

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

M. Cr. C. No.17519/2018

(Smt. Manorama Bai and Others Vs. State of M. P.)

Indore, dated 31/01/2019

Shri Amit S. Agrawal, learned Senior Counsel with Shri Rishi Tiwari, learned counsel for the petitioners.

Shri Sudarshan Joshi, learned Government Advocate for the respondent/State.

The present petition has been filed for quashment of First Information Report and subsequent proceedings arising out of First Information Report registered at Crime No.59/2017 for offences under Section 498-A, 306 and 34 of the Indian Penal Code, 1860.

02- The facts of the case reveal that the petitioner No.1 is the grand mother of petitioner No.5 Kapil Sharma, who was married to Monica Sharma (deceased), the petitioner No.2 is the father of the petitioner No.5, petitioner No.3 is the mother of petitioner No.5, petitioner No.4 is uncle of petitioner No.5 and petitioner No.5 is the husband of the deceased.

03- A marriage took place between the petitioner No.5 Kapil Sharma and the deceased wife Monica Sharma on 12/05/2009 and they were living happily in a joint family at Indore. A child was born out of the wedlock in the year 2010. An unfortunate incident took place on 26/10/2016 in the matrimonial house of Smt. Monica Sharma. She committed suicide by hanging. The death of Smt.

Monica Sharma was inquired / investigated after registering an inquest under Section 174 of the Code of Criminal Procedure, 1973 and a postmortem was done by the specialist. The reason assigned for death is Asphyxia as a result of ante mortem hanging.

04- The death has taken place on 26/10/2016 and on 18/02/2017 a First Information Report was lodged by one Saligram Raghuvanshi making allegations against the entire family members. The police has recorded statements of family members and one Shivkumar, who is brother-in-law (*Jeeja*) of the deceased has given his statement on 21/02/2017 stating that the marriage took place on 12/05/2009, dowry was given in the marriage and a demand of dowry was being made and Monica was being subjected to cruelty. The statement of Shivkumar is available in Challan and the same reads as under:-

“कथन

21-2-17

थाना अन्नपूर्णा इन्दौर अप. क्र. 59/17 धारा 498-A, 306, 34 IPC नाम - शिवकुमार पिता राम वल्लभ तिवारी उम्र 48 वर्ष नि-फ्लेट नं. 101, सागर सिटी अपार्टमेन्ट, हिमायत नगर शेड नं. 10 हेदराबाद मो. नं. 9704337000 ..अपठनिय.. बताया कि मैं उपरोक्त पते पर रहता हूँ तथा हैदराबाद में सेनेट्री का बिजनेस करता हूँ मेरी ससुराल हरदा में है मोनिका मेरी रिश्ते में साली लगती थी हेमन्त का प्रेम..अपठनिय.. है, मोनिका की शादी 12-5-09 को कपिल शर्मा के साथ इन्दौर से हुई थी शादी में 40 तोला सोना, सवा किलो चांदी के जेवर व अन्य सामग्री कुल रूपये 20,00,000 बीस लाख रूपये शादी में खिलाने पिलाने में 05 लाख रूपये खर्च हुई थे शादी के डेढ़ साल बाद मोनिका के एक लड़का ऐश्वर्य हुआ था शदी के बाद से ही रूपयों की मंगनी ससुराल वाले ..अपठनिय..कहने लगे तेरे भाई हेमन्त से रूपया लेकर आ कपड़ों का शोरूम खोलना है इसी बात को लेकर पति कपिल शर्मा, ससुर कृष्णचन्द शर्मा, सास सुशीला देवी, आंटी मनोरमा, चाचा ससुर गोपाल शर्मा शारीरिक रूप एवं मानसिक रूप से

प्रताड़ित करते थे इसी बात को लेकर मोनिका ने 26-10-16 फांसी लगा ली । मोनिका ने आते जाते में बाते मेरे को व उसकी बहिन सारिका एवं परिवार वालो रिश्तेदारों को बताया मोनिका की मौत के जुम्मेदार उसका पति कपिल शर्मा ससुर कृष्ण चन्द्र शर्मा, सास सुशीला देवी आंटी मनोरमा चाचा ससुर गोपाल शर्मा जुम्मेदार है ।
हस्ता/- 21-2-17"

