



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 9TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL PETITION NO. 200255 OF 2023 (482)

BETWEEN:

HANAMANTRAYA
S/O. MALAKAPPA HARNAL
AGE: 57 YEARS,
OCC: B.E.O. SINDAGI,
R/O. H.NO. 206, DATT NAGAR,
VIJAYAPURA ROAD, JEWARGI,
DIST. KALABURAGI-585310.

...PETITIONER

(BY SRI. AVINASH A. UPLOANKAR, ADVOCATE)

AND:

1. THE STATE THROUGH
SINDAGI POLICE STATION,
DIST. VIJAYAPURA,
NOW REPRESENTED,
ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585107.
2. SMT. MAHADEVI NAYAKAL
W/O. BASAVARAJ
AGE: 46 YEARS, OCC: HOUSEWIFE,
R/O. KORWAR,





TQ. DEVARAHIPPARAGI,
NOW RESIDING AT KULKARNI LAY-OUT,
SINDAGI, TQ. SINDAGI,
DIST. VIJAYAPURA-586128.

...RESPONDENTS

(BY SMT. ANITA M. REDDY, HCGP FOR R1;
SRI. GANESH S. KALABURAGI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO EXERCISE THE INHERENT POWERS U/SEC. 482 CR.P.C. EXAMINE THE RECORDS AND QUASH THE FIR AND COMPLAINT IN CRIME NO. 37/2023 OF SINDAGI POLICE STATION, FOR THE OFFENCE PUNISHABLE U/S. 306 R/W 149 OF IPC, PENDING BEFORE THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C AT SINDAGI, AGAINST THE PETITIONER.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 07.09.2023, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THIS COURT MADE THE FOLLOWING:

ORDER

The petitioner has filed this petition under Section 482 of Cr.P.C. praying to quash the FIR and complaint in Crime No.37/2023 of Sindagi police station, Vijayapur district, registered for the offence punishable under Sections 306 read with Section 149 of IPC, pending on the file of learned Senior Civil and JMFC, Sindagi.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.



Petitioner is accused No.3, respondent No.1 is the complainant - State and respondent No.2 is the de-facto complainant.

3. Brief facts of the prosecution case are as under:

On 13.02.2023, the complainant Smt.Mahadevi lodged a complaint to the respondent - police, alleging that, she has been residing at Korwar, Devar Hipparagi taluka, along with her family and since 14 years, her husband Basavaraj (deceased) was serving as a teacher at Sasbal Government H.P.S. School and since May, 2022, he was appointed as Principal, as the Headmaster Sri G.N.Patil (accused No.1) was elevated as Cluster Resource Center Coordinator (C.R.C.). She contended that, since her husband took over the charge as Principal, he was under tremendous pressure, as accused No.1 during his tenure as a Principal, not maintained proper documents, however, he had handed over charge to deceased Basavaraj, hence, the BEO/petitioner has been issuing



notice to him, to rectify the documents or to maintain documents properly and other accused were harassing deceased Basavaraj, thus, he became fed up and depression. It is contended that, on 12.02.2023 at 7.30 p.m., Basavaraj left his house on his motorcycle and on the same night, at 10.00 pm, the brother of complainant Mallangouda informed her that, Basavaraj hanged himself to a Neem tree in the Tahsildar Office premises by leaving death note in his pocket, noting that all accused persons are responsible for his death. Hence, she lodged a complaint, thus, police registered a case in Crime No.37/2023 for the offence punishable under Section 306 read with Section 149 of IPC.

4. Taking exception of the same, the petitioner/accused No.3 has filed this petition to quash the FIR and complaint filed against him.



5. Having heard the learned counsel for petitioner, learned HCGP for respondent No.1 - State and learned counsel for respondent No.2 - de-facto complainant.

