

07.04.2026

Ct. No. 34

S/I No.7

sg

CRR 3238 of 2022

in

IA.NO. CRAN 7 of 2026

**Biswanath Bandyopadhyay @ Biswanath Banerjee and
Ors.**

VS.

STATE OF WEST BENGAL and Anr.

Mr. Sandipan Ganguly, sr.adv.

Mrs. Manaswita Mukherjee

...for the petitioners.

Mr. Madhusudan Sur

Mr. Dipankar Paramanick

...for the State.

1. This revisional application has been filed under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 by the petitioners being uncle and parents of one Nilabhra Banerjee (principal accused) against an Order No. 18 dated July 11th July, 2022 passed by learned Additional Sessions Judge, 1st Court, Asansol, Paschim Bardhaman in connection with Sessions Case No. 146 of 2019 corresponding under Sections 306/506/34 of the Indian Penal Code whereby dismissed the prayer for discharge as filed by the petitioners.

2. Fact of the case in a nut shell is that the deceased victim was the daughter of present opposite party no.2. She and the son of the present petitioner nos. 2 and 3, Nilbhra Banerjee were in a relationship for a considerable period of time and they agreed to marry and accordingly one joint notice was also made before the Marriage Registration Officer on September 10, 2014. After that on

24th September, 2014 deceased victim lodged one complaint against said Nilabhra Banerjee along with present petitioners under Section 376/417/120B of the Indian Penal Code before the Officer-in-charge, Asansol (South) Police Station. After investigation chargesheet was submitted in connection with that case being Charge sheet No. 307 of 2014 dated 30.11.2014 under Sections 376/417/120B of the IPC against Nilabhra Banerjee and Sections 417/120B against the present petitioners. After four days from lodging such complaint the victim girl committed suicide on September 20, 2014.

3. Instant complaint is lodged by the father of the deceased victim girl, before the Officer-in-charge, Asansol (South) Police Station against present petitioners alleging against them of continuous threatening, demand of dowry, physical and mental torture on his daughter till she committed suicide and over which a previous complaint was lodged by his daughter . Further alleged they have even threatened to the present opposite party no.2 and his wife with dire consequences and demanded money .

4. The present petitions after that filed an application praying for discharge before the learned Court and vide an order dated 11th July, 2022 ,the Learned Additional Sessions Judge, 1st Court, Asansol, Paschim Bardhaman though observed that on 24th September, 2014 the complaint was lodged by the victim since deceased, against the petitioners and no charge of harassment was made therein as alleged in the subsequent complaint, being the cause of instigation to commit suicide, directed to issue summon upon the petitioners after dismissing their application to discharge

.The learned court further held that the Nilabhra Banerjee was in custody during that period so question of investigation does not arise against him and she was separated from other accused persons and no charge was framed under Sections 306/506/34 of the IPC against him . Being aggrieved thereby the instant revisional application has been filed.

Submissions

5. Mr. Sandipan Ganguly the learned Senior Advocate strenuously argued before the Court that though an unfortunate incident occurred wherein the girl committed suicide allegedly being distressed by the behaviour and conduct of Nilabhra and certain dispute arose between them on account of such alleged misbehaviour ,the present petitioners being the uncle and parents of Nilabhra cannot be held responsible or liable for the said incident ,as they were in no manner connected with or involved in the circumstances leading thereto and they have been implicated falsely. Two adult persons entered into a relationship which became toxic and lastly the girl had to take a drastic action to put an end of her life .If any responsibility lies that is against said Nilabhra against whom only four days ago lodged the complaint alleging of an offence of rape .

6. It is specifically argued that prima facie in course of investigation whatever material was collected and the statement recorded in respect of victim in connection with the previous proceeding, no allegations of harassment can be found against the present petitioners excepting some vague and generic statement .There was no proximity of alleged cause of cruelty and

the suicide as being aggrieved by the conduct of said Nilabhra Banerjee, she lodged the complaint against him where the present petitioners were also arrayed as an accused under Sections 417/120B . No specific instigatory statement was made by them which can compelled her to commit suicide after four days from lodging the complaint by the victim lady.

7. A revisional application was filed by the opposite party no .2 against an order passed by the learned Additional Sessions Judge, 3rd Court at Asansol when all the accused persons were discharged .This order was challenged by the opposite party no2 and the learned coordinate Bench considered the statement recorded under Section 164 of the Cr.P.C by the victim , where it was revealed that since their affair was divulged before her parents by Nilabhra , who were not intimated by the victim herself and held it cannot be a reason for accusing under Section 376 IPC, at best Nilabhra can be prosecuted under Sections 447/504 of the IPC. It is argued further that the said order was never challenged before any other forum.

