

Sharad Kumar And Another vs State Of U.P. And Another on 31 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Reserved

AFR

Neutral Citation No. - 2025:AHC-LK0:6868

Case :- Application U/s 482 No.6982 of 2017

Applicant :- Sharad Kumar and another

Opposite Party :- State of U.P. and another

Counsel for Applicant :- Gopesh Tripathi

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Brij Raj Singh, J.

1. The present application under Section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings of Criminal Case No.5450 of 2016, State Vs. Sharad Kumar and another, arising out of Case Crime No.135 of 2016, under Section 306 IPC, Police Station Maheshganj, District Pratapgarh as well as the cognizance order dated 06.12.2016 passed by the Judicial Magistrate, Pratapgarh.

2. Facts, in brief, are that Shishir Kumar, elder brother of the applicants, consumed Sulphas on 27.05.2016 and he succumbed. Smt. Kanti Srivastava, wife of Shishir Kumar, informed the police about the said incident, which is entered vide Report No.26 of 27.05.2016 at 15.30 hrs. that her husband committed suicide by consuming Sulphas and inquest was also prepared on the same day. Thereafter, post-mortem was conducted on 28.05.2016. Opposite party no.2, brother-in-law of the deceased, lodged an FIR on 02.06.2016 making allegation that applicants abetted the deceased to commit suicide for the reason that the loan, which was advanced by the bank to the deceased, was to be repaid by the applicants and the deceased, who are real brothers, but the applicants refused to repay the loan and also they did not give the share of the property, therefore, the deceased Shishir Kumar committed suicide. The FIR further indicates that father of the applicants had assured the

deceased that his brothers will also help him in repaying the loan.

3. Learned counsel for the applicants has submitted that all the three sons i.e. applicants and the deceased were residing separately and deceased Shishir Kumar had no issue. The deceased had purchased a Tractor by taking a loan, but could not repay the amount of loan, that is why a recovery notice was issued against him. The deceased was taken to Swaroop Rani Hospital, Allahabad for treatment by the applicants themselves, however, deceased could not be saved. Statement of father of the applicants was also recorded under Section 161 Cr.P.C., in which he categorically stated that it is opposite party no.2, who was responsible for abetment to suicide because he wanted that the deceased should adopt his son, so that he could claim the property of the deceased. Counsel for the applicants has further submitted that name of the deceased was recorded in the revenue record as co-tenure holder along with the applicants and he took the loan by mortgaging his land, which was recorded in his name. He has also submitted that there is no act of abetment by the applicants in commission of crime. It is further submitted that there is no ingredient of Section 106 IPC against the applicants as there is no evidence of any kind of active act committed by the applicants. Charge sheet has been filed on the wrong presumption that applicants abetted the deceased to commit suicide without there being any evidence. Learned counsel has further submitted that vague and bald allegations have been levelled against the applicants that too without supporting of any evidence and the applicants have been charge sheeted on surmises and conjunctures.

4. In support of his contention, counsel for the applicants has placed reliance upon the following cases:-

1. Mariano Anto Bruno and another Vs. The Inspector of Police, 2022 Livlaw (SC) 834; 2022 SCC Online SC 1387;

2. Criminal Appeal No.3578 of 2023, Mohit Singhal and another Vs. The State of Uttarakhand and others, decided on 01.12.2023;

3. Swamy Prahaladdas Vs. State of M.P. and another, 1995 Supp (3) SCC 438; and

4. Application U/s 482 No.24303 of 2016, Ambesh Mani Tripathi Vs. State of U.P. and another, decided on 01.12.2023.

5. On the other hand, learned AGA has submitted that evidence has been collected by the Investigating Officer, in which it has been found that applicants were involved in abetment of suicide and the deceased had committed suicide under pressure because he could not repay the amount of loan. Learned AGA has pointed out the statement of Smt. Kanti Srivastava, wife of the deceased, who stated that the loan was taken by her husband with the help of her father-in-law and he assured that the loan amount will be repaid by all the three brothers i.e. applicants and the deceased. She further stated that the loan amount was not repaid by the applicants, that is why her husband committed suicide. He has, therefore, submitted that this application is liable to be rejected.