6. Sri Avinash A. Uploankar, learned counsel for petitioner submitted that, the petitioner is innocent and he has been falsely implicated in the case; the petitioner is a BEO of Sindagi taluka, during his inspection to the school of deceased Basavaraj i.e., on 09.12.2022 and 12.12.2022, the petitioner issued show cause notices to discharge his official duties and to rectify the documents properly, therefore, mere issue of show cause notice cannot be construed as harassment to a staff to abet him in order to commit suicide, soon before death to attract Section 306 of IPC. Further, there is no *mens rea* or an abetment on the part of the petitioner to attract Sections 107 and 109 of IPC and there is no nexus between suicide committed by deceased Basavaraj and the issuance of show cause notices by the petitioner herein. It is contended that, the allegation neither discloses any



offence nor it link the petitioner to the allegation of abetment of suicide, hence, prima facie, there is no material against petitioner and continuation of criminal proceedings is nothing but abuse of process of law. Thus, the counsel prayed to quash the FIR. The counsel relied upon following decisions:

i. Vajjnath Kondiba Khandke vs. State of Maharashtra and Another in Criminal Appeal No.765/2018 arising out of Special Leave Petition (Crl.) No.2600/2018.

ii. Criminal Petition No.3502/20222 disposed off on 10.05.2022 in the case of Sri B.S.Manju vs. .

iii. Criminal Appeal No.2086/2014 in the case of State of Kerala and Others vs. S.Unnikrishnan Nair and Others.

7. The learned High Court Government Pleader for respondent No.1 and learned counsel for respondent No.2 submitted that, the petitioner is involved in heinous offence and there is prima facie material against the



present petitioner so as to attract Section 306 of IPC; the deceased Basavaraj committed suicide on 12.02.2023, as petitioner issued show cause notices to him and harassed him, thus, he committed suicide by leaving death note in his pocket, noting that all accused persons are responsible for his death. It is contended that, the petitioner is involved in cognizable offence and the petitioner is disputing question of fact, which cannot be gone into under Section 482 of Cr.P.C., hence, prayed to reject the petition.

8. Perused the material available on record. As per the contents of FIR and complaint, deceased Basavaraj was working as Principal at Government H.P.S. School, as he was not maintained registers and documents properly, the petitioner - accused No.3 being BEO of Sindagi, issued two show cause notices and called explanation from him, in this regard, deceased Basavaraj committed suicide on 12.02.2023 by leaving death note in his pocket, wherein,



he has mentioned the name of present petitioner, as he is also responsible for his death.

9. On perusal of the material available on record, it appears that, the complainant registered the case for the offence punishable under Section 306 of IPC, which is cognizable in nature and the fact that, deceased Basavaraj died on account of harassment and abetment caused by the accused persons, thus, he executed a death note. Now investigation is pending, the Investigating Officer has to ascertain the veracity of contents of impugned death note. Therefore, criminal complaints cannot be quashed on the ground that, the petitioner issued show cause notices in the capacity of BEO, but, the circumstances, under which the deceased committed suicide and the veracity of death note requires to be probed. On perusal of the complaint, at this stage, it appears that, there is nexus and proximity with the conduct of the petitioner with that of the suicide committed by deceased Basavaraj.



10. The Hon'ble Apex Court in the case of ***Kashibai and Others vs. State of Karnataka*** reported in **2023 SCC OnLine SC 575** at paragraph Nos.6 to 10 observed as under:

"6. At this juncture, it would be beneficial to reproduce the relevant provision contained in Section 306 IPC pertaining to Abetment of suicide.

"306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

7. What is "Abetment of a thing" has been described in Section 107 which reads as under:

"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.

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.”

8. From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established.

9. In M. Mohan Vs. State Represented by the Deputy Superintendent of Police¹, this Court has elaborately dealt with the provisions contained in Section 306 read with Section 107 IPC, and after discussing various earlier decisions has observed as under: -

"41. This Court in SCC para 20 of Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri)



1088] has examined different shades of the meaning of "instigation".

Para 20 reads as under : (SCC p. 629) "20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation." In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the



appellant's 1 (2011) 3 SCC 626 wife therein) may necessarily be drawn.

42. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) 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 her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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.

43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion



to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self- respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are 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."