8. Learned senior advocate has relied upon the following decisions : ***Amalendu Pal alias Jhantu Vs. State of W.B., (2010)1 SCC 707, M. Mohan V. State (supra) represented by the Deputy Superintendent of Police: 2011(3) SCC 626, Prabhu V. State represented by the Inspector of Police and Anr(supra): 2024 SCC OnLine SC 137, Yadwinder Singh @ Sunny Vs. State of Punjab 2025 SCC Online Sc 2332,***

Ashim Bose & Ors. Vs. State of West Bengal, 2013 SCC Online Cal 4283, State of West Bengal Vs. Indrajit Kundu and Ors. (2019) 10 SCC 188.

9. Learned prosecution on the other hand, raised strong objection and submits that a suicidal note was seized which prima facie reveals that the nature of trauma faced by the girl caused by said Nilabhra and also by the petitioners. Additionally the statements recorded in course of investigation also shows enough materials which goes against the present petitioners and the learned Court rightly passed such order refusing to allow the application for discharge, filed by the petitioners. It is argued that they must face the trial and the veracity of the allegation leveled against them should be tested in course of trial.

Analysis

10. Heard the submissions. On careful perusal of the records prima facie it appears that there was a love affair between the deceased girl and Nilabhra Banerjee and a notice of marriage was made which shows that marriage was supposed to be materialized however because of the reasons explained in the suicidal note as well as the in the complaint lodged ,it was not materialized. The allegations leveled against said Nilabhra Banerjee in the complaint lodged on 24.9.2019 reveals that he forced to do sexual relationship with the lady and committed an offence of rape . That apart he maligned her image and prestige of the family in the society as she disclosed their affairs to her parents who had no knowledge and the petitioners instigated their son to damage her

life and the life of her family members .The police authorities did not start the case as they had good relations with the petitioners . Further Nilabhra tried to take advantage of the mental agonies and continued the offence of rape on her on several time in the house and at many other places. However no allegations can be found from the fore corners of such complaint against the present petitioners in the said complaint which amounts to instigating their daughter to compel her to end her life so drastically without waiting for justice in respect of the said complaint . On completion of investigation the chargesheet was submitted against Nilabhra and the present petitioners . Subsequently an application for discharge was filed which was allowed . The said order was challenged before this court and by virtue of an order passed in CRR 1175 of 2016 filed by the opposite party no 2 ,on December 4, 2017 an observation was made by the coordinate Bench affirming the said order with the observation that only Nilabhra can be prosecuted only under Sections 447/504 of the IPC .

11. The instant complaint has been lodged by the father of the victim girl since deceased on 28.9.2014 on the day when his daughter committed suicide whereby allegations leveled against the present petitioners of threatening to them and pressurizing the deceased victim with a demand of dowry, threatened to kill her etc. till she committed suicide. Further allegations leveled of inflicting mental and physical torture by the present petitioners when previous complaint was silent about such type of allegations. No new circumstances were canvassed since filing of the previous

complaint by his daughter till she committed suicide to show instigations made to the victim to commit suicide and in respect of that case the observation of the co-ordinate Bench has attained finality .

12. The Hon'ble Supreme Court in the case of **M. Mohan V. State** reported in **(2011) 3 SCC 626** where against an order of refusal to quash the proceedings under Section 306 of I.P.C, the SLP was filed before the Hon'ble Supreme Court , it was observed that-

“45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.”

13. In the decision of **Prabhu V. State represented by the Inspector of Police and Anr(supra): 2024 SCC OnLine SC 137:** where question arose whether the allegation was under Section 306 of I.P.C. the Hon'ble Supreme Court discussed:

“14. Abetment is defined in section 107 IPC and it reads as follows:

107. Abetment of a thing. —A person abets the doing of a thing, who— First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose,

voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

In taking note of the judgement of Hon’ble Supreme Court in Criminal Appeal no.1485 of 2011 delivered on 12.10.23 the paragraph 8.2 was quoted where it was held ;

8.2 section 306 IPC penalizes abatement of commission of suicide .To charge someone under this section ,the prosecution must prove that the accused played a role in the suicide .Specifically ,the accused’s action must align with one of the three criteria detailed in section 197 ipc .This means the accused either encouraged the individual to take their life ,conspired with others to ensure the person committed suicide ,or acted in a way (or failed to act)which directly resulted in the person’s suicide .

14. The Hon’ble Supreme Court in this case further held that-
“17. where the words uttered are casual in nature which are often employed in heat of the moment between quarreling people, and nothing serious is expected to follow from the same, the same would not amount to abetment of suicide. [Swami Prabhu Das Vs. State of MP] 1995 Supp (3) SCC 438 paragraph 3;

18. In order to constitute ‘instigation’ which must be shown that the accused had by his acts or omission or by continued course of conduct, created such circumstances that the deceased left with no

other option except to commit suicide. The words uttered by the accused must be suggestive by the consequence.....

23. Broken relationships and heart breaks are part of everyday life. It could not be said that the appellant by breaking up the relationship with Kousalya and by advising her to marry in accordance with advice of her parents, as he himself was doing, had intended to abet the suicide of Kousalya. Hence offence under Section 306 of the IPC is not made out.”

