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

CRIMINAL APPLICATION (APL) NO.49 OF 2025

1. Rustam Vishnu Gawande,
Age : 53 Years,
Occupation : Labour,
(Ori. Accused No.1)
2. Shubham Rustam Gawande,
Age : 24 Years,
Occupation : Labour,
(Ori. Accused No.2)
3. Sudhir Ramesh Teke,
Age : 37 years,
Occupation : Labour,
(Ori. Accused No.3)

Applicant No.1 to 3
R/o. Belura Bk,
Post Tandli, Taluka Patur,
District Akola.

[Ori. Accused No.1 to 3 respectively] **APPLICANTS**

// VERSUS //

1. State of Maharashtra,
Through Patur Police Station,
Taluka and District Akola.
2. Subhash Suryabhan Gawande,
Age about 61,
Occupation : Agriculturist,
R/o. Belura Bk., Taluka Patur,
District Akola,
At present near Swami Smarth
Kendar Khadki, District Akola.

....**NON-APPLICANTS**

Mr. Mohammad Sameer Shaikh Rahim, Advocate for applicant.
Mr. A. M. Kadukar, APP for non-applicant No.1/State.

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

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ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel for the parties.
4. The applicants have preferred this application for quashing of the FIR in connection with Crime No.481/2023 registered with Police Station Patur, District Akola for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code (for short ` IPC) and consequent proceeding arising out of the same bearing Sessions Case No.204/2024.
5. Brief facts which are necessary for the disposal of the application are as under:

The crime is registered on the basis of a report lodged by the informant, who is the son of the deceased on an allegation that he is residing in village Bellura, Taluka Patur, District Akola, since last 20 to 25 years wherein he also owns the agriculture land along with his father. His father was looking after his agriculture operations. There was a dispute between the applicant No.1 and the father of the informant on account of the agriculture land as one of the applicant i.e. applicant No.3 has restrained their right of way to approach their field. The said dispute is also pending in the District and Sessions Court, Akola.

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It is alleged that the present applicants used to raise a quarrel with the father of the informant on account of right of way. Being fed up with the same, the father of the informant has committed suicide by hanging himself on 17.08.2023. On the basis of the said report, police have registered the crime against the present applicants. After registration of the crime, the Investigating Officer has investigated the same by drawing panchnama and recording the relevant statements of the witnesses and after completion of the investigation, submitted a charge sheet against the accused/applicants.

6. Present application is preferred by the applicants on the ground that considering the allegations levelled, even accepting the suicide note as it is, no offence is made out against the present applicants as there is no proximity between the two acts. He submitted that even if the suicide note is taken into consideration, it is only to the extent that names of the present applicants are mentioned. There is nothing in the suicide note how the present applicants have abetted the deceased to commit suicide. There is no reference of any incident from which it can be inferred that there was an abetment at the hands of the present applicants to the deceased to commit suicide.

7. Per contra, learned APP strongly opposed for the same and submitted that at the time of quashing of the FIR what

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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 sufficient to proceed against the accused. The overall material shows that the applicants created certain circumstances which compelled the deceased to commit suicide. At this stage, the Court is required to examine the material, 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 is sufficient to proceed against the present applicants, and therefore, application deserves to be rejected.

8. Despite the notice, none appears for the non-applicant No.2.

9. Before entering into the merits of the case, it is necessary to see what are the considerations as far as the offence under Section 306 of the IPC is concerned.

10. Section 306 of IPC (Section 108 of the Bharatiya Nyaya Sanhita, 2023) 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.*

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

11. Section 107 of the IPC (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.

12. Section 108 of IPC reads thus:

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108. Abettor-

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

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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 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 as 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

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A consents 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 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.

13. 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.

14. A question arises as to when is a person said to have instigated another. The word "instigate" means to goad or urge

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forward provoke, incite or encourage to do "an act" which the person otherwise would not have done.

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

16. 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 IPC and held, as under:

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"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."

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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 "goading". 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**

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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 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."