The real brother of the deceased Prem Kumar has also given statement to the police on 20/02/2017 and the statement of Prem Kumar also reads as under:-

“कथन

20-2-17

थाना अन्नपूर्णा इन्दौर अप. क. 59/17 धारा 498-A, 306, 34 IPC प्रेमकुमार पिता भीकमचन्द्र व्यास उम्र 46 वर्ष नि. 179 गणेश शंकर विधार्थी वार्ड सत्यनारायण मंदिर के पास हरदा (म.प्र.) 9826075175 ने ..अपठनिय..बताया कि मैं उपरोक्त पते पर रहता हूँ तथा जिला सहकारी बैंक होशंगाबाद में लिपिक के पद पर कार्यरत हूँ। मेरी मोनिका रिश्ते में बहिन थी मेरी बहिन मोनिका की शादी 12.5.09 में इन्दौर के कपिल शर्मा के साथ हुई थी। शादी में 40 तोला सोना ज्वेलरी व सवा किलो चांदी का घरेलु सामान आदि दिया जिसकी कुल कीमत 20,00,000 रु 20 लाख रूपये थी खानेपीने में 5 लाख रूपया खर्च किये थे मोनिका की शादी में कुल 25,00,000 रु. खर्च किये थे। शादी के बाद से ही उसके ससुराल वाले पति कपिल शर्मा सास सुशीला देवी, आंटी मनोरमा, चाचा ससुर गोपाल शर्मा ससुर कृष्ण शर्मा रूपयों के लिए शारीरिक रूप एवं मानसिक रूप से प्रताड़ित करते थे। मोनिका को एक लड़का ऐश्वर्य हुआ था रूपयों अपने भाई हेमन्त लेकर हमें कपड़े का शोरूम खोलना है इसी बात को लेकर मोनिका ने 26-10-16 को फांसी लगा ली ये बात मोनिका ने आते जाते मेरे को एवं परिवार वालों एवं रिश्तेदारों को बतायी थी, मोनिका की मौत के जुम्मेदार उसका पति कपिल शर्मा, ससुर कृष्ण चन्द्र शर्मा, सास सुशीला देवी, आंटी मनोरमा, चाचा ससुर गोपाल शर्मा जुम्मेदार है।

हस्ता/- 20-2-17"

The statement of both the persons are word by word identical. They are omnibus statement making allegations against all the family members. No specific instance attracting the ingredients of Section 498-A finds place in the statements of the aforesaid

persons.

05- The another important aspect of the case is that deceased Monica has left two suicide notes. The first suicide note is at page No.149 of the Challan and the same reads as under:-

“मेरी एक विनती है मेरे बेटे ऐश्वर्य को बहुत पढ़ाना उसे डॉक्टर बनाना वह शरारती है उसका ध्यान रखना ऐशू अपने पापा से बहुत प्यार करता है उसे पापा से अलग मत करना। ऐश्वर्य को उसके पापा के पास ही रहने देना।

ऐश्वर्य की परवरिश उसके पापा ही करें।

मेरी मौत का जिम्मेदार कोई नहीं है।”

The aforesaid suicide note is duly signed by the deceased Monica and the second suicide note is at page No.150 and the same reads as under:-

“मेरी एक विनती है मेरे बेटे ऐश्वर्य को बहुत पढ़ाना उसे डॉक्टर बनाना वह शरारती है उसका ध्यान रखना। ऐश्वर्य को उसके पापा के पास ही रहने देना वही उसकी परवरिश करे मेरी मौत का जिम्मेदार कोई नहीं है।”

At page No.209 of the Challan, *Tasdeek Nama* by cousin sister of the deceased finds place and she has verified the handwriting of the deceased. Not only this, the suicide notes were recovered from the room of the deceased, where she was found hanging.

06- Shri Amit S. Agrawal, learned Senior Counsel along with Shri Rishi Tiwari has argued before this Court that based upon omnibus statement, the entire family has been roped in. The death has taken place after seven years of marriage and there is in fact no evidence on record on the basis of which, the crime can be established and

the registration of FIR is nothing but an after thought to harass the entire family at the behest of the parents of Monica on account of unfortunate incident, which has taken place.

