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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.155 OF 2024

1. Sanjay s/o Sahadeorao Malave,
Aged about – 51 Years,
Occupation : Service,
Near Mukharji Bangla,
Mohite Plot, Akola,
Taluka and District Akola.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Akot (Gramin),
District Akola.
2. Smt. Sunita wd/o Dnyaneshwar Berad,
Aged about 51 Years,
Occupation : Nil,
R/o Umrah, Akot (Grmin),
Tahsil and District Akola.

....NON-APPLICANTS

Mr. Rajash P. Durge, Advocate for applicant.

Mr. A. M. Joshi, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22/01/2026

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally by the consent of the learned Counsel for
the applicant and learned APP for the State.

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4. The present revision application is filed by the present applicant/accused in connection with Crime No.61/2020 registered with Police Station, Akot Gramin, District Akola for the offence punishable under Section 306 of the Indian Penal Code (for short 'IPC') against the order passed by the learned Additional Sessions Judge, Akot, District Akola, rejecting the application of the present applicant for the discharge under Section 227 of the Code of Criminal Procedure.

5. Brief facts which are necessary for the disposal of the application are as under:

The wife of the deceased Sunita Berad, lodged a report at Akot Rural Police Station on 15.03.2020, informing that the applicant is working as a Headmaster of Zilla Parishad School, Umra. Her husband Dnyaneshwar Berad was employed in the said school to cook food. The applicant/accused has initiated one criminal case against her husband and son of the informant imputing alleged abuses by the deceased on the basis of the caste. Thereupon, the crime was registered against the deceased and the same was subjudiced before the Court. It is alleged by the informant that due to the lodging of the criminal complaint against the deceased, the deceased was under mental depression, he was not keeping good mental health and he has also received the threats from the present applicant, due to

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which he has committed suicide by hanging himself. On the basis of the said report, police have registered the crime against the present applicant.

6. Heard learned counsel for the applicant, who submitted that there is no dispute that the present applicant is serving as a Headmaster and the husband of the informant was also serving there. One criminal case was registered against the deceased on the basis of report filed by the present applicant. He submitted that even accepting the allegation as it is, the present applicant has filed a criminal case against the deceased and therefore, he was under mental pressure. The offence of abetment is not made out as it is not attracting the offence of abetment which is described under Section 107 of the IPC. He submitted that there is no proximity between the two acts. Even if the entire allegation is taken into consideration as it is, it is wholly to the extent that as the criminal case was filed against him, he was under mental depression and, therefore, he committed suicide. That is not sufficient to attract the offence against the present applicant. There is no close proximity as to the act of suicide and abetment at the hands of the present applicant. Moreover, the FIR is completely silent as to the nature of the abetment at the hands of the present applicant and, therefore, no offence is made out against the present applicant.

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7. Per contra, learned APP strongly opposed the said contention on the ground that at the time of quashing of the FIR what is required to be seen is whether there was a requisite mens rea and obviously, it is a matter of evidence. A strong suspicion is also expressed to proceed against the accused. He submitted that overall material shows that the applicant created certain circumstances which compelled the deceased to commit suicide. At this stage, what the Court is required to examine the material and documents on record with a view to find out if the facts emerging therefrom if taken on their face value disclose an existence of ingredients or not. Thus, at this stage, the material collected during investigation which is sufficient to proceed against the present applicant, and therefore, the application rightly rejected by the learned Additional Sessions Judge, Akot and no interference is called for.

8. After hearing both the sides and on perusal of the entire investigation papers, it reveals that the applicant is facing charge of the offence punishable under Section 306 of IPC on an allegation that while the deceased was working along with the present applicant, the present applicant has lodged a criminal complaint against him, due to which, the deceased was under mental stress and he could not carry the said mental stress and, therefore, he committed suicide by hanging himself.

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9. The application was filed by the applicant before the trial Court for discharging him on the ground that considering the allegation levelled against the present applicant which is not sufficient to attract the offence punishable under Section 306 of IPC in the light of the requirement under Section 107 of IPC to attract the offence of abetment. On perusal of the order passed by the learned Sessions Judge it is observed that while appreciating merits of the present application, in order to claim discharge, there has to be material which shows that there is no sufficient ground for proceeding against the accused and if there is no sufficient ground, the accused needs to be discharged. The Sessions Judge has observed that the statements of the various witnesses sufficiently shows that the offence under Section 306 of IPC is made out and which is sufficient to frame the charge and therefore, the application is rejected. The order and the submissions if taken into consideration, it needs to be answered whether the material which is collected during the investigation is sufficient to frame the charge against the accused.

10. Before entering into the merits of the case, it is necessary to see what are the considerations for considering the application for discharge.