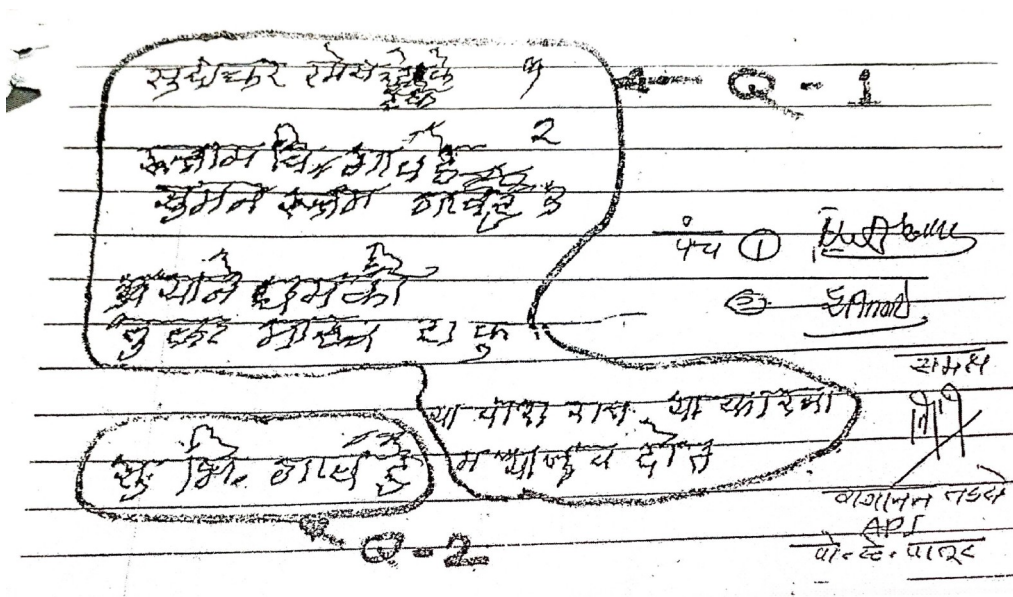
8.6. On a careful reading of the factual matrix of the instant case and the law

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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."

17. In light of the above said principles laid down by the Hon'ble Apex Court, it is well settled that to attract the provision what is to be shown is that the accused have actually instigated or aided the victim in committing suicide. There must be direct or indirect inducement to the commission of suicide and the accused must be shown to have played an active role by an act of instigation or who are doing certain acts to facilitate the commission of suicide. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that the allegation against the present applicant is that there was dispute between the applicant and the deceased on account of right of way. As per the contention of the informant, there was a way from the agricultural field of the present applicants to approach his field and the applicants have denied the same right and therefore, the deceased was fed up as the applicants raised the quarrel on that count. During the investigation, the suicide note was seized from the person of the deceased. The recitals of the Suicide Note are as under:

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18. Thus, considering the allegation levelled against the present applicants and the suicide note which is only to the extent that the names of the present applicants are mentioned in the said note. Whether this act of the present applicants amounts to abetment of suicide or not is the matter of concerned. Under Section 306 of the Indian Penal Code the very first clause of Section 107 of the Indian Penal Code lays down that a person, who abets the doing of a thing, is a person who instigates any person to do that thing. Therefore, 'instigation' to do a particular thing is necessary for charging a person with abetment. Even in case where the victim commits suicide, which may be as a result of cruelty meted out to her, the Apex Court have always held that discord and differences in domestic life are quite common in society and that the commission of such an offence largely depends upon the mental state of the victim.

Surely, until and unless some guilty intention on the part of the accused is established, it is ordinarily not possible to convict him for an offence under Section 306 of the Indian Penal Code. While dealing with the situation on the basis of the facts before the Hon'ble Apex Court, it is in catena of decision held that the accused appellant had simply refused to marry the deceased and thus, even assuming there was love affair between the parties, it is only a case of broken relationship which by itself would not amount to an abetment.

19. Therefore, 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 instigate the doing of that thing. Explanation 2 clarifies, that whoever does, do ever does anything in order to

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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.

20. Applying the above principles to the facts of the present case and even accepting the allegations as it is, it reveals that there was a dispute between the applicants and the deceased on account of right of way. It is alleged that the dispute is already pending before the District and Sessions Court, Akola. Even accepting the allegation as it is, and by examining the same on the touchstone of the principles laid down by Hon'ble Apex Court, by no stretch of imagination it can be said that the offences attracted against the present applicants. None of the ingredients are fulfilled and the material appears to be insufficient or subjecting the applicants for 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 applicants. In such circumstances, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is **allowed**.
- (ii) The FIR in connection with Crime No.481/2023 registered with Police Station Patur, District Akola for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and consequent proceeding

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arising out of the same bearing Sessions Case No.204/2024, are hereby quashed and set aside to the extent of the present applicants.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.