



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

CRIMINAL APPLICATION (APL) NO. 1167 OF 2025

1. Vijay Sitaram Zoting,
Age 55 years, Occ: Daily wages,
2. Vinod Gangaram Rajurkar,
Age 50 years, Occ. Daily wages,
Both R/o Pandharkawada, Taluka-
Kelapur, Yavatmal Maharashtra.

APPLICANTS

Versus

1. State of Maharashtra,
Thr. Police Station Officer, Police
Station Pandharkawada, District
Yavatmal, Maharashtra.
2. Vaishali Mangesh Wasekar,
R/o Ranapratap Ward,
Pandharkawada, Tal.- Kelapur,
Dist. Yavatmal, Maharashtra.

NON-APPLICANTS

Mr. S.M. Lodha, Advocate for the Applicants.
Mr. N.B. Jawade, APP for the Non-applicant No.1/State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 30th MARCH, 2026.

ORAL JUDGMENT :-

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned Counsel for the Applicants and learned APP for the Non-applicant No.1/State.
3. None appears for the Non-applicant No.2 though service of notice is there.
4. The present Application is preferred by the Applicants under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing the First Information Report in connection with Crime No.622/2025 registered with Police Station Pandharkawada, District Yavatmal for the offence punishable under Section 108 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Sessions Case No. 31/2025 pending before the Adhoc Sessions Judge, Kelapur.
5. Brief facts which are necessary for the disposal of the present Application are as under:

5(i). The crime came to be registered on the basis of a report lodged by the Non-applicant No.2 wife of the deceased on an allegation that she was residing alongwith her in-laws, two children and her husband deceased Mangesh Kisan Wasekar. Her husband was dealing with work as Civil Contractor. The Applicants were known to him and they frequently used to come at their house and there was a money transaction between the deceased and the present Applicants. The present Applicants have obtained Rs. 10-12 Lakhs from him and were not returned the same and whenever the deceased used to demand the money from them, they used to say that they would not return the money and used to quarrel with him. On that count, the deceased has committed suicide by hanging himself in the complex of Mangesh Shedam in Athawadi Bazar. On the basis of the said report Police have registered the crime against the present Applicants.

5(ii). After registration of the crime, during investigation the Investigating Officer has seized the mobile phone of the deceased as well as recorded various statements of witnesses. During the examination of mobile phone of the deceased one

video clip was found by the Investigating Agency which discloses the communication by the deceased showing that it was the present Applicants who have not repaid his amount and same action to be taken against them. On the basis of the said investigation, the charge-sheet came to be filed against the present Applicants.

6. Heard learned Counsel for the Applicants, who submitted that as far as the monetary transaction is concerned except the bare statement of the deceased there is no material to connect the present Applicants to show that they have obtained the money. The mobile phone of one of the Applicants i.e. the Applicant No.1 was seized during investigation and on inspection of the said mobile phone, nothing was found by the investigating agency showing that there was any online money transaction between the present Applicant No.1 and the deceased. He invited my attention towards the mobile verification panchnama of the Applicant No.1, wherein it is specifically mentioned that there was no such transaction revealed from the inspection of the mobile phone. Thus, he submitted that, initially the Marg Report was filed. The

statement of the wife was recorded, wherein she has not raised any suspicion against anybody and thereafter on 16.07.2025 the FIR came to be lodged i.e. after approximately 45 days against the present Applicants which is afterthought. He submitted that, even accepting the allegations as it is no offence is made out against the present Applicants as there is no proximity or nexus between the act, which is alleged to be committed by the present Applicants and the committal of the suicide by the deceased. He submitted that, the alleged incident has taken place on 02.06.2025, whereas the FIR came to be lodged on 16.07.2025. The statements of witnesses also not disclose that there was any monetary transaction between the deceased and the present Applicants. The statements of the accounts are collected during the investigation and he submitted that, the statements of the accounts though showing some transactions between them but which is not sufficient to infer that there was an abetment at the hands of the present Applicants as no exact act or positive act is narrated by any of the witnesses to attract the offence punishable under Section 306 of IPC (Section 108 of BNS). In view of that, the Application deserves to be allowed.