11. It is settled principle of law that at the stage of considering the application for discharge, the court must proceed

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on assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in **MANU/SC/1113 2023**, advertent to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in **(2014) 11 SCC 709** and **The State of Maharashtra vs. Som Nath Thapa**, reported in **(1996) 4 SCC 659** and **The State of MP Vs. Mohan Lal Soni**, reported in **(2000) 6 SCC 338**, has held as under:

*"10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** advertent to the earlier propositions of law laid down on this subject has held:*

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to

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find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

13. Thus, the defence of the accused is not to be looked into at the stage when the application is filed for discharged. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

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The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross-examination of the defence. The case of the prosecution is accepted as it is.

14. In light of the above principles laid down by the Hon'ble Apex Court, if the present case is taken into consideration, it is apparent that the discharge is claimed on the basis that there is no proximity as far as the abetment and the act of suicide are concerned. To attract the offence punishable under Section 306 of IPC, what are the consideration are required to be looked into.

Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the Indian Penal Code defines abetment of suicide, which reads thus:

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.*

Classification of offence. - *The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.*

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15. Section 107 of the Indian Penal Code (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.

16. Section 108 of the Indian Penal reads thus:

108. Abettor.

A person abets an offence, who abets either the commission of an offence, or the commission of an act

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which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, Instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being

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incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.- The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.- It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has

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been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

17. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

The said Sections penalizes abetment 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 actions must align with one of the three criteria detailed in Section 107 of the Indian Penal Code. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

18. A question arises as to when is a person said to have instigated another. The word "instigate" means to goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done.

19. It is well settled that in order to attract the offence of abetment, there must be *mens rea*. Without knowledge or

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intention, there cannot be any abetment. The knowledge and intention must relate to the act said to be abetted which in this case, is the act of committing suicide. Therefore, in order to constitute abetment, there must be direct incitement to do culpable act.

20. In the case of **Prabhu vs. The State represented by the Inspector of Police and anr, SLP [Cri] Diary No. 39981/2022, decided on 30.01.2024**, relied by learned counsel for the applicant, by referring the various earlier decisions, the Hon'ble Apex Court held that the physical relationship over a considerable period of time was out of mutual love between the appellant and the deceased and not based on the promise of marriage. In the said case, the Hon'ble Apex Court has considered its earlier decision in the case of **Kamlakar vs. State of Karnataka Criminal Appeal No.1485/of 2011, decided on 12.10.2023** and explained ingredients of Section 306 of the Indian Penal Code and held, as under:

"8.2. Section 306 IPC penalizes abetment 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 actions must align with one of the three criteria detailed in Section 107 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.

State of 8.3. In **Ramesh Kumar vs. Chattisgarh**, reported in **AIR 2001 SC 383**, this Court has analysed different meanings of "Instigation". The relevant para of the said Judgment is reproduced herein:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

8.4. The essentials of Section 306 IPC were elucidated by this Court in **M.Mohan vs. State, AIR 2011 SC 1238**, as under:

"43. This Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605: (2010) 3 SCC (Cri) 367]** had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goadings". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of selfesteem and selfrespect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there, has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 106 IPC were also discussed in **Amalendu Pal alias Jhantu vs. West bengal AIR 2010 SC 512**, in the following paragraphs:

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an

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act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased."

21. Thus, considering the allegation levelled against the present applicant and the various statements of the witnesses, in the light of the principles laid down by the Hon'ble Apex Court to consider whether the offence is made out of under Section 306 of IPC or not, the crucial word in Section 306 of the IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. As per section 107 of the IPC, a person would be abetting the doing of a thing if he instigates any person to do that thing; or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids, by any act or illegal omission, doing of such things. There are two explanation to Section 107. As per Explanation 1, even if, a person by way of wilful misrepresentation or concealment of a material fact which he otherwise found to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to

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instigate the doing of that thing. Explanation 2 clarifies, that whoever does anything in order to facilitate the commission of that act, either prior to or at the time of commission of the act, is said to aid the doing of thing.

22. In the light of the above facts and circumstances of the present case, the allegation levelled against the present applicant is, that he has lodged a complaint against the deceased and therefore, the deceased has committed suicide. By no stretch of imagination and by applying Sections 107, 108, and 306 of IPC to the present case indicates that none of the ingredients are attracted to the case in hand. The material appears to be insufficient or subjecting the applicant to trial. On the basis of the nature of the evidence on record, it cannot be said that the material is sufficient for the prosecution to establish the charge against the applicant. In such circumstances, subjecting the applicant to trial on the basis of the above said evidence would not only be a mere formality, but also an abuse of the process of law. In view of that, the application for discharge deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The revision application is **allowed**.
- (ii) The order passed by the learned Additional Sessions Judge, Akot, District Akola, rejecting the

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application below Exh.12, is hereby quashed and set aside.

(iii) The present applicant is discharged from the charge under Section 306 of the Indian Penal Code in Sessions Trial No.31/2021.

The revision application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.