14. Another decision as relied upon in **Yadwinder Singh @ Sunny** (supra) it was held that-

“15. By now the position of law insofar as abetment of suicide is concerned is well settled. Even if we accept the entire case put up by the prosecution as it is without adding anything or subtracting, we are of the view that none of the ingredients to constitute the offence of abetment punishable under section 306 of the IPC are borne out”.

16. This Court in the case of **“Nipun Aneja and Others Versus State of Uttar Pradesh”** reported in SCC OnLine SC 4091 has succinctly explained the Principles of law governing abetment. We quote the relevant observations as under:-

“13. The law governing Section 306 of the IPC is well settled. Section 306 of the IPC reads as under:— “306. Abetment of suicide. —If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

15. Similarly in **Ashim Bose & Ors. Vs. State of West Bengal** this Hon'ble High Court at Calcutta distinguished instigatory statement as well as intimidatory statement and held-

“intimidatory statements may give rise two types of conclusions, (a) either the person to whom such statement are made may be frightened and may be on receiving end or he may be angry enough to retaliate but (b) instigatory statement falls within the category of ‘goading’, provoking etc. The nature of languages used by the prosecution witness for commission of suicide by the deceased falls within the category of intimidatory statements in which the ingredients of Section 107 for abetment offence are wanting.”

In this case there was a dying declaration where the helpless condition were described by the deceased due to torture of her parents in law ,sister -in -law but no description of torture meted out was not described and such dying declaration was not found believable .

Lastly, in the case of **State of West Bengal Vs. Indrajit Kundu and Others** (supra) also the Hon'ble Supreme Court held where that deceased was termed as “call girl” that there was no utterance which can be interpreted to be an act of instigating, goading or solicitation or insinuation to the deceased to commit suicide. By referring to the case law decided by the Court where similar utterance , like “to go and die” does not constitute an offence for abetment and hence allowed the application filed by the respondent.

In this case also some suicide letters were found but it was held that the materials does not present any picture of abatement allegedly committed by the respondents,

16. In the light of the above discussion it is seen that in the instant complaint the allegation was only to the extent that threatening was given to their daughter without averring no specific sentence was uttered. On a cursory glance to the statement recorded by the deceased victim in connection with Under Section 376 of the IPC allegation were mostly found against Nilabhra Banerjee and against the petitioner was instigating their son to damage his life ,without specifying how such instigation was made . Nothing can be found from the said complaint against the present petitioners which can be described as instigatory in nature which compelled the victim to take drastic action within period of four days of lodging of such complaint . No new development and facts have been canvassed in order to show it compelled the victim to take such drastic step, despite lodging FIR against said Nilbhra Banerjee as well as present petitioners and without waiting for justice . So far the complaint lodged on previously alleging torture to commit suicide the observation of the learned coordinate Bench has become final since the order has not been challenged.

17. It is settled law while hearing an application for discharge, Court is to consider whether all conviction to be passed against accused but where prima facie materials are there to proceed against them in connection with the case. Learned Session Court considered that the criminal case lodged under Section 376 of the IPC along with other sections against present petitioners and found nothing which can come within an ambit of harassment made by the accused . The learned court considering that Nilabhra Banerjee was in custody during that period no sufficient

ground found against the Nilabhra Banerjee and did not consider the charged so far present petitioners are concerned who are uncle and parents of the deceased with the observation is no way connected so far the allegation of instigation against the deceased which compelled her to take her life by committing suicide and this was affirmed by the Learned Co-ordinate Bench .

18. So far Section 506 ,it speaks of punishment for criminal intimidation which reads as follows : ... Whichever offence criminal intimidation shall be punished intimation either description torture which may extent two years with fine or both. If threat to be a cause of death or grievous hurt or to cause destruction on any principal by far or to cause offence punishable with death an order of imprisonment of life or imprisonment torture which may extent seven years which to entirety to a women shall be punished with imprisonment either described torture which may extent seven years or more.

19. In this case it is clearly apparent from the contents of the written complaint that allegation was levelled threatening the petitioner by petitioner no.1 that is Biswanath and in the suicidal note also name of Biswanath can found who threatened the parents that is the present opposite party no and his wife . Therefore, prima facie some incriminating materials are found so far Biswanath Bandopadhyay is concerned in terms of Section 506.

20. Therefore on conspectus of all , this Court is of the considered view that the order passed by the learned Court warrents interference . All the petitioners should be discharged from the charges under Section 306 of the IPC. Petitioner nos.2 and 3

should be discharge from the charges under Section 506/34 of the IPC. So far petitioner no1 he should face the trial so far the charge framed against him under Section 506 of the IPC.

21. In view of the above, revisional application stands allowed in part.

22. Since the said charge is triable by the learned Court of Magistrate, the entire record to be transferred to the court of the Learned Chief Judicial Magistrate for taking appropriate step to transfer the record to the concerned Magistrate .

23. Case Diary be returned.

24. Parties are to act on the server copy of this order downloaded from the official *website* of the Calcutta High Court.

25. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J]