10. In view of the above, it is quite clear that in order to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

11. The Hon'ble Apex Court in the case of **Vaijnath Kondiba vs. State of Maharashtra and Another** reported in **(2018) 7 SCC 781** at paragraph Nos.7 and 8, has held as under:

"7. In the backdrop of these two lines of cases, we have gone through the material on record. There is no suicide note left behind by the deceased and the only material on record is in the form of assertions made by his wife in her



reporting to the police. It is true that if a situation is created deliberately so as to drive a person to commit suicide, there would be room for attracting Section 306 IPC. However, the facts on record in the present case are completely inadequate and insufficient. As a superior officer, if some work was assigned by the applicant to the deceased, merely on that count it cannot be said that there was any guilty mind or criminal intent. The exigencies of work and the situation may call for certain action on part of a superior including stopping of salary of a junior officer for a month. That action simplicitor cannot be considered to be a pointer against such superior officer. The allegations in the FIR are completely inadequate and do not satisfy the requirements under Section 306 IPC. In our view, the facts in the present case stand on a footing better than that in Madan Mohan Singh (supra) and there is absolutely no room for invoking provisions of Section 306 IPC. We are of the firm view that the interest of justice demands that the proceedings initiated against the appellant are required to be quashed.

8. We, therefore, allow this appeal and quash criminal case lodged in pursuance of FIR



No.268 of 2017 registered with Police Station MIDC, CIDCO, Aurangabad."

12. In ***Kanchan Sharma vs. State of Uttar Pradesh and Another*** reported in **(2021) 13 SCC 806**, the Hon'ble Apex Court at paragraph No.25, has observed as under:

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

13. If complaint discloses prima facie case as to cognizable offence, the Investigating Officer has to probe



the matter as per the established principles of law. This ratio is laid down by the Coordinate Bench of this Court in the case of ***M/s.Sabare Travel Technologies Private Limited vs. State of Karnataka and Others*** in Criminal Petition No.154/2021 dated 19.02.2021.

14. In the instant case, the counsel for petitioner disputed the manner of death of deceased Basavaraj and the involvement of petitioner, thereby, disputing the question of fact. The disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 of Cr.P.C. At this stage, only prima facie case is to be seen. The similar ratio is laid down by Hon'ble Apex Court in the case of ***M/s.Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others*** reported in ***AIR 2021 SC 1918***.

15. The Hon'ble Supreme Court in the case of ***Rajeev Kourav vs. Baisahab and Others*** reported in



(2020) 3 SCC 317, has opined in paragraph No.8 as under:

"8. It is no more res integra that exercise of power under Section 482 Cr.P.C. to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 Cr.P.C. is to prevent the abuse of process of any Court or otherwise to secure the ends of justice."

16. The counsel for petitioner relied upon Criminal Petition No.3502/2022, disposed on 10.05.2022, wherein, the Coordinate Bench of this Court at paragraph No.7 held as under:

"7. The commission of suicide by the father of the complainant by consuming tablets containing poison on 26.02.2022, is not in dispute. The exact abuses hurled on the father of the complainant is "ಬದುಕಿರುವುದಕ್ಕಿಂತ ಎಲ್ಲಿ ಆದರೂ ಹೋಗಿ ಸಾಯಿ." This is



*hurled on 23-02-2022, three days prior to the date of commission of suicide. There is no foundation laid in the complaint by narration that the petitioners were present or have instigated the deceased to commit suicide to an extent that there was no other option left to the accused. At this stage, it is appropriate to notice the law laid down by the Apex Court in the case of **M.ARJUNAN v. THE STATE - (2019) 3 SCC 315**, wherein the Apex Court has held as follows:*

"7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will no, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide..."



Later, the Apex Court in the judgment of **UDE SINGH AND OTHERS v. STATE OF HARYANA – (2019)17 SCC 301**, has held as follows:

"For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option



except to commit suicide, the case may fall within the four corners of Section 306 IPC.”

