

HIGH COURT OF MADHYA PRADESH  
BENCH AT INDORE

**Miscellaneous Criminal Case No.5952/2018**

**Abhay Kumar Katare**  
**Vs.**  
**State of Madhya Pradesh**

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Shri Surendra Singh, learned Senior Advocate assisted by S/Shri Raghavendra Singh Raghuvanshi, Mayhank Datta, Vivek Suri, Harshit Sharma & Ms. Nidhi Vaidya, learned counsel for the petitioner.

Shri Virendra Khadav, learned Government Advocate for the respondent/State.

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Whether Approved for reporting: YES

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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 paragraphs: 2 and 6 to 15.

Application allowed.

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Reserved on: 14/03/2018

**ORDER**  
(26/03/2018)

**Rohit Arya, J**

This application under section 482 Cr.P.C., is presented seeking quashment of the challan (Annexure P/1 colly.), cognizance order (Annexure P/2) and the consequent entire criminal proceedings arising out of RCT No.97/2018 for the offence punishable under section 306 IPC pending before the Court of Judicial Magistrate, First Class, Indore.

2. Petitioner is working as a Manager with DCM Shriram Limited (hereinafter referred to as "the Company") and posted at its Indore office. Sumit Vyas, the deceased; had joined the Company at Indore office in the year 2011 on the post of Accounts Officer and worked under the supervision of the

petitioner. He was promoted to the post of Section Officer. Though he worked with the Company for about six years but, he tendered resignation on number of times and thereafter withdrew the same. On 03/11/2012, the deceased sent an email and sought to be relieved of his duties for personal reasons and likewise in September, 2014 with a similar request but, at a later stage, he withdrew the same. In early 2017 since the petitioner noticed lapses and negligence in the discharge of duties by the deceased and another co-worker J.P.Yadav posing problems with the accounting system of the Company, the petitioner made a communication to the superior, S.K.Grover as regards account related issues with a copy to the deceased and co-worker J.P.Yadav by an email dated 28/04/2017 bringing to his notice the deficiencies and shortcomings to the effect that he is unable to control the accounting system due to negligence of the account staff and with a request to take some hard action or in the alternative the deceased and J.P.Yadav may be transferred to different department. S.K.Grover vide email dated 29/04/2017 called upon the deceased and Yadav for explanation.

As such, it was a pure official communication by the petitioner in the routine manner updating the superior officer about the work in the establishment.

The deceased instead of offering explanation in response to the email dated 29/04/2017 sent by S.K.Grover had made a request for termination of his service or transfer to some other place with immediate effect through email dated 03/05/2017. Nevertheless, the deceased did not make any allegations of cruelty, harassment or abuse of authority by the petitioner. Thereafter, the deceased continued to work in the same office. On 25/05/2017, the deceased sent an email titled as "Good Bye" to S.K.Grover wherein he once again disclosed his intention to leave the Company with a note of thanks to the superiors and co-workers for their support in discharge of his duties in the Company and wishing them as well, which reads as under:

"From: Sumit vyas [smo.ssp@gmail.com]  
Sent: 25 May 2017 02.18  
To : SKGrover  
Subject: Good Bye

Dear Sir,  
After more than 5-10 years of worked with Demshriram I have a lots of memories with Demshriram Ltd., I now bid adieu to the wonderful

team and people I met here.

The organization has not only helped me to learn lots & grow as a professional, but has also helped me to build bonds that will always hold a special place in my heart.

I would like to take a moment and thank everyone for their support, patience, and friendship over the past five year. It was wonderful to work with each one of you.

Thanks to Mr. Sandeep Jain Sir & All My Team Members for their guidance.

At Last but not least I am thank full to my Mentor Mr. SK Grover sahab who always wish to grow in my personal & professional career. Also thanks to all team members Zo-Indore.

Lastly one thing I would like to say sorry if I hurted some one during the professional/personal talk.”

The superior officer, S.K.Grover responded to the email on 25/05/2017 itself giving the deceased to understand that he will be relieved after completion of all the pending work and cautioned that it was not the way to leave the Company. By another email of the same date, S.K.Grover further informed the deceased that he will be relieved by 15<sup>th</sup> June, 2017 by which time, his replacement in the Company is available.