07- To bolster his contentions, he has placed reliance upon a judgment delivered in the case of **Girdhar Shankar Tawade Vs. State of Maharashtra** reported in **(2002) 5 SCC 177**, **Vipin Jaiswal (A-I) Vs. State of Aandhra Pradesh** reported in **(2013) 3 SCC 684** and lastly has placed reliance upon a judgment delivered by coordinate Bench of this Court in the case of **Abhay Kumar Katare Vs. State of Madhya Pradesh** (M.Cr.C.No.5952/2018, decided on 26/03/2018).

08- On the other hand, learned Government Advocate has opposed the prayer made by learned counsel for the petitioners and his contention is that at this stage sufficiency and insufficiency of the evidence cannot be looked into as this Court is dealing with a case of quashment of criminal proceedings and in case there is no evidence, the petitioners will certainly be acquitted by the trial Court.

09- He has drawn the attention of this Court towards the Postmortem Report and he has stated that there was an injury also over the body of the deceased. He has stated that the family members of the Monica have stated against all of the petitioners and it is not a case warranting interference by this Court in exercise of power conferred under Section 482 of the Code of Criminal

Procedure, 1973.

10- This Court has carefully gone through the entire record made available by the petitioners as well as by respondent / State. The undisputed facts reveal that death has taken place after seven years of marriage. There is a child also aged about 09 years and there is no statement of child available on record neither he is a witness. The stereo type statement of brother-in-law and real brother, which have been reproduced earlier certainly speaks volumes about the entire episode and the entire case, which is registered against the present petitioners. The statements do not specify any specific instances except for the bald statement against the entire family including 87 years old mother-in-law.

11- It is nobody's case that the deceased has not left behind any suicide note nor it has been argued by the State Government that suicide notes were planted later on. In fact the police has recovered those suicide notes and the handwriting of the deceased has been verified by her own family members. In the suicide notes there is no whisper of any kind of cruelty nor any kind of demand of dowry on the part of the petitioners.

12- Apart from the statement of the relatives, which were recorded by the police after about four months of the incident, there is nothing on record even to establish *prima-facie* that the petitioners have committed offence under Section 498-A of the

Indian Penal Code, 1860. The suicide has taken place on 26/10/2016 and the First Information Report was lodged only on 18/02/2017. Had it been a case of cruelty or a case of of abetment to commit suicide, nothing prevented the parents of the girl or other relatives to lodge a FIR with quite promptitude.

13- The Hon'ble Supreme Court in the case of **Girdhar Shankar Tawade** (Supra) in paragraphs No.3, 14 and 18 has held as under:-

“3. The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A.

14. Presently, we have on record a statement before the Executive Magistrate by was of a declaration which however does not lend any assistance in the matter in issue and as such we need not dilate thereon further.

18. A faint attempt has been made during the course of submissions that explanation (a) to the Section stands attracted and as such no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of explanation (a) would not arise - neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498- A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series

of acts in order to be a harassment within the meaning of explanation (b). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. Presently, we have no such evidence available on record.”

Keeping in view the aforesaid judgment, by no stretch of imagination, it can be held that even *prima-facie* offence under Section 498-A of the IPC has been committed by the present petitioners.

14- The apex Court in the case of **Vipin Jaiswal** (Supra) in paragraphs No.4, 8, 13, 14 and 16 has held as under:-

“4. At the trial, besides other witnesses, the prosecution examined the father of the deceased (informant) as PW 1, the cousin of PW 1 as PW 2 and the mother of the deceased as PW 4. The appellant volunteered to be a witness and got examined himself as DW 1 and took the defence that the deceased had left behind a suicide note written by her one day before her death in which she has stated that she had committed suicide not on account of any harassment by the appellant and her family members but due to the harassment by her own parents.

8. The learned counsel further submitted that so far as the suicide note (Ext. D-19) is concerned, the same cannot be believed to have been written by the deceased who was only a matriculate and the High Court has given good reasons in the impugned judgment why the suicide note cannot be believed to have been written by the deceased. He argued that in any case only on the basis of the evidence given by DW1, the Court cannot hold that the suicide note had been written by the deceased and not by someone else. He submitted that since the prosecution has been able to prove that the deceased had been subjected to not only a demand of dowry but also cruelty soon before her death, the Trial Court and the High Court have rightly held the appellant guilty both under Sections 304B and 498A, IPC.

