

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

BEFORE

**HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL
ON THE 21st OF FEBRUARY, 2023**

MISC. CRIMINAL CASE No. 51307 of 2020

BETWEEN:-

**JAKIR KHAN S/O SHRI MOHAMMAD ADNAN, AGED ABOUT
21 YEARS, WARD NO 16 (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI RAJIV SHARMA, ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH INCHARGE POLICE
STATION P.S. BASODA (MADHYA PRADESH)**

**2. RUCHI GUPTA W/O SHRI RUPESH GUPTA, AGED ABOUT 30
YEARS, GANJ BASODA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI V.P.S. TOMAR – PANEL LAWYER)

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

ORDER

This petition has been preferred by the petitioner under Section 482 of Cr.P.C. for quashing FIR registered at Crime No.421/2019 at Police Station Basoda District Vidisha for the offence under Section 306/34 of IPC as well as consequential criminal proceedings arising therefrom.

2. Brief facts of the case are that on 16.06.2019, a report was lodged by the prosecutrix at PS Ganj Basoda against Rupesh Gupta under Section 376(2) (n), 384 of IPC, $\frac{3}{4}$ of POCSO Act and 67-A of IT Act, and on the aforesaid complaint, a criminal case was registered at crime No.384/2019. Thereafter, Rupesh Gupta along with his family members left Ganj Basoda. Rupesh Gupta committed suicide on 21.06.2019 by hanging at Mathura U.P.. Therefore, the police registered a marg and during investigation a suicide note was found. During investigation it was found that the deceased and prosecutrix were cousin brother and sister, and had some illicit relations which was captured in a video and went viral. Prosecutrix stated that deceased committed rape on her. Afterwards, the father of the prosecutrix lodged the report at police station Ganj Basoda by the assistance of accused Pawan Gupta and some other reputed persons of the society due to which, deceased committed suicide on 21.06.2019. It is alleged that the act of present petitioner Jakir Khan is that despite getting Rs.50,000/-, he made viral the data of the mobile of deceased Rupesh Gupta causing mental harassment to the deceased resulting into suicide of Rupesh Gupta.

3. Learned counsel for the petitioner contended that *prima facie* on the facts and evidence as adduced by the prosecution in the case, no offence under Section 306 of the IPC is made out against the petitioner/accused as there is no evidence on record to show that the petitioner in any manner

instigated, aided or provoked the deceased to commit suicide. Learned counsel for the petitioner has relied upon the judgments passed by the Apex Court in the case of **Netai Dutta Vs. State of West Bengal [(2005) 2 SCC 659]** and **Sanju @ Sanjay Singh Sengar Vs. State of M.P. [(2002) 5 SCC 371]** and contended that the petitioner has not committed any willful act or omission or intentionally aided or instigated the deceased in committing the act of suicide. There is no case that the petitioner has played any part or any role in any conspiracy which ultimately instigated or resulted in the commission of suicide by deceased.

4. Learned counsel for the State has opposed the submission so advanced by the petitioner by submitting that at this stage no interference is warranted.

5. Heard learned counsel for the parties and perused the record.

6. On going through the copy of the charge-sheet filed by the petitioner, it is gathered that during investigation police has recorded the statements of Ruchi Gupta, Vikrant Lodhi, Devendra Kushawah, Neelesh Gupta, Ratnesh Gupta, Rupa Gupta, Rudransh Gupta and Abhishek Awashti.

7. Section 306 of IPC reads as under:-

Section 306. 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."

8. The 'abetment' has been defined in Section 107 of the IPC, which

reads as under:-

"Section 107. 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.

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."

9. As Section 306 of IPC makes abetment of commission of suicide punishable, therefore, for making a person liable for an offence punishable under Section 306 IPC, it is a duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused, it is necessary to see that his act must fall in any of the 3 categories as enumerated under Section 107 of the IPC and, therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more other persons in any conspiracy for seeing that the deceased commits suicide or he must intentionally act by any act or illegal omission, of the commission of suicide by the deceased.

10. In **Sanju alias Sanjay Singh Sengar vs. State of MP, (2002) 5 SCC 371**, the Hon'ble Apex Court in paragraphs 9 to 11 has observed as under:-

"9. In *Mahendra Singh v. State of M.P.*, 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

10. This Court, considering the definition of 'abetment' under section 107 I.P.C., found that the charge and conviction of the appellant for an offence under section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a 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 for abetting the offence of suicide should be found guilty."

11. In case of **Parveen Pradhan v. State of Uttaranchal**, [2012 (1) JT 478], it is observed that 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 been abetted. Abetment may be by instigation, conspiracy or intentional aid as provided under section 107 of the Code. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.

12. The Hon'ble Apex Court in **Chitresh Kumar Chopra v. State (Govt. 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’ ... to keep irritating or annoying somebody until he reacts....”

13. In **State of W.B. Vs. Orilal Jaiswal**, reported in **1994 (1) SCC 73**, the Hon'ble Apex Court has held as under:-

“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”.

14. The Hon'ble Apex Court in **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.”

15. In **Gangula Mohan Reddy Vs. State of A.P.** reported in **(2010) 1 SCC 750**, Hon'ble Apex Court has held as under:

“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”.

16. In 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.”

17. The Supreme Court in the case of **Amit Kapur Vs. Ramesh Chander** 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."

18. Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

19. In the present case, even if the allegations as contained in the FIR and statements of the witnesses are taken as it is, even then it cannot be said that petitioner has instigated the deceased to commit suicide. At the most, there may be an act of the petitioner of getting the FIR registered against the deceased, but that does not mean that petitioner has instigated the deceased to commit suicide.

20. Thus, considering the totality of the facts & circumstances of the case, this Court is of the considered opinion that *prima facie* there is no material to show that petitioner in any manner have abetted the deceased to commit suicide. Accordingly, FIR registered at Crime No.421/2019 at Police Station Basoda District Vidisha for the offence under Section 306/34 of IPC as well as consequential criminal proceedings arising therefrom against the petitioner is quashed so far as it relates to the petitioner and petitioner is discharged. This petition is accordingly **disposed and allowed**.

21. Before parting with the case, this Court is drawing attention of Police Authorities that as per law, Police Authorities are supposed to register the FIR but Police Authorities are not obligatory to file charge-sheet under Section 173 CrPC if sufficient evidence during investigation is not on record regarding commission of the offence. The Police Authorities are free to file closure report but this Court has experienced that despite having no evidence, the accused persons have to face judicial process. This practice should be deprecated.

A copy of this order be sent to Director General of Police, Police Headquarters Bhopal (M.P.) for information.

(DEEPAK KUMAR AGARWAL)
JUDGE