On the same date, i.e., on 25/07/2017 by yet another email, the deceased communicated to S.K.Grover that he has handed over the office key, laptop and data cord to his colleague Yadav with a request for grant of seven days leave to go for training in Mumbai. After training, he would come back and complete the remaining outstanding work.

On 02/09/2017, the deceased again wrote email giving reference of email dated 28/04/2017 by the applicant (Abhay Kumar Katore) to S.K.Grover regarding his transfer or to take hard action with allegations of arrogant behaviour alleging personal abuses against the applicant. He further expressed his anguish for not being given promotion and even the increment granted which according to him was less than what was given in the last year. Thereafter, the deceased expressed his regrets to continue at the Regional Office and tendered his resignation on 02/09/2017 and sought to be relieved by 10<sup>th</sup> September, 2017.

The resignation of the deceased was accepted by the Executive Director and Business Head, DCM SHRIRAM on 11/09/2017 with effect from 11/09/2017.

The deceased collected the email acceptance letter of resignation from the Delhi office and thereafter, he has circulated

the following email dated 11/09/2017:

"From: Sumit vyas [sumitvyas@dcmshriram.com]  
Sent: 11 September 2017 19:18  
To : Abhya Kumar Katare  
Cc : All Kirtimahar Users; sk grover, Farm Solutions,  
ZO & RO Indore, Farm Solutions – RO Bhopal; Nitin  
Bachchavat  
  
Subject: Good BYE

After more than 5-10 years of worked with Demshriram I have a lots of memories with Demshriram Ltd., I now bid adieu to the wonderful team and people I met here.

The organization has not only helped med to learn lots & grow as a professional, but has also helped me to build bonds that will always hold a special place in my heart.

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Thanks to Mr. Sandeep Jain Sir & All My Team Members for their guidance.

At Last but not least I am thank full to my Mentor Mr. SK Grover sahab who always wish to grow in my personal & professional career. Also thanks to all team members Zo-Indore.

Lastly one thing I would like to say sorry if I hurted some one during the professional/personal talk."

As such, in this email as well, the deceased has not made any allegations of harassment, instigation or cruelty against any of the superiors and the co-workers, especially the present applicant.

Thereafter, the deceased ceased to be employee in the Company and was not in contact with any of the Company officers or employees.

On 15/09/2017, the deceased sent another email with a copy to the local police, etc., with reference to the email dated 28/04/2017 (supra) written by the applicant to his superior; Mr. Grover, stating that he is undergoing depression and intended to commit suicide. In the said email the deceased hurled abuses against the applicant, on the premise that he is responsible for the alleged act of committing suicide by consuming sulphas tablets.

In the aforesaid factual backdrop, due to death of the deceased on 17/09/2017, initially *merg* No.76/2017 under section 174 Cr.P.C., was registered.

During the course of investigation, the statements of Narayan Vyas s/o Kaluram (father) on 25/09/2017, Shyam Vyas s/o Narayan Vyas (brother) on 02/10/2017, Ram Vyas s/o

Narayan Vyas (brother) on 02/10/2017, Smt. Sunita Vyas (mother) on 04/10/2017, Rani Vyas (wife of the deceased) on 04/10/2017 and other witnesses; Ashuthosh s/o Omprakash Sharma on 04/11/2017 and Abhishek s/o Ghanshyam Sharma on 04/11/2017 were recorded under section 161 Cr.P.C.,

Thereafter after about two months, FIR No.0777 has been registered on 04/11/2017 at 17.48 hours by Police Station Lasudia, Indore against the applicant for the offence punishable under section 306 IPC with the prosecution story, briefly stated as under:

The deceased under his own signature has written a suicide note wherein it was alleged that Abhay Katare working in the Company of the deceased was responsible for his death by consuming poisonous substance as Abhaby Katare used to harass and humiliate him.

The brother of the deceased Ram Vyas has produced the copies of official e-mails of the deceased prior to his death by consuming the poisonous substance in the police station. On 15/09/2017 the poisonous substance was consumed by the deceased at his residence, therefore, he was taken to the hospital for treatment by his brother's son and died on 17/09/2017 at 06.30 pm during treatment.

