

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 15th OF MARCH, 2024

WRIT PETITION No. 21097 of 2023

BETWEEN:-

**SITARAM YADAV S/O SHRI
PRABHU DAYAL, AGED ABOUT 61
YEARS, OCCUPATION: RURAL
AGRICULTURE EXTENSION
OFFICER R/O GRAM NONER
DISTRICT DATIYA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI MANAN AGRAWAL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA
PRADESH THROUGH
PRINCIPAL SECRETARY HOME
DEPARTMENT VALLABH
BHAWAN, DISTRICT BHOPAL
(M.P.) (MADHYA PRADESH)**
- 2. DIRECTOR GENERAL OF
POLICE POLICE
HEADQUARTERS BHOPAL
(MADHYA PRADESH)**
- 3. INSPECTOR GENERAL OF
POLICE DIVISION MADHYA
PRADESH (MADHYA
PRADESH)**
- 4. SUPERINTENDENT OF POLICE
DISTRICT NIWARI (MADHYA
PRADESH)**
- 5. SUB DIVISIONAL OFFICER
POLICE DISTRICT NIWARI**

(MADHYA PRADESH)

6. STATION HOUSE OFFICER
(SHO) POLICE STATION
PRITHVIPUR DISTRICT
NIWARI (MADHYA PRADESH)
7. TINKAL YADAV S.I. POLICE
STATION PRITHVIPUR
DISTRICT NIWADI (MADHYA
PRADESH)
8. HARISH YADAV CONSTABLE
POLICE STATION
PRITHVIPUR DISTRICT
NIWARI (MADHYA PRADESH)
9. ANOJ S/O SIYARAM YADAV,
AGED ABOUT 40 YEARS, R/O
LAYTAR KHIRAK
GRAMPANHARI P.S.
PRITHVIPUR DISTRICT
(MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SMT.SWATI A.GEORGE – DEPUTY GOVT. ADVOCATE)
(RESPONDENT NO.9 BY SHRI R.S.PATEL - ADVOCATE)

WRIT PETITION No. 22734 of 2023**BETWEEN:-**

1. AJAY PRATAP YADAV S/O
SHRI PRABHU DAYAL
YADAV, AGED ABOUT 40
YEARS, OCCUPATION:
WORKER R/O GRAM
SAKERA KHURD POST
NEGUWAN KHAS
DISTRICT TIKAMGARH
(MADHYA PRADESH)
2. MUNNA LAL S/O SHRI RAM
SWARUP YADAV R/O
GRAM LATHIARKHERAK
(PANIHARI) TEHSIL
PRITHVIPUR DISTRICT
NIWARI (MADHYA

PRADESH)

.....PETITIONER

(BY SHRI MANAN AGRAWAL - ADVOCATE)

AND

1. THE STATE OF MADHYA
PRADESH THROUGH
PRINCIPAL SECRETARY
HOME DEPARTMENT
VALLABH BHAWNA
SACHIVALAYA BHOPAL
(MADHYA PRADESH)
2. THE DIRECTOR GENERAL
OF POLICE, POLICE
HEADQUARTERS BHOPAL
(MADHYA PRADESH)
3. THE INSPECTOR GENERAL
OF POLICE, DIVISION NOT
MENTION (MADHYA
PRADESH)
4. THE SUPERINTENDENT OF
POLICE, DISTRICT NIWARI
(MADHYA PRADESH)
5. THE SUB DIVISIONAL
OFFICER POLICE
DISTRICT NIWARI
(MADHYA PRADESH)
6. THE STATION HOUSE
OFFICER (SHO) POLICE
STATION PRITHIVIPUR
DISTRICT NIWARI
(MADHYA PRADESH)
7. TINKAL YADAV, S.I.
POLICE STATION
PRITHIVIPUR DISTRICT
NIWARI (MADHYA
PRADESH)
8. HARISH YADAV
CONSTABLE POLICE

STATION PIRTHIVIPUR
DISTRICT NIWARI
(MADHYA PRADESH)

9. ANOJ S/O SIYARAM
YADAV, AGED ABOUT 40
YEARS, R/O LATYAR
KHIRAK GRAM PANHARI
P.S. PRITHIVIPUR
DISTRICT NIWARI
(MADHYA PRADESH)

.....RESPONDENTS

***(RESPONDENTS/STATE BY SMT.SWATI A.GEORGE – DEPUTY GOVT. ADVOCATE)
(RESPONDENT NO.9 BY SHRI R.S.PATEL - ADVOCATE)***

“Reserved on : 04.03.2024”

“Pronounced on : 15.03.2024”.

These petitions having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

1. By this common order, W.P. No.22734/2023 shall also be disposed of. For the sake of convenience, facts of W.P. No.21097/2023 shall be taken into consideration.
2. This writ petition under Article 226 of Constitution of India has been filed for quashment of FIR in Crime No.571/2023 registered at Police Station Prithvipur, District Niwari for offence under Sections 306, 294, 506, 34 of IPC.
3. It is the case of petitioner that he is working as Rural Agriculture Extension Officer. On 16.03.2023 at about 9.30 P.M., the brother of petitioner, namely; Ajay Pratap Yadav with his nephew Ankit Yadav was returning back to his village. They were waylaid by Badam Yadav, Shivam Yadav, Vipin Yadav and Anand Yadav and assaulted him by

sharp edged dangerous weapon *Farsa* and *Lohangi*. Ajay Pratap Yadav sustained incised wound on his forehead. His brother Ajay Pratap Yadav was immediately referred to the Hospital and FIR in Crime No.171/2023 was registered at Police Station Prithvipur, District Niwari for offence under Sections 324, 323, 294, 506, 34 of IPC. It is submitted by counsel for petitioner that thereafter, offence under Section 307 of IPC was also added. Since, the accused persons of crime No.171/2023 i.e. Shivam Yadav, Badam Yadav, Vipin Yadav and Anand Yadav were absconding, therefore, the SHO, Police Station Prithvipur sought an information about the property details from Tahsildar for declaring them as proclaimed absconder under Sections 82, 83 of Cr.P.C. Co-accused Vipin Yadav and Anand Yadav filed an application for anticipatory bail before the Sessions Court, which was rejected by the Second Additional Sessions Judge, Niwari by order dated 13.05.2023. The Second Additional Sessions Judge, Niwari also rejected the bail application of Badam Singh Yadav. Thereafter, brother of the petitioner, namely; Ajay Pratap Yadav filed W.P.No.13940/2023 alleging that although he was badly assaulted by accused persons even then the accused persons of Crime No.171/2023 are threatening him to take his life because one of his relative is posted in the same Police Station. It was also alleged that on 20.03.2023, the accused persons came and threatened the brother of the petitioner to enter into a compromise and, accordingly, a complaint was also made the S.P. and D.G.P. It was also specifically alleged by his brother in W.P. No.13940/2023 that Police Station Simra and Police Station Prithvipur are hand in gloves with the accused of Crime No.171/2023 and Harsh Yadav, who is related to the accused persons and is posted in Police

Station Prithvipur is hampering the investigation of Crime No.171/2023. Accordingly, Police protection was also prayed by brother of the petitioner in W.P. No.13940/2023. On 27.06.2023, a Coordinate Bench of this Court disposed of the petition with a direction to the Superintendent of Police, Niwari to enquire into the matter and direct his subordinate Police Authorities to take appropriate action against the accused persons, if any non-bailable offence is registered against them. The State Counsel was also directed to send a copy of the order to the Superintendent of Police, Niwari for information and compliance. The SHO, Police Station Prithvipur filed his status report before JMFC regarding investigation in Crime No.171/2023 and informed that accused Shivam Yadav, Vipin Yadav and Anand Yadav are absconding from the date of incident. Later on, co-accused Shivam Yadav, who was the main accused in Crime No.171/2023 was found dead on 31.07.2023 on account of electrocution as he came in contact with live electricity lines of high voltage in the agricultural field. A news to that effect was also published in Dainik Bhaskar Newspaper. Accordingly, a representation was submitted by the wife of the petitioner on 08.08.2023 to the Superintendent of Police, Niwari that since Investigating Officer Tinkal Yadav and accused of Crime No.171/2023 are related to each other, therefore, they are planning to falsely implicate the petitioner and his family members to harass and create pressure to compromise in Crime No.171/2023 registered for offence under Sections 307, 341, 324, 323, 394, 506, 34 of IPC. However, the apprehension of wife of the petitioner came true and S.I. Tinkal Yadav, Police Station Prithvipur lodged the impugned FIR No.571/2023 on the allegation that deceased Shivam

Yadav committed suicide on account of abetment by the petitioner and other co-accused persons and accordingly, offence under Sections 306, 294, 506, 34 of IPC has been registered.

4. It is submitted by counsel for petitioner that even if the entire allegations made in FIR No.571/2023 registered at Police Station Prithvipur are considered to be gospel truth, still no offence under Sections 306, 294, 506, 34 of IPC would be made out. It is submitted that dead body of Shivam Yadav was found in the agricultural field and accordingly, the information of the same was given by complainant Anoj S/o Siyaram Yadav to the effect that on 31.07.2023 at about 7.00 A.M. when he went to his agricultural field to take out the cows who had entered in his fields, he saw that his nephew Shivam Yadav was lying near the D.P. and the electricity wire connected with D.P. was stuck to his hand and he was not breathing and it appeared that he has died because of electrocution. He immediately came running to his village and informed about the death of Shivam Yadav to his another nephew Mukul Yadav. Then he started crying. Some villagers went to the field alongwith his nephew Mukul Yadav to see Shivam Yadav. They also came back and accordingly, the report was lodged. It is submitted by counsel for petitioner that on 31.07.2023, an application was made by Mukul Yadav to SHO, Police Station Prithvipur to the effect that he is an agriculturist by profession and Shivam Yadav is his elder brother, who got married about six months back to Smt. Golu Yadav R/o village Rasoi, Babina. Mukul Yadav is still unmarried. It was also mentioned in the complaint that about four months back Sanju Yadav had lodged a report against his elder brother Shivam Yadav, his father Badam Yadav, uncle Vipin Yadav and Anand Yadav in

Police Station Simra, on the basis of which a criminal case is registered in Police Station Prithvipur. On account of the said Police case, his elder brother Shivam Yadav did not come to his house. On 30.07.2023 he went to village Rasoi, Police Station Babina to take his brother Shivam Yadav. At about 11.00 in the night he was returning back alongwith his elder brother Shivam Yadav on his motor cycle. When they reached in front of Hanuman Temple Latiyarkhirak, Munna Yadav, Sitaram Yadav and Ajay @ Sanjay Yadav met with them and started abusing them and also extended a threat to kill them and they scolded Shivam Yadav that they would not spare him and will spoil his life and it is better to die and unnecessarily his is running from pillar to post. Thereafter, he left his elder brother Shivam Yadav in his house and narrated the entire incident to his family members. On 31.07.2023 at about 5.00 A.M. when his uncle Anoj Yadav went to the field to drive out the cows from his agricultural field, then he found that Shivam Yadav was lying on the ground and accordingly, an information was given to the Police. It was alleged that his elder brother Shivam Yadav has committed suicide on account of abetment by the petitioner.

5. The Police had also recorded the statements of Rajeshwari Yadav, Anoj Yadav, Vinod Yadav and Rinku @ Golu Yadav, who are the hearsay witnesses. The statement of Mukul Yadav was also recorded under Section 174 of Cr.P.C. and he had narrated the same incident, which was mentioned by him in his written complaint. Thus, the only allegation against the petitioner and other co-accused persons is that deceased Shivam Yadav, his father Badam Yadav, uncle Vipin Yadav and Anand Yadav had assaulted Ajay Yadav and on the report of Sanju Yadav, a

criminal case was registered against deceased Shivam Yadav and his relatives. On 30.07.2023, when Mukul Yadav was coming back alongwith his brother Shivam Yadav on his motor cycle, then they met with petitioner and other co-accused persons and also abused them and extended a threat to life and also scolded deceased Shivam Yadav that they would not spare him and they will spoil his life and it is better for him to die and unnecessarily he is running from pillar to post.

6. Heard the learned counsel for the parties.
7. Before considering the allegations made in the FIR, this Court would like to consider the scope of interference of this Court in exercise of power under section 482 Cr.P.C.
8. It is well established principle of law that this Court at the stage where the quashment of FIR has been sought can consider the uncontroverted allegations only and cannot look into the defence of the accused. This Court also cannot conduct a roving enquiry to find out as to whether the statements made by the witnesses are reliable or not.
9. The Supreme Court in the case of **XYZ v. State of Gujarat** reported in **(2019) 10 SCC 337** has held as under :

14. Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the

appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.

(Underline supplied)

10. The Supreme Court in the case of **State of Tamil Nadu Vs. S. Martin & Ors.** reported in **(2018) 5 SCC 718** has held as under:-

"7. In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for"

11. The Supreme Court in the case of **Ajay Kumar Das v. State of Jharkhand**, reported in **(2011) 12 SCC 319** has held as under :

12. The counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the impugned judgment by the High Court i.e. *State of Haryana v. Bhajan Lal*. In the said decision, this Court held that it may not be possible to lay down any specific guidelines or watertight compartment as to when the power under Section 482 CrPC could be or is to be exercised. This Court, however, gave an exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, this Court, however, hastened to add that as a note of caution it must be stated that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

12. The Supreme Court in the case of **Mohd. Akram Siddiqui v. State of Bihar** reported in **(2019) 13 SCC 350** has held as under :

5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung v. Essem Chemical Industries*; *State of Haryana v. Bhajan Lal* and *Harshendra Kumar D. v. Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

13. The Supreme Court in the case of **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226** has held as under :

18. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

19. Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

20. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken

by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

14. The Supreme Court in the case of **M. Srikanth v. State of Telangana**, reported in **(2019) 10 SCC 373** has held as under :

17. It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings.

15. The Supreme Court in the case of **CBI v. Arvind Khanna** reported in **(2019) 10 SCC 686** has held as under :

17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken

cognizance of by the competent court, is completely incorrect and uncalled for.”

16. Further, the Supreme Court in the case of **State of MP Vs. Kunwar Singh** by order dated **30.06.2021** passed in **Cr.A. No.709/2021** has held that a detailed and meticulous appreciation of evidence at the stage of 482 of CrPC is not permissible and should not be done. In the case of **Kunwar Singh (supra)**, the Supreme Court held as under:-

"8.....At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia....."

17. Similar view has been taken by Supreme Court in the cases of **Munshiram Vs. State of Rajasthan** reported in (2018) 5 SCC 678, **Teeja Devi Vs. State of Rajasthan** reported in (2014) 15 SCC 221, **State of Orissa Vs. Ujjal Kumar Burdhan** reported in (2012) 4 SCC 547, **S. Khushboo Vs. Kanniammal** reported in (2010) 5 SCC 600, **Sangeeta Agrawal Vs. State of U.P.** reported in (2019) 2 SCC 336, **Amit Kapoor Vs. Ramesh Chander** reported in (2012) 9 SCC 460, **Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy** reported in (2012) 12 SCC 437, **M.N. Ojha Vs. Alok Kumar Srivastav** reported in (2009) 9 SCC 682.

18. Now, the only question for consideration is as to whether the aforesaid allegations made against the petitioner would make out an offence under Section 306 of IPC or not ?
19. Before considering the allegations, this Court would like to consider the law governing the field regarding abetment.
20. "Section 306 of I.P.C. reads as under :-

"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."

"Abetment" is defined under Section 107 of I.P.C. which 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 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 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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A

to apprehend C. Here B abets by instigation the apprehension of C.

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.”

21. The Supreme Court in the case of **Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)** reported in **(2009) 16 SCC 605**, while dealing with the term “instigation”, held as under :-

“**16**.....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. *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 to be inferred.* A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by ‘goad’ or ‘urging forward’. The dictionary meaning of the word ‘goad’ is ‘a thing that stimulates someone into action; provoke to action or reaction’ (see *Concise Oxford English Dictionary*); "to keep irritating or annoying somebody until he reacts" (see *Oxford Advanced Learner's Dictionary*, 7th Edn.)."

22. The Supreme Court in the case of **Praveen Pradhan vs. State of Uttaranchal and Anothers** reported in **(2012) 9 SCC 734** held as under

:-

“17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. ((2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC.”

23. The Supreme Court in the case of **Sanju @ Sanjay Singh Sengar vs. State of M.P.** reported in **(2002) 5 SCC 371** has held as under :-

“6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.”

Further, in para 12 of the judgment, it is held as under:

“12. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation.”

24. The Supreme Court in the case of **Gangula Mohan Reddy vs. State of Andhra Pradesh** reported in (2010) 1 SCC 750 needs mentioned here, in which Hon'ble Apex Court has held that "abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under section 306 IPC, there has to be a clear *mens rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide. Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience

of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out. Hence, appellant's conviction, held unsustainable".

25. In the case of **State of West Bengal vs. Orilal Jaiswal and Another** reported in **(1994) 1 SCC 73**, the Supreme Court has held that "This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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 that accused charged of abetting the offence of suicide should be found guilty."
26. The Supreme Court in the case of **M. Mohan vs. State represented by the Deputy Superintendent of Police** reported in **AIR 2011 SC 1238** has held that "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 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

27. The Supreme Court in the case of **Kishori Lal vs. State of M.P.** reported in **(2007) 10 SCC 797** has held in para 6 as under:-

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

28. In the case of **Amalendu Pal @ Jhantu vs. State of West Bengal** reported in **(2010) 1 SCC 707**, the Supreme Court has held as under:-

“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 their 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.

14. The expression ‘abetment’ has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause ‘thirdly’ of Section 107 IPC only would be attracted. According to him, a case

of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

“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.”

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC.”

29. The Supreme Court in the case of **Amit Kapur vs. Ramesh Chander and Another** reported in **(2012) 9 SCC 460** has held as under :-

"35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of

record and documents annexed therewith. No doubt that the word “instigate” used in Section 107 IPC has been explained by this Court in *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618 to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence.”

30. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Instigation is to goad, urge forward, provoke, incite, urge or encourage to do an act.
31. The Supreme Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh** reported in (2001) 9 SCC 648 has held that “a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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.

32. The Supreme Court in the case of **Kumar @ Shiva Kumar Vs. State of Karnataka** decided on **01.03.2024 in Criminal Appeal No.1427/2011** has also laid down the same law.
33. If the allegations of are considered, then it is alleged that accused persons scolded the deceased that they would spoil his life and it is better to die and he is unnecessarily running from pillar to post. Without raising any doubt with regard to correctness of the allegations, the only question is whether those words were uttered in a fit of anger or there was some intention on the part of the accused persons that the deceased must die instead of running from pillar to post. According to the prosecution case, the accused persons met with Mukul Yadav as well as deceased Shivam Yadav at about 11.00 in the night. Except uttering the words, there is no allegation of any sort of overt act on the part of the accused persons. If the accused persons were so aggrieved by deceased Shivam Yadav then they had every opportunity to attack him, but, that was not done. Thus, it is clear that if the allegations made against the petitioner and other co-accused persons are accepted as a gospel truth, then there is nothing on record to suggest that the accused persons had any intention to abet the deceased to commit suicide.
34. So far as offence under Section 294 of IPC is concerned, from plain reading of Section 294 of IPC, it is clear that in order to frame charge under Section 294 of IPC, two ingredients are required to be proved by prosecution i.e. (i) the offender has done any obscene act in any public place, or has sung, recited or uttered any obscene word/ song in or near any public place and (ii) has caused annoyance to others. If the word has

not caused annoyance to others, the offence cannot be said to be committed.

35. The respondents have filed their return and along with the said return they have also annexed a copy of the written complaint made by Mukul Yadav as well as the statements of the witnesses recorded under Section 174 of Cr.P.C. Since Mukul Yadav was the only eye witness and the other witnesses were the hearsay witnesses, therefore, this Court would consider the allegations made by Mukul Yadav. The relevant allegations are “तभी लटियारखिर्क के हनुमान मंदिर के सामने मुझे मुन्ना यादव निवासी लटियारखिर्क, सीताराम यादव व अजय उर्फ सन्जू यादव निवासी सकेराखुर्द थाना सिमरा के मिले। तीनों लोगों ने मुझे व मेरे भाई शिवम यादव को गंदी-गंदी गालियां दी तथा हम दोनों के तीनों ने मार डालने की धमकी दी तथा मेरे भाई शिवम यादव को तीनों ने कहा कि हम तुम्हें कहीं का नहीं छोड़ेंगे तथा तुम्हारा जीवन बरबाद कर देंगे ऐसे जीवन से बेहतर है कि तुम मर जाओ घर से भागे-भागे फिर रहे हो। इसके बाद मैं अपने भाई शिवम को घर लाकर छोड़ दिया था। ” Even in the written complaint, which was made by Mukul Yadav on 31.07.2023, it is merely mentioned that they were abused filthily. The actual words uttered by any of the accused have not been mentioned. It has not been mentioned that abusive language was to their annoyance or to the annoyance of others.
36. Under these circumstances, this Court is of considered opinion that even if the entire allegations with regard to offence under Section 294 of IPC are accepted, still no offence would be made out.
37. Now the next question for consideration is as to whether an offence under Section 506 of IPC is made out or not ?
38. The Supreme Court in the case of **Vikram Johar Vs. State of Uttar Pradesh and Another** reported (2019) 14 SCC 207 has held as under :-

21. Section 504 IPC came up for consideration before this Court in *Fiona Shrikhande v. State of Maharashtra* [*Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] . In the said case, this Court had the occasion to examine ingredients of Section 504 IPC, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. In para 11, following principles have been laid down : (SCC pp. 48-49)

“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [*Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts

to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advert to any defence that the accused may have.”

22. In para 13 of the judgment, this Court has noticed the ingredients of Section 504 IPC, which are to the following effect : (*Fiona Shrikhande case* [*Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] , SCC p. 49)

“13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”

23. In another judgment i.e. *Manik Taneja v. State of Karnataka* [*Manik Taneja v. State of Karnataka*, (2015) 7 SCC 423 : (2015) 3 SCC (Cri) 132] , this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, case was registered for the offence under Sections 353 and 506 IPC. After noticing Section 503, which defines criminal intimidation, this Court laid down the following in paras 11 and 12 : (SCC pp. 427-28)

“11.***

A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening

to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.”

In the above case, allegation was that the appellant had abused the complainant. The Court held that the mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 506 IPC.

25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by *Fiona*

Shrikhande [*Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? *Ratanlal & Dhirajlal on Law of Crimes*, 27th Edn. with regard to proof of offence states the following:

“... *The prosecution must prove:*

(i) *That the accused threatened some person.*

(ii) *That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;*

(iii) *That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.”*

(emphasis supplied)

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

26. On the principles as enumerated by this Court in *Fiona Shrikhande* [*Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] and *Manik Taneja* [*Manik Taneja v. State of Karnataka*, (2015) 7 SCC 423 : (2015) 3 SCC (Cri) 132] , we are satisfied that ingredients of Sections 504 and 506 are not made out from the complaint filed by the complainant. When the complaint filed under Section 156(3) CrPC, which has been treated as a complaint case, does not contain ingredients of Sections 504 and 506, we are of the view that the courts below committed error in rejecting the application of discharge filed by the appellant. In the facts of the present case, we are of the view that appellant was entitled to be discharged for the offence under Sections 504 and 506 IPC.

39. As already held that there was no overt act on the part of any of the accused. Even if it is accepted for the sake of arguments that a threat to the life of Mukul Yadav and Shivam Yadav was extended, still there is nothing on record to indicate that the threat was with an intention to execute the same thereby causing alarm to the complainant. There does not appear to be any intention on the part of the accused to cause alarm in the mind of the complainant causing obstruction in discharge of his duties.
40. Under these circumstances, this Court is of considered opinion that even if the entire allegations are taken on their face value, still no offence under Sections 306, 294, 506 read with Section 34 of IPC would made out.
41. Accordingly, FIR in Crime No.571/2023 registered at Police Station Prithvipur, District Niwari is hereby **quashed *in toto***.
42. Before parting with this order, this Court would like to comment upon the conduct of the Police Authorities. Rajeshwari Yadav, Anoj Yadav, Mukul Yadav, Vinod Yadav and Rinku Yadav in their statements under Section 174 of Cr.P.C. have specifically stated that Shivam Yadav was absconding in a criminal case. They have stated that Shivam Yadav was residing in her matrimonial home in village Rasoi, Police Station Babina (Uttar Pradesh) and Mukul Yadav had stated that he was coming back to the village alongwith Shivam Yadav on his motor cycle. Thus, it is clear that although the witnesses were aware of the whereabouts of deceased Shivam Yadav, who was absconding in a criminal case, but in spite of that, they had screened the offender. Even the in-laws of Shivam Yadav had given protection to the accused, who was absconding in a criminal

case registered for offence under Sections 307, 341, 324, 323, 394, 506, 34 of IPC.

43. Under these circumstances, the Superintendent of Police, Niwari is directed to consider as to whether Rajeshwari Yadav, Manoj Yadav, Mukul Yadav, Vinod Yadav and Rinku Yadav as well as in-laws of deceased Shivam Yadav have committed any offence by giving protection to an offender, who was absconding in a criminal case. They were aware of the fact that Shivam Yadav is wanted in a criminal case and in spite of that he was given shelter.
44. In case if Superintendent of Police, Niwari comes to a conclusion that by giving protection to an absconder, the aforesaid persons have committed certain offences, then shall register FIR for the offences committed by them.
45. With aforesaid observation, the petitions are **allowed** with cost of **Rs.20,000/- (Rupees Twenty Thousand)** to be deposited by the respondent No.9 in the Registry of this Court within a period of one month from today, failing which the Registrar General is directed to initiate the proceedings for recovery of the cost apart from registering a case for contempt of Court.

(G.S. AHLUWALIA)
JUDGE

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