7. *Per contra*, learned APP strongly opposed the said contentions and submitted that, considering that there was a money transaction between the present Applicants and the deceased, there was an abetment at the hands of the present Applicants as they have not repaid the amount and there was financial constrains on the deceased, and therefore, the deceased has committed suicide. Thus, the act of the present Applicants not paying the amount which is obtained by them as hand loan, itself is sufficient to commit suicide by the deceased, and therefore, the deceased has committed suicide. In view of that, the Application deserves to be rejected.

8. On hearing both the sides and on perusal of the entire investigation papers it reveals that, there was a monetary transaction between the Applicants and the deceased. It is further apparent that, the Applicants allegedly have obtained some amount from the deceased and it was not repaid and that was the reason for the deceased to commit suicide. It is submitted by the learned APP that, there was a financial constrains on the said deceased and due to the said transactions there was no alternative before the deceased to commit suicide.

On perusal of the recitals of the FIR and the statement of the wife of the deceased as well as various statements of witnesses nowhere it reveals that as due to the non-repayment of the amount by the present Applicants there was a financial constrains on the deceased and there was no alternative before the deceased but to commit suicide, and therefore, the deceased has committed suicide. The prosecution has relied upon one clip which was recorded in the mobile phone of the deceased. On perusal of the translation of the said clip it reveals that it was the clip recorded wherein the deceased was found saying “अज्जु ले पाठवु पाठवु माये संतुलन खराब केले अज्जु भाई ” तसेच त्यानंतर दुसरी व्हीडीओ क्लीप जीची डीटेल्स पाहिली असता video_20250602_092241, Time - 02/06/25, 9:23am, size- 43.50 MB, 1080x1920,30 FPS 00:20, Parameters vivo Y56 5G, Path - internal storage/DCIM/Camera/video-20250602-092241.mp4 असे आठळून आले. तसेच त्यामधील व्हीडीओ क्लीप बघितली वे ऐकली असता त्यामध्ये मृतक हा स्वताहा मराठीत वक्तव्य करीत आहे की “ याचेवर कारवाई करा तुम्ही विजु झोटिंग, विनोद राजुरकर उर्फ डेव्हीड यांचेवर कारवाई करा हे माझे १० लाखाचे वरचे पैसे खाऊन आहे. मला पैसे दिले नाही मले येयन फसवुन टाकले”

9. Thus, this recording also nowhere shows that there was a financial constrains on the deceased, and therefore, the deceased has committed suicide. Thus, as far as the offence of the abetment is concerned, from the statements of the witnesses, admittedly, nothing reveals to show that some act

was committed by the present Applicants, and therefore, the deceased has committed suicide.

10. In the light of the above facts and circumstances, it is necessary to see what are the considerations for considering the application for quashing of the FIR. As far as the law in regard to the offence under Section 306 of IPC is concerned, question will remain whether repayment of money from the present Applicants, which is sufficient reason for the deceased to commit suicide.

11. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of IPC 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 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.”

13. Section 108 of IPC 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 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 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 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.

15. The said Section 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.

16. 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.

17. 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.

18. 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."*

19. 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.”

20. 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.

21. 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’.

22. 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.

23. After going through the catena of decisions, it reveals that the 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.

24. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that there was a money transaction between the deceased and the present Applicants. As per the allegations, the present Applicants were not repaying the amount, and therefore, the deceased has committed suicide. Thus, there is nothing on record to show that, due to some act of the present Applicants, the deceased constrains or compels to commit suicide. On the contrary, it is apparent that, one video recording was found in

the mobile phone of the deceased which only shows that the present Applicants are not repaying the money, and therefore, some action is to be taken against them. As far as the allegation regarding that the present Applicants were saying that they will not repay the amount, which is not substantiated by any statement or any material. Thus, as far as the abetment at the hands of the present Applicants are concerned, which is not substantiated by any material to show that, there was no alternative before the deceased to commit suicide due to the act of the present Applicants.

25. A plain reading of Sections 107, 108 and 306 of IPC and applying it to the undisputed facts of the present case indicates that none of the ingredients are attracted to the case in hand. Thus, the material appears to be insufficient or subjecting the Applicants to trial. The investigation papers nowhere reveals that there was any positive act on the part of the present Applicants and due to which the deceased has committed suicide. 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. 622/2025 registered with Police Station Pandharkawada, District Yavatmal for the offence punishable under Sections 108 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Sessions Case No. 31/2025 pending before the Adhoc Sessions Judge, Kelapur, are hereby quashed and set aside to the extent of the present Applicants.

26. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)