6. Despite of service of notice, no one has put in appearance on behalf of opposite party no.2.

7. I have heard learned counsel for the parties and gone through the record.

8. After going through the record, I find that there is no active act on the part of the applicants, which could establish that they were involved in abetting the deceased to commit suicide. An important fact has also come out that the deceased was having his own agricultural property, on which loan was sanctioned in his name, therefore, he was responsible to repay the loan amount. In case he could not repay the loan amount and under pressure he committed suicide, then how the applicants are responsible in any manner. It is not worth to presume that applicants being brothers, had to repay the loan amount, which was advanced to the deceased by the bank. The evidence on record does not indicate that applicants abetted the deceased in any manner to instigate him to commit suicide.

9. Hon'ble Supreme Court in the case of Swamy Pahaladdas (supra) has considered the issue of abetment of suicide in paragraph-3 of the judgement, which reads as under:-

"3. At the time of framing of charge, the trial court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Session was in error in summoning the appellant to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is apparent requiring rectification. The appeal is accordingly allowed. The orders of the High Court and that of the Court of Sessions are thus upset. The appellant need not face the charge."

10. Hon'ble Supreme Court in the case of Mohit Singhal (supra) has held that instigation on the part of the accused is the pivotal thing which is to be seen and there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Paragraphs 9 and 10 of the said judgement are quoted herein-below:-

"9. In the facts of the case, secondly and thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on

the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits."

11. Hon'ble Supreme Court in the case of Geo Verghese Vs. State of Rajasthan and another, 2021 SCC OnLine SC 873, has held that while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law, but an attempt to suicide is considered to be an offence under section 309 IPC. Paragraphs 13, 14, 15 and 16 of the said judgement are extracted herein-below:-

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which 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."

14. Though, the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium', 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

16. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh, 2021 SCC OnLine SC 873 has defined the word 'instigate' as under :-

"Instigation is to goad, urge forward, provoke, incite or encourage to do an act."

12. In the case of M. Arjunan Vs. State, represented by its Inspector of Police, (2019) 3 SCC 315, Hon'ble Supreme Court has further dealt with the ingredients of Section 306 IPC extensively. The relevant paragraph of the said judgement is quoted herein-below:-

"The essential ingredients of the offence under Section 306 I.P.C. 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 not, 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. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C."

13. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed by the Hon'ble Supreme Court in the case of S.S. Cheena Vs. Vijay Kumar Mahajan and another, (2010) 12 SCC 190. The relevant paragraph of the said judgement reads 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 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 the Supreme 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."

14. In the case of Ude Singh and others Vs. State of Haryana, (2019) 17 SCC 301, Hon'ble Supreme Court while discussing the question that state of mind to commit suicide is to be seen, which is mentioned under Section 306 IPC, held as under:-

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case."

16.1. 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. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

15. In the case of Madan Mohan Singh Vs. State of Gujarat and another, (2010) 8 SCC 628, Hon'ble Supreme Court has also taken the similar view in paragraphs 10, 11, 12, 13, 16, 17, which read as under:-

"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit

suicide because of this.

12. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross- examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta v. State of W.B.* 2005 (2) SCC 659, this Court had quashed the proceedings initiated against the accused.

16. Insofar as Section 294(b) IPC is concerned, we could not find a single word in the FIR or even in the so-called suicide note. Insofar as Section 306 IPC is concerned, even at the cost of repetition, we may say that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC. It will still fall short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against the appellant/accused to the effect that he had intended or engineered the suicide of the concerned person by his acts, words etc. When we put the present FIR on this test, it falls short.

17. We have already explained that the baseless and irrelevant allegations could not be used as a basis for prosecution for a serious offence under Section 306 IPC. Similarly, we have already considered Section 294(b) IPC also. We have not been able to find anything. Under such circumstances, where the FIR itself does not have any material or is not capable of being viewed as having material for offence under Sections 306 and 294(b) IPC, as per the law laid down by this Court in *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1992 Suppl. 1 SCC 335, it would be only proper to quash the FIR and the further proceedings."

16. Hon'ble Supreme Court has considered the issue of abetment to suicide in the case of State of Kerala and others Vs. S. Unnikrishnan Nair and others, (2015) 9 SCC 639. Relevant paragraphs of the said judgement read as under:-

"9. To appreciate the rivalised submissions in the obtaining factual matrix, it is necessary to understand the concept of abatement as enshrined in Section 107 Indian Penal Code. The said provision reads as follows:

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.

