

## **M.Mohan vs State Tr.Dy.Suptd.Of Police on 1 March, 2011**

**Equivalent citations: AIR 2011 SUPREME COURT 1238, 2011 (3) SCC 626, 2011 AIR SCW 1601, AIR 2011 SC (CRIMINAL) 672, 2011 (2) AIR KANT HCR 536, 2011 CRILR(SC MAH GUJ) 460, (2011) 75 ALLCRIC 539, (2011) 2 MADLW(CRI) 709, 2011 (2) CALCRILR 780, (2011) 3 MH LJ (CRI) 127, (2011) 1 CRILR(RAJ) 460, 2011 (2) SCC(CRI) 1, 2011 ALL MR(CRI) 1659, 2011 (3) SCALE 78, 2011 (3) KCCR 194 SN, 2011 (2) KER LT 78 SN, 2011 (2) KER LJ 23 NOC, (2011) 1 CURCRIR 544, (2011) 1 ALLCRIR 965, (2011) 3 SCALE 78, (2011) 3 BOMCR(CRI) 171, (2011) 1 DLT(CRL) 748, (2011) 2 ALLCRILR 322, 2011 CRILR(SC&MP) 460, (2011) 4 MAD LJ(CRI) 273, (2011) 48 OCR 961, (2011) 2 RECCRIR 272**

**Author: Dalveer Bhandari**

**Bench: Dalveer Bhandari, Surinder Singh Nijjar**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 611 OF 2011

(Arising out of SLP (CrI.) No.2550/2010)

M. MOHAN

... APPELLANT

VERSUS

THE STATE REPRESENTED BY THE

DEPUTY SUPERINTENDENT OF POLICE

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 612 OF 2011

(Arising out of SLP (Crl.) No.2687/2010)

VELMURUGAN & ANR.

... APPELLANT

VERSUS

THE STATE REPRESENTED BY THE

DEPUTY SUPERINTENDENT OF POLICE

... RESPONDENT

J U

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E N T

Dalveer Bhandari, J.

1. Leave granted in both the matters.

2. Since the facts of both the appeals are common, therefore, these appeals are decided by a common judgment.

CRIMINAL APPEAL NO. 612 OF 2011 (Arising out of SLP (Crl.) No.2687/2010)

3. We deem it proper to take the facts of Criminal Appeal arising out of SLP (Crl.) No.2687 of 2010 filed by Velmurugan, Accused No.4 and Anna Lakshmi, Accused No.5 (for short 'A-4 and A-5' respectively). This appeal emanates from the judgment and order dated 22.02.2010 delivered by the Madurai Bench of the High Court of Judicature at Madras in Criminal Original Petition (MD) No.94 of 2006.

4. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

5. One Kamatchi (deceased), daughter of Duraipandi Nadar (complainant) was married to Anandraj (A-1), son of Mahalinga Nadar on 6.9.2001. Mahalinga Nadar and his wife Anna Lakshmi (A-5) had three sons whose names are shown as under :

Mahalinga Nadar

Son(A-1)	Son(A-2)	Son(A-4)
Anandraj	M. Mohan	Velmurugan
Husband of	married	
deceased	to	
Kamatchi	Easwari (A-3)	

Anandraj (A-1) even after marriage with Kamatchi (the deceased) stayed with his two brothers and parents in the joint family. Kamatchi delivered a female child on 7.1.2003. Accused Anandraj's elder brother, M. Mohan (A-2) and his wife Easwari (A-3) owned a Qualis car. On the date of Pongal, i.e., on 14.01.2005, Kamatchi's in-laws family planned a visit to the Theme Park at Madurai from Karaikudi. Deceased Kamatchi, her husband Anandraj (A-1) were denied the use of the said family car. Other members of the family had gone to the Theme Park in the family car whereas the deceased Kamatchi and her husband Anandraj (A-1) were told by Easwari (A-3) to reach the destination by public bus who is alleged to have said to Kamatchi that "if you want to go by a car, you have to bring a car from your family".

6. Kamatchi along with her husband Anandraj and a child, took a public transport(bus) from Karaikudi to Madurai for reaching the said Theme Park and returned to her matrimonial home in a bus. Kamatchi was deeply hurt by the taunting statement of Easwari (A-3) regarding denial of the use of family car.

7. Immediately thereafter, Kamatchi demanded a car from her father for personal use and after four days, i.e., on 18.1.2005 at about 1.30 p.m. she committed suicide by hanging herself in her bedroom using her sari.

8. On receipt of the information, the father of the deceased Kamatchi reached Karaikudi and filed a complaint with the Karaikudi Police Station (South) at about 5.00 p.m. alleging that his son-in-law Anandraj (A-1) and his elder brother's wife Easwari (A-3) were responsible for his daughter's suicide. On receipt of the said complaint, the Sub-Inspector of Police, Karaikudi (South) Police Station registered a case under Section 174 of the Criminal Procedure Code (for short 'Cr.P.C.') by

assigning Crime No.13/2005 on 18.01.2005.

9. The Sub Inspector of Police forwarded a copy of the First Information Report (for short 'F.I.R.') to the Revenue Divisional Officer (for short 'R.D.O.') to hold an inquest and also a copy to the Deputy Superintendent of Police (for short 'D.S.P.'), Karaikudi, for further investigation, who commenced inquiry on the same day as Kamatchi had committed suicide within three and a half years of her marriage.

10. The D.S.P., Karaikudi on receipt of the F.I.R. from the Karaikudi South Police Station, took up the complaint for investigation and filed an Alteration Report on 19.1.2005 before the Jurisdictional Magistrate, Karaikudi under Sections 498-A and 306 I.P.C. against Anandraj (A-1) and Easwari (A-3) respectively.

