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MCRC No.3107/2018

(Mayank Sharma & Ors. vs. State of M.P. & Anr.)

Gwalior, Dated : 06.12.2018

Shri Anshu Gupta, Counsel for the applicants.

Shri B.P.S. Chauhan, Public Prosecutor for the respondent No.1/State.

Shri Pawan Devnani, Counsel for the respondent No.2.

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.44/2017 registered at Police Station Dehat Basoda, District Vidisha for offence under Section 306, 34 of IPC and under Section 11 of M.P. Money Lending Act.

The necessary facts for the disposal of the present application in short are that on 30.1.2017, a Dehati Nalsi was lodged by the complainant Mohd. Adnan to the effect that he is the resident of Makbara Haveli, Ward No.16, Mirjapur, Ganjbasoda and is a contractor by profession. At about 10:00 AM, when he called his brother Ateeq and sister-in-law Sohlat for having milk, then nobody reacted from the room and when the door of the room was not opened for a considerable long time, then the door was broke open and it was found that the brother Ateeq was hanging whereas the sister-in-law

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Sohlat was lying on the floor. All the members of the family were called and it was found that his brother Ateeq and his sister-in-law Sohlat had already died. Some papers were lying on the Sofa which has not been read by him.

On the basis of Dehati Nalsi, a Merg Enquiry No.06/17 was registered and the spot inspection was carried out. A suicide note was found from which it appears that one Deepak Khatik had given an amount of Rs.50,000/-. For entering into compromise in the case under Section 138 of the Negotiable Instruments Act he was demanding Rs.3,00,000/-. Similarly it was alleged that one Guddibai Rajput had lodged a false report with regard to misappropriation of Rs.80,000/- and whereas the applicants were demanding their money back from the deceased which the deceased had taken for getting the applicants No.1 and 3 appointed in a Government Job.

Accordingly, the police registered the offence under Section 306, 34 of IPC and under Section 11 of M.P. Money Lending Act against the applicants as well as

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against Deepak Khatik, Guddibai Rajput, Laxminarayan Namdev.

It is fairly conceded by the counsel for the applicants that the police has filed the charge sheet. By referring to the dying declaration, it is submitted by the counsel for the applicants that even if the entire allegations made in the dying declaration are accepted, then it is clear that no offence under Section 306, 34 of IPC and under Section 11 of M.P. Money Lending Act is made out against the applicants. The police has recorded the statements of the witnesses. Munabbar Ali, the brother of the deceased Ateeq has stated that on 30.1.2017 sometime between 8:00 to 10:00 AM his elder brother Mohd. Ateek, initially committed murder of his wife and, therefore, committed suicide by hanging. Allegations were against Deepak Khatik and Guddibai Rajput. It was further alleged that his deceased brother Ateeq had taken money from the applicants No.1 and 3 for getting them appointed on the post of Computer Operator and this money was taken through one Brijesh Kushwah. The money so collected from the applicants

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No.1 and 3 was given to one contractor at Bhopal. However, the applicants No.1 and 3 could not get the job, due to complaint made on C.M. Helpline and from thereafter the applicants were pressurizing his brother to return the money and because of that he was very disturbed. On 29.1.2017, the applicants came to the house of the deceased and extended a threat that they would come again on the next day and in case if he does not return the money, then he would be killed. Thus, it was alleged that because of the harassment at the hands of the applicants as well as the co-accused Deepak Khatik and Guddibai Rajput, the deceased had committed suicide after killing his wife.

A similar statement under Section 161 of Cr.P.C. was given by Mohd. Yakub, Ajhar Ali and Mohd. Adnan, the brothers of the deceased, Muneeb, the son of the deceased and Rihana Ali, the niece of the deceased had also given the identical statement under Section 161 of Cr.P.C.

The dying declaration of the deceased also carries the similar allegations against the applicants.

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Per contra, it is submitted by the counsel for the State as well as counsel for the respondent No.2 that it is not a simple case of demand of money but it was followed by a threat given by the applicants that in case if the deceased does not return the money by the next day, then it was threatened by the applicants that the deceased would be killed and thus it is clear that the applicants had abetted the deceased to commit suicide.

Heard the learned counsel for the parties.

The moot question for consideration in the present case is that whether on the basis of the allegations made by the witnesses as well as made in the dying declaration can it be said that the applicants by demanding their money back had abetted the deceased to commit suicide. It is submitted by the counsel for the applicants that even according to the prosecution case, the deceased had played fraud on the applicants and under the assurance of getting the applicants No.1 and 3 appointed on the post of Computer Operator, the deceased had taken certain money from them and when the applicants No.1 and 3 could not get the job, then

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they were well within their rights to demand their money back and thus it cannot be said that by demanding their money back from the deceased, the applicants had ever abetted the deceased to commit suicide.

