

**M.Cr.C. No.13075/2016**

**20/01/2017**

Shri Mahesh Agrawal, learned counsel for the petitioner.

Shri Pankaj Wadhvani, learned Public Prosecutor for the State.

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') praying for quashment of proceedings in *S.T.No.296/16* pending before the Court of *2<sup>nd</sup> Addl. Sessions Judge, Shujalpur Distt. – Shajapur* against the petitioner with regard to offence under Section *306 of IPC*.

Relevant facts, briefly stated, are that on 27/10/14 dead body of an unidentified male, aged about 30 years was found lying on the railway track near Nemaz river bridge, having the head separate from the trunk. On information being received from railway station Shujalpur Mandi, in this regard, Merg No.71/14 under Section 174 of 'the Code' was registered at Police Station Shujalpur. On the basis of the belongings, the dead body was identified that of Narendra Singh, aged about – 30 years, S/o Bane Singh, resident of village-Chittodi. In post-mortem, it was revealed that Narendra Singh died because of injury on the neck. On further enquiry, a suicide-note said to have been left by the deceased was found. During enquiry, it was further revealed that the petitioner, at the instance of Narendra Singh (deceased) has extended loan to one Rajendra Singh, r/o Village-Babalda. As Rajendra Singh was reluctant to repay

the loan amount, therefore, the petitioner, was pressurising the deceased and was subjecting him to harassment. It is further alleged that the deceased and his father Banesingh were threatened by the petitioner who also misbehaved with them, therefore, Narendra Singh committed suicide by jumping before the railway track.

On the basis of mere enquiry, First Information Report bearing Crime No.590/14 for offence under Section 306 of IPC came to be registered at Police Station Shujalpur against the petitioner. After usual investigation, a charge-sheet was filed against him. In due course, the case was committed to the Court of Sessions giving rise to S.T. No.296/2016.

Quashment of proceeding in S.T. No.296/2016 is prayed on the ground that petitioner at no point of time either directly or indirectly has instigated, goaded, provoked, incited or encouraged the deceased to commit suicide. It is further submitted that except for bald allegations made by Bane Singh-the father of the deceased, about harassment, there is no material on record to indicate that the petitioner caused harassment to the deceased with regard to non-refund of loan by Rajendra Singh. It is contended that recovery of alleged suicide-note is very doubtful and that even if the contents of suicide-note are accepted to be correct, *prima-facie* a case for abetment to commit suicide is not made out.

Per contra, learned Public Prosecutor has submitted that from the suicide-note, which has been found to be in the handwriting of the deceased, it clearly transpires that he was

being harassed by the petitioner, therefore, it can be inferred that the deceased was abated to commit suicide.

Heard the learned counsel for the parties and perused the record.

**'Abetment to commit suicide'** is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and fine. Expression **'Abetment'** has been defined in Section 107 of IPC which runs 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 willful misrepresentation, or by willful 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. 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"

In the *State of Punjab Vs. Iqbal Singh, AIR 1991 SC 1532*, the apex Court explaining the meaning and expanse of word 'abetment' as used in Section 107 of IPC, has held as

under:

“Abetment” as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor as a person who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word “instigate” in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word “aid” is to give assistance, help etc.

In *Rakesh Kumar vs. State of Chhatisgarh*, (2001) 9 SCC 618, a three Judge Bench of the apex Court explaining the meaning and connotation of word "**instigation**" has held as under ( para. 20):

"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."

Taking note of the fact that each person's suicidability pattern is different from others and that each person has his own idea of self-esteem and self-respect, the apex Court in *M. Mohan Vs. State of Madras, 2011 CRI.L.J. 1900 (S.C.)*, referring to its earlier decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), 2009 (16) SCC 605*, held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

Reference can also be made to the decision of the apex Court in *Gangula Mohan Reddy Vs. State of Andhra Pradesh, 2010 (Suppl.) Cr.L.R. (SC) 261*, wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he committed suicide by consuming poisonous substance. The apex Court referring to its earlier decisions in *Mahendra Singh & Anr. Vs. State of M.P., (1995) Supp. 3 SCC 731* and *Ramesh Kumar Vs. State of Chhatisgarh, (2001) 9 SCC 618*, holding that offence of abetment to commit suicide under Section 306 of IPC is not made out, observed 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”.

In *Deepak V. State of M.P., 1994 Cri. LJ 767 (M.P.)*, the deceased girl was threatened with defamation, if she refused to have sexual intercourse with two accused; within an hour she committed suicide leaving a suicidal note. Accepting the plea that the act of the accused might have been a reason for committing suicide but the same did not constitute abatement within the meaning of Section 306 read with Section 107 of the IPC, it was held that - “neither there was any intention nor any positive act on the part of the accused to instigate her or aid her in committing suicide. The two accused persons, therefore, cannot be held guilty of the offence under Section 306 of the I.P.C. and their conviction on that count by the trial Court, is liable to be set aside.”

In the case of *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 S.C. 1998*, the accused was charged under Section 306 of IPC for abetting his brother-in-law to commit suicide; the accused allegedly said to him to '*go and die*'; the deceased left behind a suicide note stating that accused is responsible for his death. It was held that words “go and die” do not constitute instigation for mens rea of offence under Section 307 of IPC.

In *Mahendra Singh and Anr. Vs. State of M.P., 1996 Cri.L.J. 894=1995 Supp (3) SCC 731*, a case prior to the insertion of Section 113-A in the Evidence Act, the charge

under Section 306 IPC proceeded on the basis of dying declaration of the deceased to the effect that – “*My mother-in-law and husband and sister-in-law (husband’s elder brother’s wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.*” Considering legal sustainability of the same the apex Court held as under:

“Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a 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. Neither of the ingredients of abetment are attracted on the statement of the deceased.”

From the aforesaid pronouncements of the apex Court, it flows that to constitute abetment to commit suicide, there must be material, *prima-facie*, indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

In the instant case, the allegation made in the suicide-note is that the petitioner had harassed the deceased because the money borrowed by one Rajendra Singh was not being repaid to the petitioner. The allegations that have been in the

suicide-note or statement of Bane Singh – father of the deceased, even if taken true at their face value does not a *prima-facie* indicate that the petitioner by positive act on his part instigated, incited, aided or provoked the deceased to commit suicide. A bare act of harassment in absence of anything else cannot amount to abetment to commit suicide, therefore, in the considered opinion of this Court, on the basis of material collected by the police during investigation and filed with the charge-sheet, *prima-facie* a case under Section 306 of IPC is not made out against the petitioner.

In *Devendra and others vs. State of Uttar Pradesh and another, (2009) 7 SCC 495*, it has been held as under:

“when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.”

In the aforesaid premises, continuation of proceedings against the petitioner for an offence under Section 306 of IPC will be nothing but an exercise in futility. Apart that, it will also result in wastage of valuable time of the trial Court, therefore, in light of the decision of apex Court in *State of Haryana & Ors. Vs. Bhajanlal & Ors., 1992 Supp(1) SCC 335*, it is a fit case for quashment of the proceedings.

Resultantly, the petition is hereby allowed and proceedings in S.T.No. 296/16 pending before the Court of 2<sup>nd</sup> Addl. Sessions Judge, Shujalpur Distt. –Shajapur are



hereby quashed.

sk

**(Ved Prakash Sharma)**  
**Judge**