



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

CRIMINAL APPLICATION (APL) NO. 1774 OF 2025

1. Kalpana Prabhakar Wankhede,
Aged about 24 Years, Occ. Nil,
R/o Uti, Tah., Mahagaon,
Dist. Yavatmal (Niece).
 2. Durga w/o Shankar Jagtap,
Aged about 25 Years, Occ. Nil,
R/o Talegaon, Tah. Haddgaon,
Dist. Nanded (Niece).
 3. Pooja w/o Anil Jadhav,
Aged about 28 Years, Occ. Nil,
R/o Bhokar, Dist. Nanded (Niece).
- APPLICANTS**

Versus

1. State of Maharashtra,
Thr. its Police Station Officer
Mahagaon, Tah. Pusad,
Dist. Yavatmal.
 2. Pandurang Prabhakar Kadam,
Aged about 50 Years,
Occ. Agriculturist,
R/o. At Post Veersani,
Tah. Himayatnagar, Dist. Nanded.
- NON-APPLICANTS**

Mr. H.S. Chawhan, Advocate for the Applicants.
Mr. H.D. Dubey, APP for the Non-applicant No.1/State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 13th JANUARY, 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 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 for quashing of the First Information Report in connection with Crime No.376/2023 dated 15.07.2023 and charge-sheet bearing No.460/2024 dated 23.09.2024 registered with Police Station Mahagaon, District Yavatmal for the offence punishable under Sections 306 and 498-A of the Indian Penal Code (for short "IPC") and consequent proceeding arising out of the same bearing C.C. No.123/2024 pending before Additional Sessions Judge, Pusad.
4. Brief facts which are necessary for the disposal of the Application are as under:

The crime is registered on the basis of the report lodged by the Non-applicant No.2/Pandurang Prabhakar Kadam against the present Applicants on an allegation that the marriage of his daughter was performed with one Vilas Sindoba Wankhede. From the said marriage she is having 2 daughters and one son. After marriage she was treated well by her in-laws for some days and subsequently she was subjected for harassment physically as well as mentally for a demand of Rs. 5 Lakhs for purchasing the Tractor. She was harassed continuously physically and mentally by demanding the money as well as forcing her to do all the works and being fed up with the same, she has committed suicide by jumping in the well in the agricultural field. On the basis of the said report Police have registered the crime against the present Applicants. The present Applicants are the Niece of the deceased. During investigation, the Investigating Officer has recorded various statements of the witnesses, drawn the spot panchnama and after completion of the investigation submitted charge-sheet against the present Applicants.

5. Heard learned Counsel for the Applicants who submitted that, as far as the allegations are concerned they are not attracting the offence of abetment which is prescribed under Section 107 of IPC. He submitted that, there is no proximity between the two acts. Even if the entire allegations are taken as it is no offence is made out against the present Applicants except mentioning of the names there was no positive act or action on the part of the present Applicants to attract the offence punishable under Sections 306 and 498-A of IPC. There is no close proximity as to the act of suicide. Thus, even accepting the case as it is there is no *mens rea* on the part of the Applicants appearing on the face of record, and therefore, the charge under the aforesaid Sections cannot be sustained. In support of his contentions he placed reliance on the decision of ***Laxmi Das Vs. State of West Bengal & Ors., 2025 SCC OnLine SC 120.***

6. *Per contra*, learned APP strongly opposed the Application on the ground that, at the time of quashing of the FIR what is required to be seen is whether there was a requisite *mens rea* and obviously, it is a matter of evidence. A strong

suspicion is also expressed to proceed against the Applicants. It is submitted that, overall material shows that the Applicants created certain circumstances which compelled the deceased to commit suicide. At this stage, the Court is required to examine the material documents on record with a view to find out if the facts emerging therefrom if taken on their face value disclose an existence of ingredients or not. Thus, at this stage, the material collected during investigation is sufficient to proceed against the present Applicants, and therefore, Application deserves to be rejected.

