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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 13th OF JULY, 2023

CRIMINAL REVISION No. 615 of 2019

BETWEEN:-

**NARAYAN S/O PREMPRAKASH BATHAM, AGED ABOUT
24 YEARS, OCCUPATION: BUSINESS, R/O-54,
INDRANAGAR RATLAM (MADHYA PRADESH)**

.....PETITIONER

**(SHRI SANJAY KUMAR SHARMA, LEARNED COUNSEL FOR THE
PETITIONER.)**

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THR. PS. INDUSTRIAL AREA RATLAM
(MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI SUDHANSHU VYAS, LEARNED P.L. FOR THE RESPONDENT/
STATE.)**

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*This revision coming on for admission this day, the court passed the
following:*

ORDER

The petitioner/ accused has preferred this revision petition u/s 397 r/w 401 of Cr.P.C. being aggrieved by the order dated 08/01/2019 passed by Vth Additional Sessions Judge, Ratlam in S.T. No.157/2018 whereby the learned trial court has passed order for framing of charges u/s 306 of IPC against the petitioner.

2. Prosecution case in brief is that the deceased Vishnu Rathore has committed suicide on 21/09/2018 in the intervening night of 20–21 September, 2018, by hanging in his house. On the same day after receiving intimation from

father of the deceased Bhawarlal, a Merg Intimation No.49/2018 was lodged at Police Station- Industrial Area, Ratlam. After conducting post-mortem of the dead body, statement of father of deceased Bhawarlal, brother Rakesh and cousin brother Dharmendra was recorded and it was found that the deceased was having friendship with the petitioner since last 3 years. The deceased and the petitioner were seen in objectionable position by sister-in-law of the deceased, Pooja. Further it is said that whenever, petitioner came to drop the deceased at his house, then he used to kiss the deceased, on that doubt arose and the family members of the deceased started searching a bride for marriage of deceased Vishnu. It is also alleged that, for 3 days before the incident, the deceased was worried and when his family members asked him the reason, he disclosed them that petitioner loves him and wants to marry him and further the petitioner gave threat that if the deceased marries any girl, he will either kill the deceased or will commit suicide himself and implicate the deceased through his suicide letter. The family of the deceased tried to convince the deceased Vishnu and the petitioner-Narayan. On 28/09/2018, the deceased went to meet the petitioner in evening and returned in night at about 11:00 PM, being worried and upset, told his family members that he is being bothered by the petitioner and the petitioner wants to marry the deceased and they had a quarrel as well due to which he sustained injuries on his right hand and lips. However, at night he committed suicide.

3. The learned trial court, after perusal of the chargesheet and evidence on record, by the impugned order came to the conclusion that *prima facie* charge u/s 306 of IPC is made out against the petitioner and ordered for framing of the aforesaid charge. Feeling aggrieved by which the petitioner has preferred

this revision.

4. It is submitted by the learned counsel for the petitioner that it is not disputed that there was friendship between the deceased and the petitioner. As alleged that there was physical relationship between the deceased and petitioner but that relationship was consensual, relying upon the *judgment dated 06/09/2018 passed by the Apex Court in the case of Navtej Singh Johar Vs. Union Of India [AIR 2018 SC 4321]*, whereby it has been held with regard to Section 377 of IPC that the “law is unconstitutional, in so far as it criminalises consensual sexual conduct between adults of the same sex”.

5. It has further been submitted that, as alleged by the prosecution that father and other family members of the deceased wanted to get him married immediately and had started searching bride for him, therefore, possibility that because of the said pressure, built by his family members he committed suicide, cannot be ruled out. Further submitted that even if the case of prosecution is assumed as gospel truth then too at the most it may be a cause to commit suicide and same cannot be equated with the abetment as defined u/s 107 of IPC.

6. Learned counsel has stated that there is nothing in record to indicate that the petitioner at any point of time has instigated/ incited, suggested, encouraged the deceased to commit suicide. It is further submitted that to constitute abetment, within the meaning of Section 107 and with Section 306 of IPC, there should be instigation, provocation, goading, suggestion or persuasion by the accused to the deceased to commit suicide, and that the accused must be intended that the deceased commits suicide. placed reliance in the case of *Kanchan Sharma V State Of Uttar Pradesh And Anr. [(2021) 13 SCC 806]*; *Chitresh Kumar Chopra V State (Government Of Nct Of*

Delhi) [(2009) 16 SCC 605] and Bittu alias GIRRIRAJ V State Of Madhya Pradesh [MCRC no.1742/2016, order dated 08/03/2017].

7. On other hand it is submitted by the learned panel lawyer that the deceased was being subjected to harassment and humiliation by the petitioner, therefore, the alleged act is covered by Section 306 of IPC.

8. Heard learned counsel for the parties and perused the records.

9. In the case of **Kanchan Sharma (Supra)** the Apex Court observed in paragraph 13 as under:-

“13. In *Amalendu Pal V State Of W.B.*³ in order to bring a case within the purview of Section 306, IPC this Court has held as under: (SCC p.712, paras 12-13)

“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 there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit 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.”

10. In the case of **Chitresh Kumar Chopra (Supra)** the Hon'ble apex court discussing the ingredients of offence u/s 306 of IPC and revisional power of High court against charge, in paragraph 19 and 25 held as under:-

“19. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See: Niranjana Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijjaya⁵).

11. In the case of *Bittu alias Girroraj (Supra)* wherein the legal position has been considered by this High Court in the light of various pronouncements of the apex court, relevant paragraphs where of run as under:-

“09. '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".

10. 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.

12. In ***Ramesh Kumar Vs. State Of Chattisgarh [(2001) 9 SCC 618]*** a 3 judge bench of the Apex court explaining the meaning and connotation of word "Instigation" has held in paragraph 20 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."

13. Taking note of the fact that each person's suicidability is different from others and that each person has his own idea of self esteem and self

respect, the Apex Court in *M. Mohan V State represented by the Deputy Superintendent Of Police, [2011 Cri. L.J. 1900 (SC)]*, referring to its earlier decision in *Chitresh Kumar (Supra)* held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

14. The Apex court in the case of *Gangula Mohan Reddy V 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 decision in *Mahendra Singh And ANR. V State Of M.P. [(1995) (Supp.) 3 SCC 731]* and *Ramesh Kumar V State Of Chattisgarh [(2001) 9 SCC 618]*, holding that offence of abetment to commit suicide u/s 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.”

15. 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.

16. In the case of *Devendra And Ors. V State Of Uttar Pradesh And Anr. [(2009) 7 SCC 495]* it has been held as under-

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

17. From the aforesaid, it is clear that in absence of instigation,

provocation or suggestion on the part of the accused, no offence u/s 306 of IPC can be made out.

18. Even if the allegation discussed above made against the petitioner is accepted at its face value, it may not by itself constitute an offence of abetment, because there is nothing that indicates that the petitioner had instigated, incited, suggested or encouraged the deceased to commit suicide. Therefore, it is clear that there is no material in the case to frame charge u/s 306 of IPC against the petitioner.

19. The learned trial court while framing the charge has not considered the aforesaid factual and legal aspect of the matter and has mechanically framed the charge. Therefore, the charge u/s 306 of IPC against the petitioner cannot be sustained.

20. Accordingly, this petition deserves to be and is hereby, **allowed**. The charge framed by the trial court is set aside and the petitioner is discharged from section 306 of IPC.

C.C. as per rule.

सत्यमेव जयते

(PRAKASH CHANDRA GUPTA)
JUDGE