

**The High Court of Madhya Pradesh**  
**MCRC 2887/2017**  
**Rakesh Rathore & Another vs. State of MP & Anr.**

**Gwalior, dtd. 27/11/2018**

Shri Rahul Bansal, counsel for the applicant No. 1.

Shri Sanjay Gupta, counsel for the applicant No.2.

Shri BM Patel, Public Prosecutor for the respondent No.1/  
State.

This petition under Section 482 of CrPC has been filed for quashing the FIR in Crime No.497/2016, registered at Police Station Narwar, District Shivpuri for offence under Sections 306 read with Section 34 of IPC.

The necessary facts for the disposal of the present petition in short are that the, first informant Pawan Jatav informed the police that in between 07:00- 08:00 pm, his brother Jitendra Jatav informed him on telephone that their father Narayan informed that as he is heavily indebted, therefore, he is going to commit suicide by jumping from the bridge. On the information given by Jitendra, when the first informant Pawan Jatav went to the bridge, then he found that one person has jumped from the bridge. It was found that in fact, his father had jumped and accordingly, he was taken to the hospital where his father was declared dead. The police recorded the statements of the witnesses as well as also seized a suicide note from clothes of the deceased. The suicide note reads as under:-

" एक हस्त लिखित एक लेखीय पत्र सफेद कलर का जिसका मजमून इस प्रकार है "मैं नारायण सिंह जाटव मेरी पत्नी एवं बच्चों से कोई परेशानी नहीं है। कर्ज वाले मुझे परेशान कर रहे हैं। कर्ज देते देते मैं थक गया हूँ। इसलिए मैं आत्म हत्या कर रहा हूँ। मोहन कुशवाहा ने झूठे कोर्ट में चेक लगाए है। सब परेशान करने वाले शिवपुरी के है। एक माह से ड्यूटी पर नही जाने देते रहे हैं।"

The witnesses in their statements have also stated that the deceased had taken loan from the applicants as well as from one Sanjay, which was repaid by him but still the applicants were demanding additional money from the deceased and as such, he was being harassed by the applicants, therefore, he committed suicide by jumping from the bridge.

It is submitted by the counsel for the applicants that even if the entire allegations are accepted, then it is clear that it may not be an offence under Section 306 read with Section 34 of iPC. If anybody has given money to the deceased and he was demanding his money back, then it cannot be said that the lender of money has abetted the deceased to commit suicide. It is further submitted that there is nothing on record to suggest that the deceased had repaid the entire loan amount and in spite of that, the applicants were demanding additional money. To buttress their contentions, the Counsel for the applicants have relied upon the judgments passed by the Supreme Court in the case of **Swami Prahlad Das Vs. State of M.P.** reported in **1995 SCC (Cri) 943**, **Sanju Vs. State of M.P.** reported in **AIR 2002 SC 1998**, **S.S. Chheena Vs. Vijay Kumar** reported in **2010 (12) SCC 190** and **M. Mohan Vs. State** reported in **2011 (3) SCC 626** and the Judgments passed by this Court in the cases of **Ved Prakash Vs. State of M.P.** reported in **1995 Cr.L.J. 893**, **Ram Naresh Vs. State of M.P.** reported in **2002(2) MPLJ 360**, **Laxmi Prasad Vs. State of M.P.** reported in **2003 (!) MPWN 34**, **Ajay Patodia Vs. State of M.P.** reported in **2003(2) MPWN 153**, **Jugal Kishore Vs. State of M.P.** reported in **2005(1) Crimes 117**, **Madiya Vs. State of M.P.** reported in **2006 (1) MPLJ 583**, **Paramjeet Vs. State of M.P.** reported in **2007 Cr.L.J. 3343**, **Prakash**

**Chand Vs. State of M.P.** reported in **2007(1) MPWN 20**, **Devendra Singh Vs. State of M.P.**, reported in **2007(3) MPHT 247**, **Khayliram Vs. State of M.P.** reported in **2007(5) MPHT 407**, **Sita Vs. State of M.P.** reported in **2008(1) MPHT 92**, **Chaterbai Vs. State of M.P.** reported in **2010 (1) MPLJ Cri. 690** and **Gyan Singh Vs. State of M.P.** reported in **2010 (1) MPLJ Cri. 767**.

*Per contra*, it is submitted by the State Counsel that the statements of the witnesses have been recorded and they have specifically stated that the deceased had informed them that he has already repaid the entire loan amount to the present applicants but still they are pressurizing the deceased to pay additional money, as a result of which he was very upset. It is further submitted that the charge sheet has already been filed against the applicants and the legitimate prosecution of the applicants, may not be stifled in the mid way.

Heard the learned counsel for the parties.

The moot question for determination is that even if the entire allegations are accepted as they are, then whether can it be said that the applicants have committed an offence of abetment of suicide.

Section 306 of I.P.C. 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."

