

**IN THE HIGH COURT OF MADHYA
PRADESH**

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 12th OF JUNE, 2023

MISC. CRIMINAL CASE No. 46563 of 2022

BETWEEN:-

.....APPLICANT

(BY SHRI ASHISH GUPTA – ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER
THROUGH PS SENDHWA, DISTT. BARWANI (MADHYA PRADESH)**
- 2. VIJAY S/O LUSIYA, AGED ABOUT 35 YEARS, R/O HINGHWA (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI HARSH RANA – GOVT. ADVOCATE)

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

ORDER

1/ This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short “Cr.P.C.”) for quashment of the FIR dated 18/07/2022 bearing Crime No.554/2022 registered at P.S. Anjad, District Barwani against the petitioners for the offence

punishable under Section 305, 306 and 34 of the Indian Penal Code (in short "IPC").

2/ The facts in brief are that on 18/07/2022 Merg No. 120/2022 was registered u/s 174 of Cr.P.C. regarding the unnatural death of [REDACTED] at P.S.- Sendhwa Gramin, District – Barwani. The deceased committed suicide by hanging on 18/07/2022. An inquiry was initiated and statements of family members of the deceased were recorded. It is allegedly stated by the family members of the deceased that deceased- [REDACTED] was aged 14 years old and was studying in class 8" and residing in Eklavya Adarsh ~ Hostel. Whenever she used to return home from the hostel, she used to inform - her parents that the hostel in-charge, who is the Petitioner No. 01 was never available at the hostel. Whenever [REDACTED] told anything to the Petitioner No. 01, she allegedly used to shout at her. She used to make the deceased and other girls in the hostel clean the premises like peons. She had also informed her mother that Dinesh (Petitioner No. 02), who is a peon at the hostel, used to make the deceased sift grains and do his personal work. It is alleged that due to the ill treatment meted out to [REDACTED] by the present Petitioners, she committed suicide. A suicide note was also found. On the basis of the above mentioned allegations, a formal FIR was registered at crime no, 554/2022 for offences under section 305, 306 and 34 of IPC against the present petitioners.

3/ Learned counsel for the petitioner submitted that all the allegations made against the petitioner, even if accepted in their entirety, do not make out a case under Section 306 of IPC. It is further submitted that to constitute the abetment within the meaning of Section 107 read with Section 306 of IPC, there should be instigation, provocation, incitement, suggestion, insinuation or goading to commit suicide and

that accused must have intended that the deceased commits suicide. Only omnibus allegations have been levelled against the present petitioner. The deceased left no suicide note or any dying declaration. The deceased, in her suicide note only mentioned that she did not want to stay in the hostel; she wanted different room and she did not feel happy there. Assuming the allegations of the Investigating Agency to be true just for the sake of argument, then it doesn't transpire that at any stage the petitioners has abated, instigated, coaxed, or forced the deceased to commit suicide. The petitioners have had a blemish free record of over years and not even once has it ever been alleged that they did not do their duties as expected or neglected the children. There is no legal evidence to connect the petitioners with the aforesaid offence. In this regard, reliance has been placed upon the judgment delivered by Hon'ble Supreme Court in the case of **Gangula Mohan Reddy Vs. State of Andra Pradesh reported in 2010 Cr.L.J 2110 (SC)** as also **Gurucharan Singh Vs. State of Panjab reported in AIR 2017 SC 74**.

4/ *Per contra*, it is submitted by learned counsel for the respondent/State that prima facie charge for offence under Section 306 IPC has been framed against the petitioners on the basis of the material available in the charge sheet. There is prima facie sufficient and ample evidence available on record, which directly connects the petitioners with the aforesaid offence, therefore, no interference is required.

5/ Both the parties heard at length and perused the case diary and other documents available on record.

6/ The law is well settled that the jurisdiction of this Court under Section 482 of The Code is wide enough and that if the proceedings are going to result in abuse of process of the Court, then the

high Court in exercise of powers under Section 482 of 'The Code' can quash such proceedings and nothing will come in the way.

7/ For making out an offence under Section 306 of IPC, one essential and requisite ingredient is 'abetment' by the accused to deceased to commit suicide. Section 306 of the IPC reads as under:-

“306. **Abetment to commit 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.

As per definition given in Section 107 of the Indian Penal Code abetment is constituted by:

- (i) Instigation a person to commit an offence; or
- (ii) Engaging in a conspiracy to commit; or
- (iii) Intentionally aiding a person to commit it.

A person is said to “instigate” another to an act, when he actively suggests or stimulates him to the act by means of language, direct or indirect whether it takes the form of express solicitation, or of hints, insinuation of encouragement. The word 'instigate' means of goad or urge

forward or to provoke, incite, urge or encourage to do an act.”

8/ Apex Court in the case of **M. Mohan v. State of Madras** reported in **2011 Cr.L.J. 1900**, has held as under:-

“This Court in *Chitresh Kumar Chopta v. State (Government of NCT of Delhi)* [(2009) 16 SCC 605], had an occasion to deal with aspect of abetment. The Court dealt the dictionary meaning of word “instigation” and “goad”. 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 in different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket

formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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 cases decided by this Court are clear that in order to convict a person under Section 306, IPC there has to be 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.”

9/ In the case of **Rajesh Vs. The State of Madhya Pradesh** **vide order dated 9.7.2019 passed in CRR No.3155/2011**, this Court has observed in para No.13 as under:-

“13.....For framing charges under Section 306 of IPC, there has to be a *mens rea* to impel or incite the subject to commit suicide. It also requires an active or direct act, which lead the deceased to commit suicide and this act must push the deceased into such a position that he sees no option except to annihilate his own life.”

10/ In the instant case, only allegation against the petitioners is that they have not provided suitable room to the petitioners in the hostel and they did not use to call her for lunch and dinner. Petitioner no. 1 was never available at the hostel. Petitioner no. 1 used to make every girl in the hostel to clean the premises. Prior to the incident deceased did not make any complaint against the petitioners before their higher authority or before any police station. Although she left suicide note, but from perusal of the suicide note, it appears that there is no instigation, provocation, suggestion or force for committing suicide, except the statements of relatives of the deceased, there is nothing on record to show that the deceased was being harassed by the petitioners.

Only omnibus allegation has been levelled against the petitioners It is also pertinent to note that the allegation levelled against the petitioners does not amount to abatement to commit suicide Hence, in view of the settled law in the case of Rajesh (supra), this Court of the considered opinion that there is no *mens rea* to impel or incite the deceased to commit suicide.

11/ In view of the aforesaid discussion, I find that the prosecution of the present petitioners tentamounts to abuse of process of law. Hence, it is a fit case where the power under Section 482 of the Cr.P.C. can be exercised. Consequently, the petition is **allowed** and FIR dated 18/07/2022 bearing Crime No.554/2022 registered at P.S. Anjad, District Barwani against the petitioners for the offence punishable under Section 305, 306 and 34 of IPC and other consequential proceedings relating to is hereby quashed.

12/ Let a copy of this order be sent to the concerned trial Court for information and necessary compliance.

C.C. as per rules.

(ANIL VERMA)
JUDGE

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