13. What DW1 has further stated is relevant for the purpose of his defence and is quoted hereinbelow:

“While cleaning our house we found a chit on our dressing

table. The said chit was written by my wife and it is in her handwriting and it also contains her signature. Ex. D 19 is the said chit. I identified the handwriting of my wife in Ex. D19 because my wife used to write chits for purchasing of monthly provisions as such on tallying the said chit and Ex. D19 I came to know that it was written by my wife only. Immediately I took the Ex. D19 to the P.S. Mangalhat and asked them to receive but they refused to take the same.”

From the aforesaid evidence, it is clear that while cleaning the house the appellant came across a chit written in the handwriting of his wife and containing her signature. This chit has been marked as Ext. D-19 and the appellant has identified the handwriting and signature of the deceased in Ext. D19 which is written in Hindi.

14. The English translation of Ext.D19 reproduced in the impugned judgment of the High Court is extracted hereinbelow:

“I, Meenakshi W/o Vipin Kumar, do hereby execute and commit to writing this in my sound mind, consciousness and senses and with my free will and violation to the effect that nobody is responsible for my death. My parents family members have harassed much to my husband. I am taking this step as I have fed up with his life. Due to me the quarrels are taking place here, as such I want to end my life and I beg to pardon by all.”

It appears from Ext. D19 that the deceased has written the chit according to her free will saying that nobody was responsible for her death and that her parents and family members have harassed her husband and she was taking the step as she was fed up with her life and because of her quarrels were taking place.

16. In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution.”

Keeping in view the aforesaid judgment and by taking into

account the statement of the family members and also the delay in lodging the FIR as well as the Postmortem Report, this Court is of the opinion that ingredients of harassment or cruelty under Section 498-A nor any offence under Section 304-B of the IPC has been made out by the prosecution.

15- The coordinate Bench of this Court in the case of **Abhay Kumar Katare** (Supra) was dealing with a case of suicide by an employee and the allegation was against the senior officers of the Company. This Court in the aforesaid case in paragraphs No.6 to 15 has held as under:-

“6. Before adverting to the rival contentions, it shall be useful to reiterate the law as laid down by the Hon'ble Supreme Court on the jurisdictional issues, firstly; the scope of jurisdiction of this Court under section 482 Cr.P.C., in the matter of quashment of the criminal proceedings and secondly; the meaning, concept and dimension of abetment as defined under section 107 IPC with reference to the offence of the abetment of suicide defined under section 306 IPC.

In **R.P.Kapur Vs. State of Punjab, AIR 1960 SC 866**, the Hon'ble Supreme Court summarized categories of cases where the High Court can and should exercise its inherent powers to quash the proceedings and amongst them is a case; where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged.

In **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others, AIR 1976 SC 1947**; the Hon'ble Supreme Court has held that the proceedings against the accused can be quashed; where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

In **State of Haryana & others Vs. Bhajan Lal & others, AIR 1992 SC 604**, the Hon'ble Supreme Court while exhaustively reviewing the entire case law on the scope of jurisdiction of the High Court has given exhaustive guidelines as regards the scope of jurisdiction under section 482 Cr.P.C., and

one of the circumstance is; where the uncontroverted allegations made in the FIR or the complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

In **Zandu Pharmaceutical Works Ltd., & others Vs. Mohd. Sharaful Haque & Another, AIR 2005 SC 9**, the Hon'ble Supreme Court has observed as under:

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that intimation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

Similar view has been reiterated by the Hon'ble Supreme Court in **Devendra and Others Vs. State of Uttar Pradesh and Another (2009) 7 SCC 495**:

"There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. 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."

7. Section 306 IPC defined "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 extent to ten years, and shall also be liable to fine."

8. The word 'suicide' is not defined in IPC. However, its literal meaning is well known. 'Sui' means 'self' and 'cide' means 'killing', i.e., "self-killing". The suicide by itself is not an offence under the Penal Code. However, attempt to suicide is an offence under section 309 IPC as the successful offender committing suicide is beyond the reach of law.

9. Section 107 IPC defined 'Abetment' and 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 aides, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with Section 107 reads as under:

"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 facilitate the commission thereof, is said to aid the doing of that act."

10. In **Ramesh Kumar Vs. State of Chhattisgarh AIR 2001 SC 3837**, the Hon'ble Supreme Court has lucidly examined the dimensions of meaning 'instigation'. Para 20 reads as under:

"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 he 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."

