

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Single Bench)**

**Present:**

**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

**Criminal Revision No.2525/2017**

*Suresh Patel*  
**-Versus-**  
*State of M.P.*

Shri Manish Datt, Senior Advocate with Shri Pradeep Hajari,  
Advocate for the applicants.

Shri Bramhadatt Singh, Govt. Advocate for the non-applicant.

<b><i>Whether approved for reporting ?</i></b>	Yes.
<b><i>Law laid down</i></b>	Scope of interference under Section 397 CrPC against an order framing charge, power should be exercised very sparingly and with circumspection and that too in the rarest of rare case. The court should apply the test as to whether uncontroverted allegation available from the record of the case and the documents, <i>prima facie</i> does not establish any offence and the basic ingredients of the offence are not satisfied, then the Court may interfere. Merely non-return of mortgaged papers would not amount to 'abetment' under sections 306 and 107 of the IPC.
<b><i>Significant paragraph Nos.</i></b>	7 and 8.

Date of hearing : 10-11-2017.

**ORDER**  
**(Jabalpur, dated 14.11.2017)**

This criminal revision has been filed under Section 397/401 of the Code of Criminal Procedure (for short 'the CrPC') challenging the order dated 14-6-2017 passed by the learned III

Additional Sessions Judge, Link Court, Sounsar District Chhindwara in S.T. No.11/2017 [State of M.P. vs. Ganpati Dandwe and another] whereby charge under Section 306/34 of the Indian Penal Code [for brevity 'the IPC'] has been framed against the applicant.

2. Facts of the case, succinctly stated are that the Police Station, Sounsar registered Crime No.234/2016 in respect of offence punishable under sections 306/34 of the IPC and under section 3/4 the M.P. Protection of Debtors Act, 1937 against the present applicant and one other co-accused. After investigation charge-sheet was filed by the police before the competent court of jurisdiction which in turn, committed the matter to the Court of Sessions for trial.

3. Allegations from the record appear to be that the deceased is one Sangeeta wife of the complainant – Yadav Ladse. It is alleged that one Ganpati took amount from Sangeeta by pledging registry documents with respect to the house of the deceased for a consideration of Rs.70,000/- for his personal use in presence of the present applicant. It is alleged that when Sangeeta demanded the said amount the co-accused, Ganpati refused payment and also denied return of the registry papers. Prosecution alleges that

because of refusal of return of the registry documents, Sangeeta committed suicide pouring kerosene and setting herself ablaze.

4. Learned counsel for the applicant submitted that the alleged allegation of non-return of registry papers by the present applicant to the deceased would not constitute the necessary ingredients of the offence punishable under Section 306 read with 34 of the IPC. He asseverated that the entire material available with the prosecution against the present applicant, reveal that the present applicant only refused return of the registry papers, as per contents of the FIR and also the statement of Manohar Ladse. He has also drawn attention of this Court to the statement of sister-in-law (Jethani) of the deceased, namely Manisha Ladse and submitted that she has stated that when she asked the deceased as to how the incident occurred – she had stated that she pledged registry documents pertaining to her house with the present applicant and had taken a loan of Rs.70000/- and the said amount was given to the co-accused, Ganpati. The deceased further informed her that after about 1-2 months when she asked Ganpati to return the amount and to get registry papers released from the present applicant, he refused payment of the said amount. For the said reason, the deceased committed suicide setting herself afire pouring kerosene on her.

After the said information given by her the deceased died after a period of five days at Nagpur during course of her treatment.

5. Learned counsel for the State submitted that the alleged act of the present applicant refusing to return the registry documents to the deceased, would amount to harassment and, therefore, the same falls within the purview of 'abetment to commit suicide'. However, the counsel for the State could not point out any other material to establish the ingredients of abetment.

6. The moot question that arises for consideration is that as to whether considering and accepting the entire material available on record as absolutely correct and true, a *prima facie* case for the alleged act of refusal to return registry papers would constitute an offence punishable under Section 306 of the IPC against the present applicant.