Explanation 2-Whoever, either prior to or at the time of 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.

10. The aforesaid provision was interpreted in Kishori Lal v. State of M.P. (2007) 10 SCC 797 by a two-Judge Bench and the discussion therein is to the following effect:

Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in Indian Penal Code. 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.

11. In Amalendu Pal v. State of West Bengal (2010) 1 SCC 707 dealing with expression of abetment the Court observed:

The expression "abetment" has been defined Under Section 107 Indian Penal Code 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 Indian Penal Code. Section 109 Indian Penal Code 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 Indian Penal Code only would be attracted. According to him, a case of abetment of suicide is made out as provided for Under Section 107 Indian Penal Code.

12. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it hereinbefore. On a plain reading of the same, it is difficult to hold that there has been any abetment by the Respondents. The note, except saying that the Respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The Respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reason, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate.

13. In *Netai Dutta* (supra), a two-Judge Bench, while dealing with the concept of abetment Under Section 107 Indian Penal Code and, especially, in the context of suicide note, had to say this:

In the suicide note, except referring to the name of the Appellant at two places, there is no reference of any act or incidence whereby the Appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the Appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

Apart from the suicide note, there is no allegation made by the complainant that the Appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the Appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the Appellant. The prosecution initiated against the Appellant would only result in sheer harassment to the Appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the First Information Report against the Appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the Appellant herein. We find that this is a fit case where

the extraordinary power Under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the Appellant and accordingly allow the appeal.

14. In *M. Mohan (supra)*, while dealing with the abatement, the Court has observed thus:

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 are clear that in order to convict a person Under Section 306 Indian Penal Code 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.

15. As far as *Praveen Pradhan (supra)*, is concerned, Mr. Rao, has emphatically relied on it for the purpose that the Court had declined to quash the F.I.R. as there was a suicide note. Mr. Rao has drawn out attention to paragraph 10 of the judgment, wherein the suicide note has been reproduced. The Court in the said case has referred to certain authorities with regard to Section 107 Indian Penal Code and opined as under:

"18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force 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 Code of Criminal Procedure.

19. Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the Appellant, upon non-fulfillment of which, he would be mercilessly harassed by the Appellant for a prolonged period of time. He

had also been forced to work continuously for a long durations in the factory, vis-à-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, "had there been any other person in his place, he would have certainly committed suicide" is what makes the present case distinct from the aforementioned cases considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this Court as regards the impugned judgment and order of the High Court.

16. We have quoted in extenso from the said judgment and we have no hesitation in stating that the suicide note therein was quite different, and the Court did think it appropriate to quash the proceedings because of the tenor and nature of the suicide note. Thus, the said decision is distinguishable regard being had to the factual score exposted therein.

17. Coming to the case at hand, as we have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, we are disposed to think that the High Court is justified in quashing the proceeding, for it is an accepted position in law that where no prima facie case is made out against the accused, then the High Court is obliged in law to exercise the jurisdiction under Section 482 of the Code and quash the proceedings."

17. Similar issue has been dealt with by the Hon'ble Supreme Court in Criminal Appeal No.1022 of 2021, Kanchan Sharma Vs. State of U.P. and another, decided on 17.09.2021. Relevant paragraphs of the said judgement are quoted herein below:-

"9. Having heard learned counsel on both sides, we have perused the impugned order and other material placed on record. Except the self-serving statements of the complainant and other witnesses stating that deceased was in love with the appellant, there is no other material to show that appellant was maintaining any relation with the deceased. From the material placed on record it is clear that on the date of incident on 04.05.2018 deceased went to the house of the appellant and consumed poison by taking out from a small bottle which he has carried in his pocket. Merely because he consumed poison in front of the house of the appellant, that itself will not indicate any relation of the appellant with the deceased. 'Abetment' involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it 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. There is nothing on record to show that appellant was maintaining relation with the deceased and further there is absolutely no material to allege that appellant abetted for suicide of the deceased within the meaning of Section 306, IPC. Even with regard to offence alleged under Section 3(2)(v) of the Act it is to be noticed that

except vague and bald statement that the appellant and other family members abused deceased by uttering casteist words but there is nothing on record to show to attract any of the ingredients for the alleged offence also.