11. In **State of West Bengal Vs. Orilal Jaiswal & Another AIR 1994 SC 1418**, it has been held by the Hon'ble Supreme Court that if it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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.

12. In **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009 (16) SCC 605**, the Hon'ble Supreme Court dealt with the dictionary meaning of the word "instigation" and "goaded". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the accused.

13. In **M. Mohan Vs. State Represented by the Deputy Superintendent of Police, AIR 2011 SC 1238**, the Hon'ble Supreme Court while reviewing almost the entire case law with reference to section 306 IPC has laid down the meaning and

concept of the word 'abetment". Paragraphs 45 and 46 reads as under:

“45. 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.

46. 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.”

14. Therefore, to constitute the commission of an offence of abetment of suicide, an element of *mens rea* is an essential ingredient as the abetment involves a mental preparedness with an intention to instigation, provoke, instigate or encourage to do an act or a thing. Besides, such process of instigation etc., must have close proximity with the act of commission of suicide. Therefore, a person cannot be accused or punished for an offence of abetment of suicide under section 306 IPC, unless; the aforesaid requirement of law is satisfied as laid down by the Hon'ble Supreme Court in the cases of **Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 SC 1998** and **Madan Mohan Singh Vs. State of Gujarat and another (2010) 8 SCC 628**.

15. In the backdrop of the factual matrix of the case in hand detailed in the preceding paragraphs, it is apparent that the deceased joined the Company in the year 2011 and continued for a period of six years. During this period, on many occasions, he sought to be relieved of his duties for personal reasons. In email dated 03/11/2012 (Annexure P/4) while intending to resign, he has also expressed his gratitude to the Management for giving him opportunities and support during his service tenure. The request was accepted by S.K.Grover on the same day by an email dated 03/11/2012 assuring him to be relieved on 10/12/2012, however, he continued to work. Thereafter, on 12/09/2014, he sent another email addressed to the applicant with a copy to S.K.Grover expressing his intention for resignation as Section Officer wherein also he has expressed his gratitude for working in the Company. As such, he dropped the idea of leaving the Company and further continued as evident from the email of September, 2014. As a matter of fact, the deceased himself withdrew the resignation twice on the premise that his personal problem was solved and continued to discharge his duties. As such, the communication referred above do not contain allegations of the nature the applicant is accused of in the FIR.

The communication dated 28/04/2017 was made by the

applicant through email to the superior officer, S.K.Grover bringing to his notice the shortcomings in the day to day working of the accounting system with a copy to the deceased and another co-worker J.P.Yadav wherein, he has pointed out the lapses and negligence in the discharge of duties by both of them with a request to take some hard action or in the alternative they may be transferred to a different department.

This email finds reference in the alleged email suicide note dated 15/05/2017 while the deceased accused the applicant of causing him harm which led to commission of suicide.

S.K.Grover vide email dated 29/04/2017 called upon the deceased and Yadav for explanation.

The deceased appeared to have taken strong exception and instead of offering explanation had taken extreme stand seeking termination from service or transfer to some other place with immediate effect by an email dated 03/05/2017.

That apart, if the subsequent email exchanges of the deceased, viz., 25/05/1997 and 11/09/2017 are perused, the deceased had not made allegations of harassment, cruelty or incitement tantamounting to provocation by the applicant to take the extreme step of committing suicide. In fact, while tendering resignation by email dated 02/09/2017, the deceased sought to be relieved at the earliest (by 10th September) and expressed his gratitude and appreciation for all the members of the staff while discharging the duties. However, for the first time the deceased made allegations of discontentment in the day to day working, sarcastic comments, arrogant behaviour and induction of a new accounts officer, etc., against the applicant.

After acceptance of resignation of the deceased by the Executive Director & Business Head, DCM Shriram with effect from 11/09/2017, he sent an email on 11/09/2017 addressed to the applicant and other officers recording his appreciation to the staff members during his service tenure but, there was no allegation of any kind against the applicant.

There is no allegation in the suicide note/email dated 15/09/2017 or in the challan that the deceased and the applicant either communicated or met with each other between 11/09/2017 and 15/09/2017. As such, neither with reference to the email of the applicant addressed to S.K.Grover dated 28/04/2017 nor that of the deceased email dated 02/09/2017 could be said to be having nexus or proximity with the alleged act of committing suicide on 15/09/2017.

