



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1255 OF 2025

APPLICANT : Diksha alias Pooja Kirankumar Aswar,
Aged : 28, Occ. Housewife,
R/o Lalkhed, Tah. Darwha,
Dist. Yavatmal.

VERSUS

NON-APPLICANTS : 1. State of Maharashtra
Through Police Station, Lalkhed,
Tq. Darwha, Dist. Yavatmal.

2. Arjun Maroti Aswar,
Aged 59 years, Lalkhed,
Tq. Darwha, Dist. Yavatmal.

Shri S. H. Tayade, Advocate for applicant.
Shri A. M. Joshi, Additional Public Prosecutor for non-applicant No.1.

CORAM: URMILA JOSHI-PHALKE, J.
DATED : 20/02/2026.

ORAL JUDGMENT :

1. Heard. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.

2. Despite service of notice, none appears for non-applicant No.2.

3. By this application, the applicant is seeking quashing of First Information Report by invoking jurisdiction under Section

528 of the BNSS, 2023 and the consequent proceeding arising out of the same bearing Charge Sheet No.85/2025.

The brief facts which are necessary for the disposal of the application are as under :-

4. The FIR came to be registered on the basis of report lodged by the non-applicant No.2 on an allegation that the marriage of the present applicant was performed with his son Kirankumar Arjun Aswar which was a love marriage. The applicant is the daughter-in-law and his son was residing separately in the same house, as the behaviour of the present applicant was not good. They have convinced her, gave her understanding where she has not paid any attention to it. As per the allegations on 25/03/2025 at about 10.00 p.m., the applicant was communicating with somebody by approaching to the terrace and therefore, she was brought back in the house and on that count, there was quarrel between her and her husband. She left the house on that count and thereafter, son of the present applicant has committed suicide by hanging himself. On the basis of said report, police have registered crime against the present applicant.

5. Heard learned counsel for the applicant who submitted that even accepting the allegations as it is, the test which is laid down is not fulfilled and therefore, the offence punishable under Section 306 of the IPC is not made out. He submitted that there is nothing on record to show that there was any instigation, aiding or abetment on the part of the present applicant and there was no alternative before the deceased but to commit suicide and thereby, he has committed suicide. He submitted that even accepting that there was quarrel between the applicant and husband, it was a domestic quarrel between the husband and wife and that would be sufficient to attract the offence punishable under Section 306 of the IPC and therefore, no offence is made out against the present applicant. He invited my attention towards the recitals of the FIR as well as the statements of various witnesses and submitted that by no stretch of imagination, it can be said that due to abetment at the hands of present applicant, the deceased has committed suicide and on that count, application deserves to be allowed.

6. Per contra, learned APP strongly opposed the said contention and submitted that considering that the applicant was communicating with somebody during the night hours and therefore, the act of the present applicant was objected and she

has left the house. Therefore, the deceased has felt humiliated and he has committed suicide. Thus, the act of present applicant is sufficient to attract the abetment at third hands and therefore, application deserves to be rejected.

7. Before entering into the merits of the case, it is necessary to see what are the ingredients of the offence and whether the domestic quarrel between the husband and wife would be sufficient to attract the offence punishable under Section 306 of the IPC.

8. Sections 306 (Section 108 of the BNSS, 2023) of the IPC defines abetment of suicide which reads as under :-

“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.”

9. 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.

10. 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 an offence.

Illustration

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

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

Illustration

A 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.

11. Section 306 of the IPC talks about the 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.

12. The said Section penalizes the 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 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

13. 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 could not have done.

14. 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 a culpable act.

15. In the case of Kamlakar Vrs. State of Karnataka in Criminal Appeal No.1485/2011 decided on 12/10/2023 wherein the Hon'ble Apex Court explained the 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 This 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 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 Section 306 IPC, the court under 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.”

16. In the case of Sanju @ Sanjay Singh Sengar Vrs. State Of M.P., reported in (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."

17. Thus, a direct influence or an oblique impact with the acts or utterances of the accused caused or created in the mind of deceased and which draw him to commit suicide will not be sufficient to constitute offence of abetment of suicide. A fetal 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 IPC. In order to bring out an offence under Section 306 of the IPC specific abetment as contemplated by Section 306 of the IPC on the part of 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 IPC.

18. Thus, combined 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.

19. After going through the catena of decisions, it reveals that test that 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 actually instigated or aided in the victim's 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.

20. 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

dispute between the husband and the wife and due to which wife has left the house and thereafter, husband has committed suicide. There is nothing on record to show that there was any abetment at the hands of the present applicant. Thus, except the allegation that as the present applicant has left the house in the night due to quarrel between the husband and wife and thereafter, husband has committed suicide is not sufficient to attract the offence punishable under Section 306 of the IPC. In view of that, application deserves to be allowed. Accordingly, I proceed to pass the following order :-

ORDER

- i] The application is allowed.
- ii] The FIR in connection with Crime No.118/2025 and the consequent proceeding arising out of the same bearing Charge Sheet No.85/2025 is hereby quashed and set aside to the extent of present applicant.

21. The application is disposed of.

[JUDGE]