This Court in the case of *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 had an occasion to deal with the aspect of abetment. In the said case this Court has opined that there should be an intention to provoke, incite or encourage the doing of an act by the accused. Besides, the judgment also observed that each person's suicidability pattern is different from the other and each person has his own idea of self-esteem and self-respect. In the said judgment it is held that it is impossible to lay down any straightjacket formula dealing with the cases of suicide and each case has to be decided on the basis of its own facts and circumstances. In the case of *Amalendu Pal @ Jhantu v. State of West Bengal* (2010) 1 SCC 707 in order to bring a case within the purview of Section 306, IPC this 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 there 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."

In the judgment in the case of *S.S. Chheena v. Vijay Kumar Mahajan & Anr.* (2010) 12 SCC 190 this Court reiterated the ingredients of offence of Section 306 IPC. Paragraph 25 of the judgment reads 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."

In the judgment in the case of *Rajiv Thapar & Ors. v. Madan Lal Kapur* (2013) 3 SCC 330 this Court has considered the scope of the provision under Section 482, Cr.PC and has laid down the steps which should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings in exercise of power under Section 482, Cr.PC. Paragraph 30 containing the four steps read as under :

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

10. By applying the aforesaid ratio decided by this Court, we have carefully scrutinized the material on record and examined the facts of the case on hand. Except the statement that the deceased was in relation with the appellant, there is no material at all to show that appellant was maintaining any relation with the deceased. In fact, at earlier point of time when the deceased was stalking the appellant, the appellant along with her father went to the police station complained about the calls which were being made by the deceased to the appellant. Same is evident from the statement of S.I. Manoj Kumar recorded on 05.07.2018. In his statement recorded he has clearly deposed that the father along with the appellant went to the police post and complained against the deceased who

was continuously calling the appellant and proposing that she should marry him with a threat that he will die otherwise. Having regard to such material placed on record and in absence of any material within the meaning of Section 107 of IPC, there is absolutely no basis to proceed against the appellant for the alleged offence under Section 306 IPC and Section 3(2)(v) of the Act. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever.

11. In view of the same, we are of the view that the High Court has committed error in rejecting the application filed by the appellant by merely recording a finding that in view of the factual disputes same cannot be decided in a petition under Section 482, Cr.PC.

.....

23. Section 107 I.P.C. read with Section 306 I.P.C. is very much clear for abetment of a thing. Instigation is the first condition, second condition is engagement of one or more persons in any conspiracy and further an act or illegal omission in pursuance of conspiracy and the third thing is intention to do by any act or illegal omission. All these legal ingredients are fully missing in this case. In fact, only denial of marriage not coupled with any other fact does not come within the purview of abetment as defined in Section 107 I.P.C., therefore, it would not be an offence under Section 306 I.P.C."

18. Hon'ble Supreme Court in the case of M. Vijayakumar Vs. State of Tamilnadu, (2024) 4 SCC 633 while considering the question of mens rea in committing the crime under Section 306 IPC held as under:-

"19. In the contextual situation, in view of the analysis of the provisions under section 306 IPC and the decisions referred to supra, we will also have to consider what is mens rea? 'Mens rea' means a guilty mind. As a general rule, every crime requires a mental element, the nature of which, will depend upon definition of the particular crime in question. Although it is impossible to ascribe any particular meaning to the term 'mens rea' as the circumstance to determine the existence of mens rea depends upon the ingredients constituting the particular offence and the expression used in the definition of the particular offence to constitute such offence. It is only appropriate to refer to Halsbury's Laws of England (4th Edn., Vol-11, Para-10), going by the same:

"...it is impossible to ascribe any particular meaning to the term 'mens rea', concepts such as those of intention, recklessness and knowledge which commonly used as the basis for criminal liability and in some respects, it may be said to be fundamental to it. Generally, subject to both qualification and exception, a person is not to be made criminally liable for serious crimes unless he intends to cause or foresees that he will probably cause or at the lowest he may cause the elements which constitute a crime in question."

20. In the decision in Director of Enforcement v. MCTM Corp. Pvt. Ltd, it was observed that mens rea is a state of mind and held that under the criminal law mens rea is considered as the "guilty

intention" and unless it is found that the 'accused' had the guilty intention to commit the crime, he could not be held guilty of committing the crime."