Facts and circumstances do not suggest mental preparedness of the applicant with an intention to provoke, incite or instigate the deceased to commit suicide. As a matter of fact, the deceased committed suicide after four days of cessation from employment with the Company.

A careful reading of the record also suggests that the

deceased was rushed to the Bombay Hospital, Indore on 15/09/2017 by dialing number 100. The family members of the deceased were also present during his treatment and thereafter he died on 17/09/2017. The police did not record the statement of any members of the family on the said date. Thereafter, the suicide note is reportedly presented before the police by the brother of the deceased on 19/09/2017. The statement of Rani wife of the deceased was recorded on 04/10/2017, i.e., after unexplained delay of about 17 days from the date of death of the deceased and that of other family members; wherein she allegedly said that the deceased had told her that the applicant used to harass, insult and threatened. It is a queer fact that none of the family members of the deceased including his wife despite, having the alleged knowledge ever lodged any complaint in the Police Station or made any complaint to the police in the hospital where the deceased was admitted.

The police has also not recorded the statement of the deceased during the period 15/09/2017 to 17/09/2017, when he died.

It appears that there was noticeable improvement in the statements of the same witnesses recorded on 04/10/2017 and 07/11/2017, i.e., wife, Rani and mother, Smt. Sunita Vyas of the deceased.

There is no reason forthcoming why the prosecution has not recorded the statement of J.P.Yadav who was also admonished alongwith the deceased in the matter of negligence and dereliction of duties by the applicant in his email dated 28/04/2017 to the superior officer, S.K.Grover.

In the challan papers, there is no material to suggest or attributable positive act on the part of the applicant that he had an intention to push the deceased to commit suicide.

The Magistrate has not applied the mind while taking the cognizance and appears to have passed the impugned cognizance order (Annexure P/2) in a mechanical manner.

In the considered opinion of this Court, the material on record do not suggest mental preparedness of the applicant with an intention to provoke, incite or instigate the deceased to commit suicide attributable to his official duties or otherwise to fulfill the ingredients of abetment for constituting an offence under section 306 IPC in the light of the law laid down by the Hon'ble Supreme Court in the abovementioned cases.”

16- This Court has allowed the petition preferred under Section 482 in the aforesaid case. In the present case also facts and circumstances do not suggest mental preparedness of the applicants with an intention to instigate, provoke, incite or

encourage to commit suicide. The suicide notes left by her does not implicates the petitioners at all.

17- The First Information Report has been lodged after four months. Not only this, there is no evidence on record to establish even *prima-facie* that the petitioners have committed offence under Section 498-A of the IPC. The brother and the brother-in-law in their statements are referring to some incident of the year 2013 and on the basis of some earlier incident of the year 2013, an attempt has been made to rope in the present petitioners for offence under Section 498-A of the IPC.

18- This Court, after careful consideration of the entire material on record in the facts and circumstance of the case, is of the opinion that the material on record do not suggest mental preparedness of the petitioners with an intention to provoke, incite or instigate the deceased and therefore, the First Information Report and the consequent criminal proceedings arising out of First Information Report No.59/2017, Police Station Annapurna, Indore are hereby quashed.

19- With the aforesaid, petition stands allowed.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
SINGLE BENCH : HON'BLE SHRI JUSTICE S. C. SHARMA

M. Cr. C. No.17519/2018

Smt. Manorama Bai and Others

Versus

State of Madhya Pradesh

Counsel for the Parties : Shri Amit S. Agrawal, learned Senior Counsel with Shri Rishi Tiwari, learned counsel for the petitioners.

Shri Sudarshan Joshi, learned Government Advocate for the respondent/State.

Whether approved for reporting : Yes

Law laid down : (1) 'Abetment' – Involves a mental preparedness of a person to instigate or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide – no offence can be said to be made.

(2) The intention of the Legislature is that to convict a person under section 306 IPC, there has to be a clear *mens rea* and close proximate link to commit the offence. It also requires an active act or direct act which facilitating the act of commission of suicide by the deceased.

Significant paragraph numbers : 13 to 19

J U D G M E N T

(Delivered on this 31st of January, 2019)

(S. C. SHARMA)
J U D G E