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

**BEFORE
HON'BLE SMT. JUSTICE NANDITA DUBEY**

ON THE 18th OF JULY, 2023

MISC. CRIMINAL CASE No. 2201 of 2022

BETWEEN:-

**SANJAY DUBEYS/O LATE SHRI GANGA PRASAD DUBEY,
AGED ABOUT 51 YEARS, OCCUPATION: GOVERNMENT
SERVANT R/O BLOCK NO.4 OM RESIDENCY IN FRONT
OF BETUL OIL MILL DISTRICT-BETUL (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI SAURABH SUNDER - ADVOCATE)

AND

- 1. STATE OF M.P THROUGH POLICE STATION
KOTWALI DISTRICT BETUL (MADHYA PRADESH)**
- 2. SMT MUNNI PAWAR W/O LATE SHRI SUNDAR
LAL PAWAR, AGED ABOUT 53 YEARS, R/O NEW
BARASKAR COLONY MAHAVEER WARD BETUL
DISTRICT BETUL (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1/STATE BY SHRI ADITYA GUPTA - PANEL LAWYER)

(RESPONDENT NO.2 BY SHRI PRADEEP SINGH CHOUHAN - ADVOCATE)

*This application coming on for admission this day, the Court passed
the following:*

ORDER

This petition under Section 482 of the Cr.P.C. has been filed by the petitioner seeking quashment of the criminal proceedings with respect to the FIR dated 20.07.2021 and charge sheet dated 14.09.2021 registered at Crime No. 650/2021 for offence punishable under Section 306 of IPC at PS-Kotwali, District-Betul.

The incident out of which these proceedings arise took place on 30.06.2021, when one Sunderlal (deceased), posted as Assistant Grade-III, working at CMHO Office, Betul committed suicide by consuming poisonous substance. He was rushed to the hospital, where looking to his serious condition, his dying declaration was recorded wherein he has stated that present applicant has falsely implicated him in Covid-19 recruitment case. Suderlal died at 5.10 PM. On search of the dead body, a suicide note was recovered from pocket of his pant, allegedly, in the handwriting of the deceased, wherein it has been mentioned that when he was working in the receipt section at Betul, at that time, the present petitioner had orally instructed him to look after the Covid-19 vacancy work and to collect the application forms. Since he was working in the receipt section, he collected the forms. He has further mentioned in the suicide note that he has nothing to do with the case nor he has taken any money from anyone. This suicide note further mentions that the present applicant has falsely implicated him in the recruitment process, hence, he is committing suicide for which the present petitioner will be responsible.

On the basis of dying declaration and the suicide note, the FIR was registered against the present applicant. Statements of widow of deceased and other persons were also recorded.

Challenge to this FIR and the charge sheet is made on the ground that of false implication and that no offence under Section 306 of IPC is made out against the present applicant as the ingredients of Section 107 of IPC are totally absent.

It is argued that as per suicide note, there is no allegation that the applicant had threatened or harassed the deceased or abetted the crime, in any

manner. The only allegation against the present applicant is that he orally instructed the deceased to look after the Covid-19 vacancy work and collect the application forms.

Per contra, learned counsel for the respondents have vehemently opposed the contentions raised on behalf of the petitioner. It is submitted that in the dying declaration and the suicide note, the deceased has disclosed the name of petitioner and is responsible for suicide of the deceased. Apart that, the widow of deceased in her 161 Cr.P.C.statement also stated that her husband has told her that he is committing suicide because of the present applicant who has falsely implicated him in the Covid-19 recruitment case. It is urged that since charge had already been framed, petition for quashing the FIR and charge sheet is not tenable.

Having heard learned counsel for the parties and on perusal of record, I am of the opinion that this petition deserves to be allowed.

