



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

CRIMINAL APPLICATION (APL) NO. 721 OF 2025

1. Kalandar Shah Ismail Shah,
Aged about 75 years Occ: Labour,
R/o S/o Islam Shah, Balajichok
Junivasati, Murtizapur, Hatgaon,
Akola.
2. Raheman Shah Islam Shah,
Aged about 58 years, Occ: Labour,
R/o S/o Islam Shah Ismile Shah, Near
Balaji Mandir, Old city Murtizapur,
Murtizapur Akola.
3. Ibrahim Shah Islam Shah,
Aged about 58 years, Occ: Labour,
R/o S/o Islam Shah Ismile Shah, Near
Balaji Mandir, Old city Murtizapur,
Murtizapur Akola.
4. Razzaque Shah Islam Shah,
Aged about 49 years, Occ: Labour,
R/o S/o Islam Shah, Balaji chowk
pardeshi pura, juni basti Murtizapur,
Hatgaon, Akola.

APPLICANTS

Versus

1. State of Maharashtra,
Thr. Police Station Officer, Police
Station Murtizapur (Rural),
Dist. Akola.

2. Syed Mukhtar Syed Salim,
Aged about 22 years, Occ: Labour,
R/o. Near Balaji Mandir, Old Basti,
Murtizapur, Akola.

NON-APPLICANTS

Mr. Z.Z. Haq, Advocate for the Applicants.
Mr. A.M. Joshi, APP for the Non-applicant No.1/State.
Mr. A.M. Tirukh, Advocate for the Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 04th MARCH, 2026.

ORAL JUDGMENT :-

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.
3. The present Application is preferred by the Applicants under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for quashing of the First Information Report in connection with Crime No.95/2024 registered with Police Station Murtizapur, District Akola for the offence punishable under Sections 201 and 302 of the Indian Penal

Code initially and the consequent proceeding arising out of the same bearing Charge-sheet No.31/2025 filed under Section 306 read with Section 34 of the Indian Penal Code (for short “IPC”).

4. Brief facts which are necessary for the disposal of the present Application are as under:

4(i). The report came to be lodged on 17.02.2024 by Complainant Sayed Sabir Sayed Jamir stating that he is a farmer and his son-in-law Syed Salim Syed Mushtaqa aged about 50 years who resides at old colony Murtizapur and having poultry farm and was taken care of business of scarp. His son-in-law was found to be in improper mental health prior to the lodging of the FIR. On 16.02.2024 at 5.30 he left his house somewhere with his motorcycle and subsequently he received a phone call of the son of the deceased by informing that deceased Salim was found in burn condition in front of the poultry farm. The Complainant immediately visited the said place and he found that his son-in-law is found in a burn condition and at a some distance found partially burnt clothes. Thereafter the relatives were informed and the report was lodged.

4(ii). During investigation the spot panchanama was drawn by the Investigating Agency. The post mortem report reveals that the death is shock due to burns with head injury and unnatural death was found. Therefore, initially the offence was registered under Section 302 of IPC. During investigation it revealed that, due to the abetment at the hands of the present Applicant, the deceased has committed suicide, and therefore, charge-sheet came to be filed against the present Applicants under Section 306 read with Section 34 of IPC.

5. Heard learned Counsel for the Applicants, who submitted that, even considering the statements of various witnesses, which were recorded only to the extent that the deceased used to be in under pressure condition, and therefore, he committed suicide. As far as the present Applicants are concerned, there is no single instance to show that at the hands of the present Applicants there was an abetment, and therefore, the deceased has committed suicide.

5(i). He submitted that, though the Non-applicant No.2 has filed on record two NC reports and even if the said NC reports are taken into consideration, by no stretch of

imagination it can be said that, it is an abetment at the hands of the present Applicants, and therefore, deceased has committed suicide. He submitted that, initially the FIR was registered under Section 302 of IPC contending that, the present Applicants had caused the death of the deceased but during investigation the Investigating Officer has referred the dead body for the post mortem examination and subsequent to that, the referral letter was given to the Forensic Lab and Medical Officer for ascertaining the cause of the death and it revealed that, the head injury sustained by him prior to six hours of sustaining the burn injuries. Therefore, he submitted that, this aspect is also not helpful to the prosecution to establish that the present Applicants have caused the death of the deceased.

5(ii). He submitted that, there is no single iota of evidence to show that, at any point of time before the incident the present Applicants met the deceased and thereafter there was an abetment at the hands of the present Applicants and the deceased has committed suicide.

5(iii). On the contrary, the CCTV footage collected during the investigation shows that, it was the deceased who has

purchased the petrol from the petrol pump and went from the petrol pump and at some distance he poured kerosene on himself and set himself on fire. Thus, the entire investigation papers nowhere discloses that, the present Applicants are responsible for the death of the deceased as they have abetted him to commit suicide. In view of that, no *prima facie* case is made out and hence, the Application deserves to be allowed.

6. *Per contra*, learned APP strongly opposed the said contention and invited my attention towards various statements of witnesses and submitted that, these statements sufficiently show that there was previous dispute between the deceased and the present Applicants. Present Applicants were insisting him to withdraw the suit which is filed by his brother, and therefore, he has committed suicide. He also invited my attention towards the NC reports which is filed by the Non-applicant No.2 alongwith his remark. In view of that, the Application deserves to be rejected.