On the basis of the statements of the witnesses, suicide note and the emails of the deceased, offence was made out under section 306 IPC against the accused/applicant. “

The applicant was arrested on 05/11/2017.

Thereafter, challan was filed on 31/12/2017 and the Court below took cognizance under section 306 IPC against the applicant by an order dated 04/01/2018.

3. This Court has enlarged the applicant on bail while disposing of Mis. Cr. Case No.22167/2017 vide order dated 15/11/2017.

4. Learned senior counsel while questioning the challan

(Annexure P/1 colly.) and the cognizance order (Annexure P/2) arising out of RCT No.97/2018 for the offence punishable under section 306 IPC has made the following the submissions:

(i) Even if allegations made in the FIR referable to contents of emails detailed above or the statements of witnesses recorded under section 161 Cr.P.C., are taken by their face value make out absolutely no case against the accused/applicant, muchless; the alleged act of abetment as the material collected does not disclose the essential ingredients of the offence of abetment of suicide alleged against the applicant;

(ii) To constitute the commission of offence of abetment and to convict a person under section 306 IPC, there has to be a clear *mens rea* to commit the offence; an active act or direct act having close proximity with the act of commission which led the deceased to commit suicide seeing no option. The alleged act beyond any reasonable doubt must have been intended to push the deceased into such a situation to commit suicide;

(iii) a careful perusal of the email exchanges from 28/04/2107 to 11/09/2017, amongst the applicant, S.K.Grover and the deceased on their uncontroverted face value do suggests the communications primarily and predominantly were in the realm of office administration, official duties/responsibilities in the interest of the Company; as such could not be said to have been intended to instigate, incite or encourage with reasonable certainty suggestive of the consequences for commission of the suicide; and

(iv) that apart, there existed an official relationship between the applicant and the deceased. The email dated 28/04/2017 written by the applicant was in the realm of

administrative functions (referred to in the alleged email suicide note dated 15/09/2017) and there was no nexus between the commission of suicide and the communication with superior official.

(v) apart from that, there is no proximate link of the email dated 28/04/2017 with the alleged act of email suicide note dated 15/09/2017. It is absurd to even think that a superior officer like the applicant would intend to bring about suicide of an employee of the Company and there is no other material to the contrary;

(vi) baseless and irrelevant allegations could not be used as a basis for prosecution of a serious offence under section 306 IPC;

(vii) under the circumstances, where the FIR does not have any material capable of being viewed as having relevance for an offence under section 306 IPC, in the light of the settled law by the Hon'ble Supreme Court in the case of **Madan Mohan Singh Vs. State of Gujarat and another, (2010) 8 SCC 628**, it shall be in the fitness of things to quash the FIR and the further proceedings based thereupon.

5. *Per contra*, learned Public Prosecutor appearing for the respondent/State contends that the email dated 15/09/2017 addressed to one Pooja Mahndiratta and others, in fact, is a suicide note, sent by the deceased. The contents of the email do suggest that the applicant had instigated the deceased facilitating commission of suicide within the meaning of section 306 IPC. Hence, the named FIR lodged in the context thereof clearly discloses the act of abetment on the part of the applicant for commission of suicide by the deceased, as supported by the statements of the witnesses recorded under section 161 Cr.P.C., viz., Narayan Vyas (father) Shyam Vyas s/o Narayan Vyas (brother), Ram Vyas s/o Narayan Vyas (brother) Smt. Sunita Vyas (mother), Rani Vyas (wife of the deceased) and other

witnesses as well. With the aforesaid prayed for dismissal of the instant application under section 482 Cr. P.C.,

6. Before advertng 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 places 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 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."

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 "goading". 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 instigate, provoke, incite 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 10<sup>th</sup> 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. In view of the foregoing facts and circumstances, the application is allowed. The criminal case No.RCT No.97/2018, cognizance order (Annexure P/2) and the consequential proceedings against the applicant are quashed and he stands discharged.

**(Rohit Arya)**  
**Judge**  
**26-03-2018**

b/-