In the instant case, bare perusal of the FIR, the dying declaration, suicide note and the statement of widow of deceased recorded under Section 161 Cr.P.C. indicate that the only allegation against the applicant is that he orally asked the deceased to look after the Covid-19 vacancy work and collect the application forms. There is no allegation that the petitioner harassed or tortured or did any such act with the deceased which might have compelled him or pressurized him to such an extent that he had no other option but to commit suicide. Rather, from the 161 Cr.P.C.statement of widow of deceased, it can be seen that the deceased was attached since last two months to the Govt. Hospital, Multai, District-Betul. He was suspected to be involved in the Covid-19 recruitment process and a day prior to his suicide, i.e. on 29.06.2021, he was called to the SDOP office, Betul for interrogation where he was told that if he is

found involved in the case, his service will be terminated and he would not get the pension and other funds.

To constitute an offence under Section 306 of IPC, the prosecution has to establish that person (deceased) had committed suicide and the suicide was abetted by the accused beyond reasonable doubt. There is a requirement of active participation on the part of the accused which led to the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, the accused cannot be convicted under Section 306 of IPC.

What actually constitute abetment is defined under Section 107 of IPC, the same reads as under :-

Section 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.

This aspect has been considered by the Supreme Court in the case of **Gurucharan Singh vs. State of Punjab (2020) 10 SCC 200**, wherein it has been observed that:-

"15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 of IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous."

Similarly, in the case of **S.S.Chheema vs. Vijay Kumar Mahajan (2010) 12 SCC 190**, the Supreme Court has held thus :-

25. 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. The intention of the legislature and the ratio of the cases decided by this Court is 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 that act must have been intended to push the deceased into such a position that he committed suicide.

Similar was the view taken by the Supreme Court in **Gurjit Singh vs. State of Punjab (2020) 14 SCC 264** and in **State of West Bengal vs. Indrajit Kundu and others (2019) 10 SCC 188**.

There is no merit in the submission of respondents/State that once charge is framed, the petition for quashing the FIR and further proceedings is not maintainable. The High Court can exercise its inherent jurisdiction of quashing a criminal proceeding when the allegations made in the complaint do not

constitute an offence or that the exercise of the power is necessary either to prevent the abuse of process of Court or otherwise to secure ends of justice. There is no such rigid formula and it depends upon the facts and circumstances of an individual case wherein such power should be exercised.

In **State of Haryana and others vs. Bhajan Lal and others 1992 (Suppl.) 1 SCC 335** the Supreme Court has set out the categories of cases in which the inherent power under Section 482 of the Cr.P.C. can be exercised.

The first, third and fifth categories set out therein are as follows :-

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(3) Where the uncontroverted allegations made in the FIR or 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;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

The present case falls under aforesaid three categories. In view of the law laid down by the Apex Court, merely filing charge sheet on the basis of dying declaration and the suicide note of the deceased where he had not stated anything other than, *"that applicant has falsely implicated him in the recruitment process"*, and without there being any other evidence to support the charge, the accused/petitioner cannot be asked to face the trial, and in that view of the matter continuance of criminal proceeding against the petitioner would tantamount to abuse of the process of the Court.

In **Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandraojirao Angre and others (1988) 1 SCC 692**, the Supreme Court has held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. It has been further held by the Supreme Court that where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowed a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.

In the present case, apart from the bald statement in the suicide note and dying declaration that the present applicant asked the deceased to look after the Covid-19 vacancy work and collect the application forms, there is no other mitigating circumstances or evidence/ document on record to connect the petitioner with the alleged crime. Such a bald assertion in a suicide note that "applicant orally instructed/asked the deceased to look after the Covid-19 vacancy work and collect the application forms" even if taken to be correct, does not fall within the ambit of definition of abetment. Asking the deceased to collect application forms does not establish the *mens rea* nor can it be taken as an active or instigative act which pushed the deceased into such a position that he felt that he had no other option but to commit suicide. Hence, the material on which the prosecution proposes to rely against the petitioner is wholly inadequate to sustain the charge that the petitioner, in any manner, is connected

with the suicide of the deceased.

In the result, this petition is allowed. The FIR dated 20.07.2021 as well as the charge sheet dated 14.09.2021 and consequential proceeding pending in S.T.No.106/21 before the Ist Addl. Sessions Judge, Betul under Section 306 IPC are hereby quashed.

(NANDITA DUBEY)
JUDGE

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