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

CRIMINAL APPLICATION (APL) NO.952 OF 2025

1. Manisha w/o Sachin Bagde,
Aged about 29 Years,
Occupation : Household work.
2. Sachin s/o Suresh Bagde,
Aged about 34 Years,
Occupation : Service,
Both R/o. C/o. Prakash Mangtani,
Vaishnav Devi Nagar, Arni Road,
Yavatmal, District Yavatmal.

.... APPLICANTS

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Yavatmal (Rural)
2. Pratibha w/o Digambar Donode,
Aged about 45 Years,
R/o. Ghota, Taluka Barshi Takali,
District Akola.

....NON-APPLICANTS

Mr. R. M. Daga, Advocate for applicants.
Mr. N. B. Jawade, APP for non-applicant No.1/State.
Ms. Himani Kavi, Advocate (appointed) for non-applicant
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/02/2026

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

(2)

3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the non-applicant No.1/State and learned appointed counsel for the non-applicant No.2.

4. The application is preferred by the applicants under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of the FIR in connection with Crime No.520/2024 registered with Police Station Yavatmal (Rural) for the offence punishable under Sections 108, 80(2), 85, 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising of the same bearing Sessions Case No.6/2025 (charge sheet No.129/2024).

5. The crime is registered on the basis of a report lodged by the informant, who is the mother of the deceased, on an allegation that her daughter Mayuri married with the co-accused Amit Suresh Bagade on 17.06.2022 and the applicant No.1 is the wife of the brother of the said Amit, whereas applicant No.2 Sachin is the brother of the said Amit. After marriage, her daughter resumed cohabitation at the house of the present applicants, however, she was disliked by them and on that count, they used to ill-treat her by physically and mentally. It is further alleged that on 10.10.2024, he has received the phone call message on the mobile of his daughter that the deceased has committed suicide and therefore, he immediately rushed to the

(3)

matrimonial house of her daughter, wherein it revealed to her that her daughter has committed suicide by hanging herself. She alleged that due to the abetment at the hands of the present applicants and other co-accused, the deceased has committed suicide. On the basis of the said report, police have registered the crime.

6. After registration of the crime, the Investigation Officer has visited the alleged spot of incident, drawn the spot panchnama, inquest panchnama, recorded the relevant statements of the witnesses and after completion of the investigation, submitted charge sheet against the accused.

7. Heard learned counsel for the applicants, who submitted that by no stretch of imagination it can be said that the offence under Section 306 of IPC is made out, as there is no proximity between the act of abetment and the suicide by the deceased. He further submitted that what actually act or instigation was on the part of the applicants, which is not narrated by the informant or any other witnesses. He submitted that to attract the offence punishable under Section 306 of IPC, in view of Sections 107 and 108 of IPC there has to be some act on the part of the present applicants which is absent in the present case. On the contrary, recitals of the FIR itself shows that the applicants are residing at Yavatmal and along with the

(4)

deceased and her husband. Thus, the basic ingredients to constitute the offence and there is nothing on record to show that there was any *means rea* on the part of the present applicants, therefore, the application deserves to be allowed.

8. Per contra, learned APP for the non-applicant No.1/State submitted that at the time of the quashing of the First Information Report what requires to be seen is whether there was requisite *mens rea* and obviously it is a matter of evidence. A strong suspicion is also sufficient to proceed against the accused. He submitted that overall material shows that the applicants created certain circumstances which compelled the deceased to commit suicide. He also invited my attention towards the various statements of the witness and submitted that the material collected during investigation is sufficient to proceed against the present applicants and therefore, the application deserves to be rejected.

9. Learned appointed counsel for the non-applicant No.2 also reiterated the said contentions and submitted that the statements of the witnesses disclose the *prima facie* material against the present applicants and therefore, the application deserves to be rejected.

(5)

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

11. 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.*

12. 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

(6)

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.

13. 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

(7)

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

(8)

(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

(9)

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

(10)

A conspires 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.

14. 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

(11)

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. It is well settled that in order to amount to 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 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 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.

8.3. In **Ramesh Kumar vs. State of 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

(13)

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.

(14)

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

(15)

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

(16)

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 the light of above said principles laid down by the Hon’ble Apex Court, it is well settled that to attract the provisions what is to be shown is that the accused have actually instigated or aided to the victim in 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.

18. 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 applicants are that they are the nearest relatives of the husband of the deceased, however, the recitals of the FIR itself shows that they were residing at Yavatmal and except the reference of their names and general and sweeping allegation against them, no overt act is attributed to them. Thus, 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

(17)

charging a person with abetment. Even in cases where the victim commits suicide, which may be as a result of cruelty meted out to her, the Courts 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 Apex Court in the case of **Kamaruddin Dastagir vs. State of Karnataka**, reported in **MANU/SC/1266/2024**, the Hon'ble Apex Court held that accused-appellant had simply refused to marry the deceased and thus, even assuming there was love between the parties, it is only a case of broken relationship which by itself would not amount to abetment to suicide.

19. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that the deceased and present applicants are the relatives as the husband of the deceased is the real brother of the applicant No.2. It is alleged that they have also ill-treated, except the stray sentence, there is no material to show that in what manner the instigation was there at the hands of the present applicants.

(18)

On examination of the instant case on the touchstone of the principles laid down by the Hon'ble Apex Court, the entire material collected during the investigation, even taking the allegation as it is, at its face value, no offence is made out against the present applicants merely because the present applicants are the relatives they appears to be arraigned as an accused.

20. A plain reading of Sections 107, 108, and 306 of the Indian Penal Code and applying it to the undisputed facts of the present case indicates that none of the ingredients are attracted to the case in hand. The material appears to be insufficient for 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 applicants. In such circumstances, subjecting the applicants for trial on the basis of the above said evidence would not only be a mere formality but also abuse of process of law. In view of that, 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.520/2024 registered with Police Station Yavatmal (Rural) for the offence punishable under Sections 108, 80(2), 85, 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the

(19)

consequent proceeding arising of the same bearing Sessions Case No.6/2025 pending before the learned Ad-hoc District Judge-1 and Additional Sessions Judge, Yavatmal, are hereby quashed and set aside to the extent of the present applicants.

(iii) The fees of the appointed counsel be quantified as per rules.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.