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

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 10th OF MAY, 2023

MISC. CRIMINAL CASE No. 30444 of 2022

BETWEEN:-

**UMESH JADIYA S/O LATE SHRI RAMSEWAK JADIYA,
AGED ABOUT 46 YEARS, OCCUPATION: AGRICULTURE,
R/O PAPOURA CHOURAHA. TAALDARWAJA ROAD,
TIKAMGARH, DISTRICT TIKAMGARH (M.P.)**

.....APPLICANT

(BY SHRI R.S. PATEL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
STATION HOUSE OFFICER, POLICE STATION
KHARAKPUR TIKAMGARH (MADHYA PRADESH)**
- 2. VIGYAAN NAYAK S/O LATE RAMESH PRASAD
N A Y A K RANIPURAI PS BALDEVGARH,
TIKAMGARH, MADHYA PRADESH**

.....RESPONDENTS

**(SHRI YOGENDRA DAS YADAV - GOVERNMENT ADVOCATE FOR
RESPONDENT NO.1/STATE)**

*This application coming on for hearing this day, the court passed the
following:*

ORDER

This M.Cr.C under Section 482 of Cr.P.C has been filed by the applicant for quashing the registration of Crime No.155/2020 at Police Station Kharakpur District - Tikamgarh (M.P.), and the proceedings pending in the criminal trial.

2. The case of prosecution in a nutshell as articulated in FIR dated 18.07.2020 that, on 25.05.2020 when Shramik Special train was on the way, the deceased named Ramesh Nayak jumped in front of train and due to that

unfortunate incident the deceased succumbed to injuries. On the basis of suicide note of deceased Ramesh Nayak, this case was registered. It is stated in the said suicide note that co-accused Abhay Goyal and the applicant Umesh Jadiya have got executed a registered sale deed on behalf of deceased. In the night of 21.05.2020 at 2:35 AM, when deceased came out of his house for urinating, Abhay Goyal and Umesh Jadiya caught him and taken him on motorcycle and a false case was initiated. On the anvil of this FIR the case was registered against the applicant and co-accused under Section 306 r/w 34 of IPC.

3. This petition under Section 482 of Cr.P.C has been filed on the basis of the facts that even if the whole prosecution case is accepted in its entirety, then also no case is made out under Section 306 r/w 34 of IPC against this applicant. It is further prayed that since no case is made out, the main co-accused who has purchased the said land from the deceased through registered sale deed has already been exonerated by Hon'ble High Court in M.Cr.C No.43139 of 2021 wherein the proceedings against that co-accused has been quashed on 08.05.2022. On the basis of stray suicide note, the accused cannot be connected with the crime.

4. It is further contended that the said sale deed was executed on 05.08.2014 and after that the family members of deceased have filed a civil suit to declare the said sale deed null and void. It is also worthwhile to mention that the deceased was not the party of the said civil suit which speaks volumes of the facts that the deceased had no objection whatsoever with respect to the execution of the sale deed and it depicts that only the family members of the deceased had their objections against the said sale deed.

5. It is further expostulated that the deceased had committed suicide after 06 years of the said execution of sale deed. It also emerged that the said FIR dated 18.07.2020 against applicant was also lodged after 02 months of the fateful incident. There is not a single complaint against the applicant regarding harassment or any kind of cruelty against deceased. The main allegation of harassment of the deceased could not suffice for an offence of abetment of suicide. In order to establish the act of instigation, the active role is necessary ingredient for an offence punishable under Section 306 of IPC. On the basis of aforesaid, learned counsel for applicant prayed to this Court that this false criminal proceeding pending against the applicant be quashed.

6. Learned counsel on behalf of State, opposing the contention of petitioners application, demurred that in view of the evidence available on record, there is a prima facie case made out against this applicant. Inasmuch as this applicant is witness of the said execution of sale deed, the criminal proceeding pending in the Trial Court may not be struck down. On the basis of parity, the extraordinary power of this Court under Section 482 cannot be exercised.

7. In view of the rival submissions of both parties, the matter has been considered in light of the records. So far as the principle of parity is concerned, certainly the principle of parity is not applicable in using the extraordinary jurisdiction enshrined under Section 482 of Cr.P.C. However, this Court can obtain the guidelines from the order passed in the same matter by the Co-ordinate Bench of this Court. Here it is pertinent to mention that the case against Abhay Goyal was more serious than the case of this applicant. Virtually the said registered sale deed was executed in favour of Abhay Goyal and, therefore, the co-accused Abhay Goyal was the main beneficiary of the said sale deed.

Whereas this applicant has only witnessed the said sale deed.

8. So far as the involvement of this applicant in said crime is concerned, in plethora of judgments of the Hon'ble Apex Court it has been made luminescent that in order to constitute offence under Section 306, there has to be a proximate nexus in terms of Section 107 between act of committing suicide by the deceased and any overt act attributed to the accused in terms of instigating to commit suicide.

9. In this regard, the law laid down by Hon'ble Supreme Court in a recent judgment, rendered in ***Knachan sharma v. State of Uttar Pradesh and Another 2021 (4) Crimes 48 (SC)***, is propitious to produce here:

'Abetment' involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it 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.

10. On this aspect, I can also profitably rely on another judgment of Supreme Court held in ***Mahendra K.C. v. State of Karnataka and Another (2022) 2 SCC 129*** wherein it is ordained as under:

The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission.

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.

11. In view of the aforesaid ratio, the factual matrix of this case has been meticulously examined. In this case, the said sale deed was executed on 05.08.2014 thereafter, a civil suit was filed to declare the said sale deed as null and void by the family members of the deceased. Then after more than 05 years of the said sale deed, the deceased has committed suicide on 22.05.2020. Subsequent to that an FIR was lodged after 02 months of the said incident in which the applicant along with co-accused were implicated for abetting the deceased to commit suicide. No proximity between the acts of applicant and committal of suicide established by prosecution.

12. Virtually the act of instigation and an active role is a necessary ingredient for an offence under Section 306 of IPC. Since, aforesaid both the ingredients have not been evinced, no case under Section 306 of IPC is culled out against the applicant. There is no material on record to show as to how the applicant has abetted the deceased for committing suicide.

13. In the result thereof, this application under Section 482 succeeds and the proceeding initiated against applicant vide Crime No.155/2020 of Police Station- Kharakpur, District Tikamgarh, dated 18.07.2020 for offence under Section 306 r/w 34 of IPC stands quashed and all other proceedings that may

be pending before any Court arising from the said FIR are also resultantly quashed.

14. Accordingly, this application is *disposed off*.

(PREM NARAYAN SINGH)
JUDGE

VPA