Initially the suicide note was not the part of the case diary and, therefore, this Court by order dated 2.4.2018 had directed the State Counsel to requisition the copy of the suicide note. Accordingly, the State has produced the suicide note. The suicide note is written in multiple pages and every page deals with certain allegations against different persons including accused Deepak Khatik, Laxminarayan Namdev and Guddibai Rajput. However, so far as the allegations against the applicants in the suicide note are concerned, they are reproduced as under:-

“हा मयंक ने प्रदीप ने जो आवेदन दिया है उनका पैसा ऐखनाम कंपनी भोपाल में लाखन राजपूत ठेकेदार को मैने दिया है और बीस बन्दे है जिन्होने नौकरी के लिये आवेदन किये थे किसी ने सी.एम.हेल्पलाईन पर शिकायत कर दी थी इस कारण इन सब की नौकरी न लग पाई ब्रजेश कुशवाह नामदेव कालोनी 9754572906 जो भी जानकारी चाहीये सब इसको पता है इसके द्वारा ही सब बन्दे मेरे पास आये थे एस नाम की सिलेक्ट लिस्ट इसको मैने दि थी ब्रजेश का भी उस लिस्ट में नाम है इससे कुछ नहीं लिया कोई रू0 नहीं लिया। मयंक के साथ प्रदीप मयंक के पापा के साथ दिनांक 28.1.17 को दोपहर में आये थे मयंक उसके पापा धमकी दे के गये थे कि

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बजरंग दल के सदस्य है निलेश नाम बता रहे थे तुमहारे घर का पता भी नहीं चलेगा मरवा के फिकवा देंगे। 30.1.17 को यह फिर दिन में 11 बजे के बाद आयेंगे हमारे घरवालों का कोई अनुचीत न होये बस यही प्रार्थना है 29/1/17 हस्ताक्षर अंग्रेजी सै.मो.अतीक।”

The allegations made in the suicide note against the applicants finds corroboration from the ocular evidence of the witnesses.

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

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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

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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

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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) 1 SCC 750** needs mentioned here, in which Hon'ble Apex Court has held that:-

"abetment involves a mental process of

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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

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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

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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

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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

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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

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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

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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."

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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.*"

Considering the entire material which has been collected by the police against the applicants it is clear that so far as the applicants are concerned, the deceased had taken money from the applicants No.1 and 3 on the assurance of getting them appointed on the post of Computer Operator. However, the applicants No.1 and 3 could not get the appointment. It is the prosecution case that therefore the applicants No.1 and 3 were demanding their money back and one day prior to the date of incident it is alleged that the applicants went to the house of the deceased and once again demanded their money back and also extended a threat that they are the members of Bajrangdal. It is submitted by the counsel for the complainant that as the applicants had extended

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a threat that they are the members of Bajrangdal, therefore, the deceased was under mental pressure and thus the applicants have abetted the deceased to commit suicide. However, it is fairly conceded by the counsel for the complainant that the Bajrangdal is not a prohibited Association. Merely because the applicants had informed the deceased that they belong to an association, would not by itself mean that the applicants have abetted the deceased to commit suicide. Once the deceased himself had given a false assurance to the applicants to the effect, that he can get them appointed and for that purposes the applicants are required to pay some money, then the applicants after realizing some ray of hope and belief that the deceased would get the applicants No.1 and 3 appointed on the post of Computer Operator, gave certain money to him. However, the deceased could not succeed in fulfilling his assurance and under these circumstances the applicants cannot be said to be wrong in demanding their money back from the deceased. In fact it was the deceased who himself was responsible for giving false and illegal assurance to the

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applicants No.1 and 3 and it was the deceased who created this problem for himself by taking money from the applicants No.1 and 3 in an illegal manner. Thus, it cannot be said that the applicants No.1 and 3 had lend money to the deceased. Under these circumstances, this Court is of the considered opinion that neither the offence under Section 306 of IPC is made out against the applicants nor an offence under Section 11 of M.P. Money Lending Act is made out against the applicants.

Accordingly, the FIR in Crime No.44/2017 registered at Police Station Dehat Basoda, District Vidisha for offence under Section 306, 34 of IPC and under Section 11 of M.P. Money Lending Act and the subsequent criminal proceedings against the applicants are hereby quashed. They are discharged.

The applicant succeeds and is hereby **allowed**.

(alok)

(G.S. Ahluwalia)
Judge