19. Recently, Hon'ble Supreme Court in Criminal Appeal No.221 of 2025, Mahendra Awase Vs. The State of Madhya Pradesh, decided on 17.01.2025 after considering the earlier judgements in regard to abetment to suicide and its impact, held as under:-

"14. In Madan Mhan Singh Vs. State of Gujarat and another, (2010) 8 SCC 628, this Court held that in order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for attracting Section 306.

15. In Amalendu Pal alias Jhantu Vs. State of West Bengal, (2010) 1 SCC 707, this Court held as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 PC, 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 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.

[Emphasis supplied]

16. 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.

17. M. Mohan vs. State, (2011) 3 SCC 626 followed Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618, wherein it was held as under:-

"41. This Court in SCC para 20 of Ramesh Kumar 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 wife therein) may necessarily be drawn."

Thereafter, this Court in Mohan (supra) held:

"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." [Emphasis supplied]

18. As has been held hereinabove, to satisfy the requirement of instigation the accused by his act or omission or by a continued course of conduct should have created such circumstances that the deceased was left with no other option except to commit suicide. It was also held that a word uttered in a fit of anger and emotion without intending the consequences to actually follow cannot be said to be instigation.

19. Applying the above principle to the facts of the present case, we are convinced that there are no grounds to frame charges under Section 306 IPC against the appellant. This is so even if we take the prosecution's case on a demurrer and at its highest. A reading of the suicide note reveals that the appellant was asking the deceased to repay the loan guaranteed by the deceased and advanced to Ritesh Malakar. It could not be said that the appellant by performing his duty of realising outstanding loans at the behest of his employer can be said to have instigated the deceased to commit suicide. Equally so, with the transcripts, including the portions emphasised hereinabove. Even taken literally, it could not be said that the appellant intended to instigate the commission of suicide. It could certainly not be said that the appellant by his acts created circumstances which left the deceased with no other option except to commit suicide. Viewed from the armchair of the appellant, the exchanges with the deceased, albeit heated, are not with intent to leave the deceased with no other option but to commit suicide. This is the conclusion we draw taking a

realistic approach, keeping the context and the situation in mind.

Strangely, the FIR has also been lodged after a delay of two months and twenty days.

20. This Court has, over the last several decades, repeatedly reiterated the higher threshold, mandated by law for Section 306 IPC [Now Section 108 read with Section 45 of the Bharatiya Nyaya Sanhita, 2023] to be attracted. They however seem to have followed more in the breach. Section 306 IPC appears to be casually and too readily resorted to by the police. While the persons involved in genuine cases where the threshold is met should not be spared, the provision should not be deployed against individuals, only to assuage the immediate feelings of the distraught family of the deceased. The conduct of the proposed accused and the deceased, their interactions and conversations preceding the unfortunate death of the deceased should be approached from a practical point of view and not divorced from day-to-day realities of life. Hyperboles employed in exchanges should not, without anything more, be glorified as an instigation to commit suicide. It is time the investigating agencies are sensitised to the law laid down by this Court under Section 306 so that persons are not subjected to the abuse of process of a totally untenable prosecution. The trial courts also should exercise great caution and circumspection and should not adopt a play it safe syndrome by mechanically framing charges, even if the investigating agencies in a given case have shown utter disregard for the ingredients of Section 306."

20. In the present case, while considering the case in view of Sections 107 and 306 IPC, I find that there is no evidence in the case of alleged abetment of suicide because there is no active act shown on the part of the applicants in any manner so that the deceased was compelled to commit suicide. It is apparent on the face of record that the loan was sanctioned in the name of the deceased, who could not repay the same, then how the applicants being brothers, could have been held responsible for abetment in commission of suicide by the deceased. There is no evidence or any adverse material between the applicants and the deceased, which could establish that applicants were responsible to repay the loan amount which was advanced in the name of the deceased. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused, but in the present case, no evidence is available to establish that applicants were having mens rea in abetment of commission of suicide. Therefore, continuance of the present criminal proceedings against the applicants is nothing but an abuse of process of law.

21. Application is accordingly allowed and the entire proceedings of Criminal Case No.56450 of 2016, State Vs. Sharad Kumar and another, arising out of Case Crime No.135 of 2016, under Section 306 IPC, Police Station Maheshganj, District Pratapgarh pending in the court of Judicial Magistrate, Pratapgarh against the applicants, are hereby quashed.

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(Brij Raj Singh, J.) Order Date :- January 31st , 2025 Rao/-