7. The Non-applicant No.2 though served but non appears for the Non-applicant No.2.

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

9. 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.”*

10. 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.”

11. 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.”

12. 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.

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.

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 would not have done.

14. 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.

15. 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 "goad". 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.”

16. In light of the above said principles laid down by the Hon'ble Apex Court, it is well settled that to attract the provision what is to be shown is that the accused have actually instigated or added to the victim in committing suicide. There must be direct or indirect inducement to the commission of suicide and the accused must be shown to have played an active role by an act of instigation or who are doing certain acts to facilitate the commission of suicide. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that except mentioning of the names no specific role is attributed to them as far as the ill-treatment and harassment at their hands are concerned. Admittedly, the Applicants were not residing alongwith the deceased and her husband at the relevant time.

17. Thus, considering the allegations levelled against the present Applicants and the entire statements of the witnesses which are recorded during the investigation except

the mentioning of the names no specific role is attributed to them to attract the offence of abetment of suicide against them.

18. In the case of *Kamaruddin Dastagir vs. State of Karnataka, reported in MANU/SC/1266/2024*, wherein while dealing with the provisions under Section 306 of IPC extensively it is held that the very first clause of Section 107 of IPC 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. It is observed that 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 IPC. While dealing with the situation on the basis of the facts before the Hon'ble Apex Court, it is held that the accused/appellant had simply refused to marry the deceased

and thus, even assuming there was love affair between the parties, it is only a case of broken relationship which by itself would not amount to abetment to suicide.

19. In the case of ***Laxmi Das*** (Supra), on which the learned Counsel for the Applicants relied upon, wherein also by considering the catena of decisions it is held by the Hon'ble Apex Court that the proof required to prove the offence is direct or indirect instigation, proximity to the act of suicide and clear *mens rea*.

20. Thus, in view of the catena of decisions the crucial word in Section 306 of IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. As per Section 107 of IPC, a person would be abetting the doing of a thing if he instigates any person to do that thing; or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids, by any act or illegal omission, doing of such things. There are two explanation to Section 107 of IPC. As per Explanation 1, even if, a person by way of wilful misrepresentation or concealment of a material fact which he otherwise found to disclose, voluntarily causes or procures, or

attempts to cause or procure a thing to be done, is said to instigate the doing of that thing. Explanation 2 clarifies, that whoever does anything in order to facilitate the commission of that act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

21. Applying the above principles to the facts of the present case and even accepting the allegations as it is, it reveals that there was no specific allegations levelled against the present Applicants in what manner they have abetted the deceased to commit suicide. On examination of the instant case on the touchstone of the principles laid down by Hon'ble Apex Court, the entire material collected during the investigation, including the statements of the witnesses etc., it reveals that the Applicants are the Niece of the deceased and except mentioning of their names no role attributable against them as far as suicide by the deceased is concerned. Thus, there is no proximity or nexus between the acts of the present Applicants and the commitment of suicide by the deceased. Merely, because they are the family members cannot be a ground to implicate them in the alleged offence.

22. A plain reading of Sections 107, 108 and 306 of IPC and applying it to 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 or subjecting the Applicants 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 to trial on the basis of the above said evidence would not only be a mere formality but also abuse of process of law.

23. In this view of the matter, the Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The prayer of Applicant No.1/Kalpna Prabhakar Wankhede, Applicant No.2/Durga w/o Shankar Jagtap and Applicant No.3/Pooja w/o Anil Jadhav for quashing of First Information Report in connection with Crime No. 376/2023 dated

15.07.2023 and charge-sheet bearing No.460/2024 dated 23.09.2024 registered with Police Station Mahagaon, District Yavatmal for the offence punishable under Sections 306 and 498-A of the Indian Penal Code and consequent proceeding arising out of the same bearing C.C. No.123/2024 pending before the Additional Sessions Judge, Pusad are hereby quashed and set aside.

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

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte