



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 25th OF SEPTEMBER, 2024
MISC. CRIMINAL CASE No. 23967 of 2024
PUSHPENDRA @ KALLU GAUTAM
Versus
*THE STATE OF MADHYA PRADESH AND OTHERS***

Appearance:

Shri Vipul Vardhan Jain- Advocate for applicant.

Shri Mohan Sausarkar- Government Advocate for the respondent/State.

ORDER

This application under Section 482 of Cr.P.C. has been filed seeking the following reliefs:-

“It is therefore, prayed that this Hon’ble Court may kindly be pleased to quash the impugned FIR in Crime No.520/2023 dated 01.12.2023 registered at Police Station Hata, District Damoh (M.P.) for the offence punishable under section 306 against the present applicant and its entire further proceeding initiating against the applicant in relation with ST No.08/2024 pending before Addl. Session Judge, Hata, District Damoh in the interest of justice.”

2. By this application the applicant has sought quashment of FIR in Crime No. 520/2023, registered at Police Station Hata, District Damoh for offence under Section 306 of IPC.
3. It is submitted by counsel for applicant that during the pendency of this application charges have been framed. However, the same have



not been challenged by filing any revision. Thus, it is submitted that merely because the charges have been framed during the pendency of this application, therefore, this application would not render infructuous and still it can be decided on merits.

4. The facts necessary for disposal of the present application in short are that an information was received from District Hospital, Damoh on 04.10.2023 at 17:55 to the effect that one Madan Dimha has been brought in a dead condition and it was informed that he has consumed sulphas. Accordingly, the police registered *marg* and started conducting enquiry. Statement of witnesses including wife of the deceased were recorded. Smt. Kirti Dimha widow of Late Madan Dimha has stated that her husband was posted as Home Guard Sainik. Her husband Madan Dimha was the relative of Kaushal Kishore Upadhyay. Kaushal Kishore Upadhyay has six sons and a daughter. Since her husband was the relative of Kaushal Kishore Upadhyay, therefore, he used to visit her house. Her husband used to treat Kaushal Kishore Upadhyay as his uncle and his children as brothers and sisters. The present applicant is the son-in-law of Kaushal Kishore Upadhyay and, therefore, he was visiting the house of Kaushal Kishore Upadhyay. About six months back, she was informed by her husband that applicant does not like the intimate relationship of deceased in the house of Kaushal Kishore Upadhyay and has a suspicion that the deceased Madan Dimha has illicit relationship with daughter of Kaushal Kishore Upadhyay. After sometime her husband informed that applicant is defaming him and also threatening him on mobile and always alleged that since he is having illicit relationship with daughter of Kaushal Kishore Upadhyay,



therefore, he will ruin him and it is better for him to stay away. About four months back also number of calls were received from the applicant by her husband. She was also told by the applicant that her husband is not a good person and has illicit relationship with daughter of Kaushal Kishore Upadhyay and various other ladies. He also requested her to stop her husband. Even otherwise, he threatened that he would get her husband dismissed from service. On account of defamation in the society as well as on account of mental harassment, her husband has committed suicide by consuming sulphas. While her husband was admitted in the hospital, she enquired from her husband as to why he has consumed sulphas then she was informed by her husband that the applicant has harassed him mentally and has also defamed him in the society, therefore, he has consumed poison. Thereafter, her husband was referred by the doctor to Damoh Hospital. They took him to Damoh hospital where he was declared dead. Similar allegations were made by the other witnesses.

5. Accordingly, the police registered an offence under Section 306 of IPC on the allegations “that the applicant was apprehending that the deceased has illicit relationship with daughter of Kaushal Kishore Upadhyay, therefore, he was objecting to it and on this ground he was threatening the deceased to stay away and had also defamed him in the society”. It is also not out of place to mention her that according to the prosecution case, the applicant is the relative of Kaushal Kishore Upadhyay.



6. When the police checked the CDR of mobile of deceased then it was found that he had long conversations with applicant and daughter of Kaushal Kishore Upadhyay.

7. Now the only question for consideration is as to whether the aforesaid allegations are sufficient to make out a *prima facie* case under Section 306 of IPC or not?

8. It is submitted by counsel for applicant that even if the entire allegations are accepted on their face value still it would not satisfy the ingredient of Section 107 of IPC, whereas; it is the contention of counsel for State that whether the applicant had committed offence or not is a subject matter of trial which can be decided only after recording of evidence.

9. Heard learned counsel for parties.

10. Before considering as to whether the allegations made against the applicant would amount to abatement to commit suicide or not, this Court would like to deal with the law governing the field.

11. 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.“

12. “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 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.

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, willfully 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.”

13. 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.)."

14. 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.”

15. 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.”

16. 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”.



17. 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.”

18. 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.”



19. 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.”

20. 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.”

21. 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 appellants 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."

22. 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.”



23. 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.

24. The Supreme Court in the case of **UDE Singh and Ors Vs. State of Haryana**, reported in **AIR 2019 SC 4570** has held that calling a unmarried girl as his wife, *Bahuriya* or *Chachi* in the backdrop of strain relationship was not with an intention to tease her but it amount to demeaning and destroying the self-esteem of young girl whose engagement had broken and whose uncle was mocking her to join him in matrimony. Even on the fateful day the accused caught hold the daughter of complainant, dragged her into the house and pushed her and verbally abused her and her family members. Thus, it was held that it was the act of humiliation of highest order for the girl who had personally suffered the set-back of broken engagement, apart from that she was unable to clear even 10th standard examination. It was further held that she was being ridiculed and taunted for her broken engagement. The other accused persons also chose to join the accused No. 1 and aggravated the humiliation of the girl by addressing her as younger brother's wife or aunt. Thus, it was held that the accused persons were working with the common intention to harass and humiliate the girl with reference to her broken engagement.

25. However, if the facts and circumstances of the case in hand are considered in light of judgment passed by Supreme Court in the case of **UDE Singh (supra)**, then it is clear that even if the entire allegations are accepted, it cannot be said that the applicant had in any manner instigated the deceased to commit suicide. The applicant who is the



close relative of Kaushal Kishore Upadhyay had a suspicion that the deceased has illicit relationship with daughter of Kaushal Kishore Upadhyay and therefore, he was objecting to it and he may have threatened the deceased on phone and had also narrated this incident to other members of the society but by no stretch of imagination, it can be said that the aforesaid act of the applicant would satisfy the ingredients of Section 107 of IPC.

26. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that even if the entire allegations are taken on their face value, still no offence under Section 306 of IPC would be made out.

27. As a consequence thereof, the FIR in Crime No. 520/2023 registered at Police Station Hata, District Damoh for offence under Section 306 of IPC, charge-sheet which has been filed after the investigation of such offence as well as further proceedings in the trial are hereby **quashed**.

28. The application succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

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