7. Before advertng to the aforesaid question, it would be apposite to consider the scope of interference under Section 397 of the CrPC against an order framing charge. Law in this regard is no longer *res integra*. Framing of a charge is an exercise of jurisdiction by the trial Court in terms of Section 228 of the CrPC, unless the accused is discharged under Section 227 of the CrPC. Under both

sections 227 and 228, the Court is required to consider “record of the case” and the documents submitted therewith and, after hearing the parties, the Court may either discharge the accused or where it appears to the Court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section concerned exists, then the Court would be right in presuming that there is a ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the Court in relation to existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction.

**8.** In the case of **Amit Kapoor vs. Ramesh Chander and another, (2012) 9 SCC 460** the Apex Court has culled out certain principles to be considered for proper exercise of jurisdiction with regard to quashing of the charge either in exercise of power under Section 397 or Section 482 of the CrPC, or together, as the case may be. In the present case, the principles laid down by the Apex Court in paras 27.1, 27.2, 27.3 and 27.6 would be relevant, which are reproduced as under:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the

power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

Xx xx xx xx

Xx xx xx xx

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.”

9. In the light of the aforesaid enunciation of principles of law laid down in regard to interference under Section 397 of CrPC against an order framing charge, this Court proceeds to examine that whether in the present case ingredients of Section 306 of IPC regarding ‘abetment of suicide’ are present. At this juncture it is

useful to reproduce the provision of Section 306 of the IPC and the same is extracted hereunder:

“306. 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 extend to ten years, and shall also be liable to fine.”

**10.** The term ‘abetment’ is defined under Section 107 of the IPC in Chapter V. It is profitable to refer the said provision. It reads thus:

“**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 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 wilful misrepresentation, or by wilful 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 facilitate the commission thereof, is said to aid the doing of that act.”

**11.** As per definition given in Section 107 of the IPC the ‘abetment’ is constituted by the following ingredients:

- (i) Instigating a person to commit an offence; or

- (ii) engaging in a conspiracy to commit it; or
- (iii) intentionally aiding a person to commit it.

**12.** A person is said to `instigate' another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, of of hints, insinuation or encouragement. The word `instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act. In the present case, refusal of return of the registry documents with the intent to non-payment of loan amount, would not amount to goad or urge forward or to provoke, incite, urge or encourage to commit suicide. Merely goaded her to refund or repay the amount advanced by the accused to her. He had never intended that the deceased should commit. On the other hand, he wanted that the loan advanced by him to the deceased to be repaid by her.

**13.** The offence of `abetment' by instigation depends upon the intention of the person and not on the act which is done by the person who has been abetted. Abetment made by instigation, conspiracy or intentional aid is provided under Section 107 of the IPC. However, the word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be termed as



`instigation'. However, in the present case, against the present applicant there is only allegation that he had refused to return the registry documents, as his loan amount granted to the deceased was not repaid to him which would not amount to abetment. The view expressed above, gets fortified as held by a Co-ordinate Bench of this Court in the case of **Vedprakash Bhaiji vs. State of M.P., 1994 J.L.J. 758** that demand of loan advanced, is not abetment to commit suicide.

14. While dealing with the word `instigation', the apex Court in the case of **Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh, AIR 2002 SC 1998** held that utterance of the words by the accused to the deceased `to go and die', would not constitute the necessary ingredients of `instigation'. Presence of *mens rea* is necessary concomitant of instigation.

15. In the case of **Vedprakash Bhaiji (supra)** this Court has quashed the charge levelled against the accused under Section 306 read with 34 of the IPC. In the case of **Sanju alias Sanjay Singh Sengar (supra)**, the order framing charge under Section 306 of the IPC was quashed, as necessary ingredients of `abetment' were not present.

**16.** In the case at hand, considering and accepting the entire material available on record as correct and true, this Court does not find a prima facie case for commission of the alleged offence punishable under Section 306 of the IPC, as the indispensable ingredients of sections 306 and 107 of the IPC to constitute the offence of 'abetment' are completely missing. This Court finds it a fit case to exercise revisional jurisdiction to set aside the impugned order framing charge against the present applicant, in the light of the judgment of the Supreme Court in **Amit Kapoor (supra)**.

**17.** Accordingly, the revision is allowed and the impugned order framing charge against applicant is set aside.

**(Vijay Kumar Shukla)**  
**Judge**