The Apex Court clearly holds that if the accused by his acts and continuous course of conduct creates a situation, which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 of the IPC. The facts narrated hereinabove, the abuses quoted supra and the incident taking place three days after the alleged abuse would all lead to a prima facie conclusion that there was no proximity as is required in law to drive home abetment of suicide under Section 306 of the IPC. It is also to be noticed that there are no criminal antecedents of the petitioners. Though the offence alleged is punishable with imprisonment upto 10 years, the narration in the complaint of the incident would not mean that the petitioners are not entitled to grant of



anticipatory bail albeit imposing stringent conditions."

17. But, on perusal of the above order, it appears that, the Coordinate Bench of this Court has made certain observations while disposing off the bail petition and in the last paragraph, it has made following observation:

"The observations made above are only for the purpose of consideration of the application for anticipatory bail and the same shall not in any manner influence the trial. The trial Court shall consider the case on its merits and without being influenced by this order."

18. Therefore, such observation cannot be considered while disposing off the petition under Section 482 of Cr.P.C., as the facts and circumstances involved in the present case is completely different.

19. The learned High Court Government Pleader for respondent vehemently argued and submitted that, deceased executed death note, mentioning the



harassment made by petitioner herein, which ultimately lead to abetment of suicide.

20. Generally, the person who commit suicide used to/liked to leave a suicide note naming certain persons as responsible for his committing suicide. Merely because a person has been so named in the suicide note, one cannot immediately jump to the conclusion that, he is an offender under Section 306 of IPC. The contents of the suicide note and other attending circumstances have to be examined to find out whether it is abetment within the meaning of Section 306 of IPC read with Section 107 of IPC. But, in order to ascertain this factual aspect, a full fledged investigation is required as well as trial to be held.

21. The Hon'ble Apex Court in the case of ***Gurucharan Singh vs. State of Punjab*** reported in ***(2020) 10 SCC 200***, summarized principles, which necessitate the ingredients of Section 306 of IPC, in paragraph Nos.15 to 18, which is as under:



"15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.



16. *The necessary ingredients for the offence under section 306 IPC was considered in the case SS Chheena Vs. Vijay Kumar Mahajan¹ where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-*

"25. Abetment involves a mental process of instigating a person or intentionally aiding a 1 (2010) 12 SCC 190 person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

17. *While dealing with a case of abetment of suicide in Amalendu Pal alias Jhantu vs. State of West Bengal², Dr. Justice M.K. Sharma writing for the Division Bench explained the*



parameters of Section 306 IPC in the following terms:

"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 there being any positive action proximate to the 2 (2010) 1 SCC 707 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.

18. In the case Mangat Ram Vs. State of Haryana³, which again was a case of wife's unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnanan rightly observed as under:-

"24. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless



abetted to do so by someone else, is a perverse reasoning." 3 (2014) 12 SCC 595."

22. The learned counsel petitioner would contend that, as a superior officer, if some work was assigned by the petitioner to the deceased, merely on that count it cannot be said that there was any guilty mind or criminal intent. The exigencies of work and the situation may call for certain action on part of a superior. That action simplicitor cannot be considered to be a pointer against such superior officer. Whereas, in the instant case, there is suicide note left by the deceased and in addition to that, there is material on record in the form of assertions made by his wife in her reporting to the police. Therefore, the ratio laid down in the case of **Vaijnath's** case is not applicable to the case on hand, as there is death note left by deceased.

23. Further, in order to attract Section 306 IPC, there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the



deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

24. On perusal of the decisions cited supra and facts and circumstances of the present case, disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 of Cr.P.C. and at this stage, only prima facie case is to be seen. Admittedly, Section 306 of IPC is cognizable offence, thus, the police has statutory right as well as a duty under the Code of Criminal Procedure to investigate cognizable offences and the allegations in the FIR discloses the commission of cognizable offences.

25. In view of the foregoing discussion of the above facts and the ratio laid down in the decisions cited supra, the petition is liable to be dismissed. Hence, I pass the following:



ORDER

The criminal petition is dismissed.

Sd/-
JUDGE

SRT
List No.: 1 Sl No.: 29