7. Learned Counsel for the Non-applicant No.2, also reiterated the same contention and submitted that, these NC reports sufficiently show that the relationship between the

deceased and the present Applicants was not cordial and due to dispute between them, the deceased has committed suicide. In view of that, the Application deserves to be rejected.

8. After hearing both the sides and on perusal of the entire investigation papers, initially the prosecution has come with a case that the death of the deceased is homicidal one and the investigation was carried out. During investigation, the dead body of the deceased was found in a burn condition and it was sent for the post mortem examination. The post mortem report which was collected during the investigation, which shows that, the death is due to burn injury associated with head injury. The query report was sent to the Medical Officer and it reveals from the query report that, the injury i.e. the head injury sustained by the deceased was prior to 5 to 6 hours of the burn injuries sustained by him. Thereafter various statements of the witnesses were recorded by the Investigating Agency and during the statement it reveals that the deceased has purchased the petrol from petrol pump and thereafter he proceeded with that petrol and subsequently he found dead at some distance from the petrol pump in one farm. The various statements which were

recorded by the Investigating Agency disclose that, as there was a dispute between the present Applicants and deceased, and therefore, the deceased poured kerosene on himself and set himself ablaze. After completion of the investigation, the Investigating Officer has filed charge-sheet against the present Applicants under Section 306 read with Section 34 of IPC.

9. Now, a question remains whether the prosecution has *prima facie* established that the deceased was abetted by the present Applicants to commit suicide.

10. 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.”*

11. 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.”

12. 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 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 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

A concerts 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 IPC 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.

14. 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 actions must align with one of the three criteria detailed in Section 107 of IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

15. 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.

16. 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.

17. In the case of ***Prabhu vs. The State represented by the Inspector of Police & Anr., SLP [Cri] Diary No. 39981/2022, decided on 30.01.2024***, relied by learned Counsel for the Applicants, 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:

"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.

*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 "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 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 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."*

18. In the case of ***Sanju @ Sanjay Singh Sengar v. State of M.P., (2002) 5 SCC 371***, the Hon'ble Apex Court extensively dealt with concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the accused/appellant therein was that he had abetted the commission of suicide of his sister's

husband one Chander Bhushan. The facts reveals that there were matrimonial disputes between sister of the appellant/accused and her husband and in connection with the said disputes, the appellant had allegedly threatened and abused Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him “to go and die”. The appellant, who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. While allowing the appeal, the Hon’ble Apex Court, *inter alia*, observed as follows:

“Even if we accept the prosecution story that the appellant did tell the deceased ‘to go and die’, that itself does not constitute the ingredient of ‘instigation’. The word ‘instigate’ denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.”

19. Thus, a direct influence or an oblique impact with the acts or utterances of the accused caused or created in the mind of the deceased and which draw him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or ill-fated thoughts of the suicide, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of the Indian Penal Code. In order to bring out an offence under Section 306 of the Indian Penal Code specific abetment as contemplated by Section 306 of the Indian Penal Code on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for an offence under Section 306 of the Indian Penal Code.

20. The Hon'ble Apex Court in case of *Ramesh Kumar Vs. Chattisgarh*, reported in AIR 2001 SC 383 referred in *Prabhu Vs. The State represented by the Inspector of Police Anr.*, (supra), relied upon by learned counsel for the applicant, in para No.20 has examined different meaning of 'instigation',

which reads as, ‘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’.

21. Thus, combine reading of Sections 306, 107, and 108 of the Indian Penal Code, shows the requirement is a positive act on the part of the accused to instigate or aid in committing suicide and in the absence of the same, the conviction cannot be sustained. There has to be a clear intention to commit the offence for being held liable under Section 306 of Indian Penal Code.

22. After going through the catena of decisions, it reveals that test that the Court should adopt in these types of cases is to make an endeavour to ascertain on the basis of the materials on record whether there is anything to indicate even prima facie that the accused intended the consequences of the act, i.e., suicide. To attract the provisions what is to be shown is that the accused have actually instigated or aided in the victim act of committing suicide. There must be direct or indirect incitement to the commission of suicide and the accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

23. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that though the prosecution has come with a case that there was a previous dispute between the deceased and the present Applicants, which is not substantiated by any material. Even if it is accepted that, the FIR came to be lodged against the present Applicants alleging that they have caused the death of the deceased but there is no single circumstance which is brought on record to show that the present Applicants are connected

with cause of death of the deceased. As far as the allegations regarding the abetment of the suicide is concerned, now it is settled law that, mere dispute between the parties are not sufficient to attract the ingredients of the offence punishable under Section 306 of IPC. There has to be some intended act to constitute the offence of abetment of committing suicide. In view of first clause of Section 107 of IPC which 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.

24. The two NC reports which are filed on record which shows that the dispute is of a striven in nature which is not sufficient to establish that there was an abetment and there was no alternative before the deceased but to commit suicide and thereby he has committed suicide. Thus, in the absence of the material to attract the offence or to constitute the offence punishable under Section 306 of IPC, no *prima facie* case is made out against the present Applicants. In view of that, the

Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
 - ii. The First Information Report in connection with Crime No. 95/2024 registered with Police Station Murtizapur, District Akola for the offence punishable under Sections 201 and 302 of the Indian Penal Code initially and the consequent proceeding arising out of the same bearing Charge-sheet No.31/2025 filed under Section 306 read with Section 34 of the Indian Penal Code, are hereby quashed and set aside to the extent of present Applicants.
25. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)