"Abetment" is defined under Section 107 of I.P.C. which reads as under :-

**"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."

The Supreme Court in the case of **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)** reported in **(2009) 16 SCC 605**, while dealing with the term "instigation", has held as under :-

**16.**.....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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

**17.** Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action;

provoke to action or reaction' ... to keep irritating or annoying somebody until he reacts...."

The Supreme Court in the case of **Praveen Pradhan vs. State of Uttaranchal**, reported in **(2012) 9 SCC 734** has held as under :-

"**17.** The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. ( (2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554)

**18.** In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC."

The Supreme Court in the case of **Sanju @ Sanjay Singh Sengar vs. State of M.P.** reported in **(2002) 5 SCC 371** has held as under :-

"**6.** Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.”

Further, in para 12 of the judgment, it is held as under:

“The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation.”

The Supreme Court in the case of **Gangula Mohan Reddy vs. State of A.P.** reported in **(2010) I SCC 750** needs mentioned here, in which Hon'ble Apex Court has held that:-

“abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing – Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained – In order to convict a person under section 306 IPC, there has to be a clear mens rea to commit offence – It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide – Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty– Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out– Hence, appellant's conviction, held unsustainable”.

In the case of **State of W.B. vs. Orilal Jaiswal**, reported in **1994 (1) SCC 73**, the Supreme Court has held as under:-

“This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to

the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that that accused charged of abetting the offence of suicide should be found guilty."

The Supreme Court in the case of **M. Mohan vs. State represented by the Deputy Superintendent of Police**, reported in **AIR 2011 SC 1238** has held as under :-

"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. The intention of the Legislature is 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."

The Supreme Court in the case of **Kishori Lal vs. State of M.P.** reported in **(2007) 10 SCC 797** has held in para 6 as under:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished

with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

In the case of **Amalendu Pal @ Jhantu vs. State of West Bengal** reported in **(2010) 1 SCC 707**, the Supreme Court has held as under:-

**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 their 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.

**14.** The expression 'abetment' has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a



case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

**15.** In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"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."

**16.** Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC."

The Supreme Court in the case of **Amit Kapur vs. Ramesh Chander** reported in **(2012) 9 SCC 460** has held as under :

"**35.**The learned counsel appearing for the appellant has relied upon the judgment of this Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) ((2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in Ramesh Kumar v. State of Chhattisgarh ((2001) 9 SCC 618) to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to

be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. "

Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

It is submitted by the Counsel for the applicants, that there should be some *mens rea* on the part of the accused persons. If the applicants were demanding their legitimate money, then it cannot be said that the applicants had abetted the deceased to commit suicide.

The Supreme Court in the case of **S.S. Chheena Vs. Vijay Kumar Mahajan and another**, reported in **2010 AIR SCW 4938**, has held as under:-

"**26.** In *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73 : (AIR 1994 SC 1418 : 1994 AIR SCW 844), this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

**27.** This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 : (AIR 2010 SC 1446) had an occasion to deal with this aspect of

abetment. The Court dealt with the dictionary meaning of the words "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 other. Each person has his own idea of self-esteem and self-respect. 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.

**28.** 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. The intention of the legislature and the ratio of the cases decided by this Court is 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 that act must have been intended to push the deceased into such a position that he committed suicide.

**29.** In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation."

The Supreme Court in the case of **Gurcharan Singh Vs. State of Punjab**, reported in **(2017) 1 SCC 433**, has held as under:-

**"29.** That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena v. Vijay Kumar Mahajan*."

Thus, considering the facts and the allegations made against the applicants, it is clear that there is an ocular evidence to the effect that the deceased had already repaid the entire loan amount to the applicants, but still they were

insisting and pressurizing the deceased to pay the additional amount. A suicide note has also been recovered, in which it was mentioned that the persons who had given the loan to him are harassing him, a false case has been instituted against him and for the last one month, the lenders of money are not permitting him to go on duty. If the ocular evidence is considered in the light of the suicide note written by the deceased, it is clear that *prima facie* it has come on record that the deceased had repaid the entire loan amount and still the applicants were pressurizing him to pay the additional and excessive amount to the lenders of money/applicants. Thus, it can be safely said that there was an overt act on the part of the applicants leading the deceased to commit suicide seeing no option but to put an end to his life. According to the suicide note, the deceased was compelled to face false cases, but even the lenders of money were not permitting the deceased to even go on his duty. Under these circumstances, it cannot be said that the applicants were demanding their legitimate money from the deceased. Under the facts and circumstances of the case, it can be said that *prima facie* case has been made out against the applicants warranting their prosecution for offence under Section 306 r/w Section 34 of IPC. Further, charge sheet has already been filed against the applicants and it is not known that whether the charges have been framed or not?

Accordingly, the petition fails and is hereby **dismissed**.

**(G.S.Ahluwalia)**  
**Judge**