

**HIGH COURT OF MADHYA PRADESH: SINGLE BENCH AT  
INDORE BEFORE HON. SHRI JUSTICE ALOK VERMA,J.**

**M.Cr.C. No.2144/2016**

**Dilip Kumar**

**Vs.**

**State of M.P.**

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Shri S.K. Vyas, learned senior counsel with Shri L.S. Chandiramani, learned counsel for the applicant.

Shri C.S. Ujjainia, learned counsel for respondent/State.

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**ORDER**

**(Passed on 13/10/2016)**

This application under Section 482 Cr.P.C. is filed for quashment of FIR arising out of Crime No.627/2015 under Section 306/34 registered at Police Station- Station Road Ratlam, District Ratlam and the proceedings arising therefrom.

2. According to prosecution story, the deceased Virendra @ Pappu Jain was a property dealer. He was living separately from his brothers in Flat No.08, Shashtri Nagar, Saket Apartment. He committed suicide and left a suicide

note in which he stated that co-accused Rambabu Sharma alongwith present applicant Dilip Kothari and other co-accused persons were threatening him and they are trying to grab his property. During merg inquiry, and thereafter, during investigation, statements of various prosecution witnesses including closed relatives of the deceased were recorded and they stated that the accused persons including the present applicant harassed the deceased, and therefore, he committed suicide. It was also stated that the accused persons including the present applicant used to drink liquor with the deceased. They executed certain documents of the property belonging to the deceased. The co-accused Rambabu Sharma acted as power of attorney holder of the deceased.

**3.** The present applicant is an advocate and a document writer.

**4.** Learned counsel for the applicant submits that there was no abetment from the present applicant, due to which he committed suicide. The suicide note does not indicate any such instigation which amounted to abetment under Section 107 of IPC.

5. Learned counsel for the State opposes the application.

6. The applicant placed reliance on the judgment delivered by Hon'ble the Supreme Court in the case of Sanju @ Sanjay Singh Sengar Vs. state of MP reported in 2002 SCC (Cri) 1141 in which, it was held that ingredients of section 107 of IPC should present for taking the act as abetment of the suicide. "Instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea is the necessary concomitant for instigation. Words uttered in a quarrel or on the spur of moment, such as "to go and die", cannot be taken to the uttered with mens rea.

7. Placing reliance on this judgment of Hon'ble the Supreme Court, learned counsel for the applicant argues that in the present case, the present applicant was not present when the deceased committed suicide. He was living separately, therefore, it cannot be taken as abetment on his part, due to which the deceased committed suicide.

8. I have gone through the certified copy of the charge-sheet produced by the applicant, I find that the documents relating to the property belonging to the deceased were

prepared in the office of the present applicant. He is advocate by profession. The documents were registered also before the Registrar and some of the documents including power of attorney in favour of co-accused Rambabu Sharma were prepared by another advocate.

9. Learned counsel for the applicant placed reliance on judgment of Hon'ble Apex Court in case of **Central Bureau of Investigation, Hyderabad vs. K. Narayanan Rao** in Criminal Appeal No.1460/2012, judgment dated 21.09.2012 reported at **(2012) 9 SCC 512**. In this case, the applicant was a practicing lawyer and also a panel advocate and his duty was to verify documents and give legal opinion in respect of customers who apply for housing loan. It was alleged that he gave false legal opinion in respect of 10 housing loans. In para 26 of the judgment the Hon'ble Court observed that :-

“26. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

27. However, it is beyond doubt that a mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the

most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.”

**10.** This case was followed by Division Bench of this Court in **Harikishan Tuteja vs. State of Madhya Pradesh** in M.Cr.C. No.7954/2013 dated 16.08.2013.

**11.** It is also the case of the present applicant that the deceased was consuming the liquor heavily and taking the facts in entirety as they stated in the FIR, I find that no ingredients of Section 107 are made out. There is no evidence that the present applicant apart from preparing the documents for transfer of properties belonging to the deceased did anything which amounted to abetment under Section 107 r/w Section 306 IIPC.

**12.** In this view of the matter, the application deserves to

be allowed and hereby allowed. The FIR arising out of Crime No.627/2015, Police Station- Station Road under Section 306/34 so far it relates to the present applicant and the proceedings arising therefrom are quashed. The accused is discharged from offence under Section 306/34 IPC.

**( Alok Verma)**  
**Judge**

Kafeel