11. The R.D.O. commenced enquiry on 18.1.2005 and examined many witnesses and on 3rd February, 2005 a report was sent by him to the D.S.P. in which he had categorically stated that there was no dowry harassment in the suicide case, especially in view of the fact that even the parents of the deceased had not informed him about the harassment of dowry. The parents of the deceased had specifically stated before the R.D.O. that because of the taunts made by Easwari (A-3) their daughter had committed suicide. The D.S.P., in addition to the inquest held by the R.D.O., proceeded to investigate the case and filed a Charge Sheet on 29.4.2005 not only against Anandraj (A-1), the deceased's husband and M. Mohan (A-

2), her brother-in-law and his wife, Easwari (A-3), but also against the appellants herein who are elder brother of the husband of the deceased and the mother of appellant No.1 respectively under Sections 304-B, 498-A and 306 of the Indian Penal Code (for short 'I.P.C.'). A copy of the charge sheet dated 29.4.2005 was filed before the learned Judicial Magistrate, Karaikudi.

12. The learned Magistrate, on perusing the final report, took the same on file by assigning P.R.C.No.11/2005 and summoned the accused to furnish copies before committing the case to the Court of Sessions for trial.

13. The appellants, aggrieved by the vexatious prosecution initiated at the behest of the respondent approached the High Court of Judicature at Madras for quashing the proceedings against them under Section 482 Cr.P.C. The learned Single Judge, while quashing the charges under Sections 498-A and 304-B I.P.C.

against the appellants, partly allowed their petition and held that they have to face trial for the offence under Section 306 I.P.C.

insofar as challenge to Section 306 I.P.C. was concerned.

14. The High Court in the impugned judgment observed that in the F.I.R. lodged by the complainant, no whisper of demand for dowry has been made against the appellants. A perusal of the F.I.R. would reveal that Anandraj (A-1) and Easwari, A-3 were torturing the deceased on some

pretext or the other especially in connection with getting a car from her father. The deceased was denied use of the car for going to the Theme Park near Madurai on 14.01.2005. The deceased was also abused by Anandraj (A-1) in this regard. They had to go to the Theme Park at Madurai by bus.

After returning, the deceased contacted her father on phone and narrated the entire incident and on 18.1.2005 at around 1.30 p.m., Kamatchi committed suicide by hanging herself. On registration of the case under Section 174 Cr.P.C., the complainant and his wife and others were examined. Even in the statement, the complainant had not made a whisper about the demand of dowry on the part of the appellants but harped upon the ill treatment to his daughter at the hands of Anandraj (A-1) and Easwari (A-3). Even at the inquest conducted by the R.D.O., the complainant has not even whispered with regard to the demand of dowry on the part of the appellants.

The statement of witnesses including that of the complainant were recorded on 27.01.2005. The relevant portion of the exact version given in the F.I.R. reads as under :

".....My eldest daughter is aged about 21 years. She was given in marriage by me to one Anandaraj son of Mahalinga Nadar of Karaikudi 3 years ago in the year 2002, and next daughter was given in marriage at Coimbatore and other two daughters are yet to be married. At the time of marriage of my daughter Kamatchi, to Anandraj, I gave them one Kilo of Gold, Diamonds and jewels, and other utensils and articles. They were living along with his elder brother Mohan as joint family. They possess one Qualis car of their own. The said car was purchased in the name of Easwari my son-in-law's brother's wife. My daughter felt very hurt when she was not allowed to use the said car and was taunted by my son-in-law Anandraj and Mohan's wife Easwari to get a car from her parental home if she wished to go by a car. When she disclosed this matter to me I was ready to give her a car. At this junction, during last Pongal festival, her family had gone to Madurai ('Athisayam') in the said Qualis car. They refused to take my daughter along with them in the said car, and they have also teased and insulted her and told her to come in the bus and also said 'do you want to use a car then why you did not get a car'. My daughter informed about this incident to me over the phone and before I could get a car ready for her today on 18.1.2005, at about 1.30 hours, my son-in-law, Anandraj, informed over phone that my daughter had hanged herself and is dead. My son-in-law Anandraj and Mohan's wife Easwari who were cause for my daughter's death....."

The above quoted portion of the F.I.R. also indicates that all allegations are confined to Anandraj (A-1), the husband of the deceased and his sister-in-law, Easwari (A-3). According to the appellants, from the entire material available on record, by no stretch of imagination, an offence under Section 306 I.P.C. was made out against the appellants and the impugned judgment of the High Court is contrary to the law as has been laid down by this court in a series of judgments.

15. According to the appellants, the High Court in the impugned judgment has seriously erred in not quashing the charge under Section 306 I.P.C. despite the fact that there is absolutely no material on record to proceed against the appellants either for cruelty or for dowry harassment.

16. The appellants contended that the learned Single Judge, after examining the F.I.R., R.D.O. report and Statements of the Witnesses under Section 161 Cr.P.C. found that there were no allegations against the appellants herein from the inception either by the complainant or by the mother of the deceased and has further held that there was no element of dowry related harassment and/or any cruelty meted out to the deceased by her sister-in-law or for that matter by any of the accused. In view of the above categorical findings, the learned Single Judge quashed the charges under Sections 304-B and 498-A I.P.C. However, the learned Single Judge failed to appreciate that on the basis of the material available on record and in the absence of any allegation, if no offence is made out against the appellants under Sections 304-B and 498-A, then the appellants cannot be convicted under Section 306 I.P.C. It is stated that to attract the provisions of Section 306 I.P.C., the allegations as to the existence of cruelty, dowry harassment and abetment to suicide are all integrated. In absence of any allegations under Sections 498-A and 304-B I.P.C. provisions of Section 306 I.P.C. cannot be attracted.

17. The appellants submitted that this Court in the case of Gangula Mohan Reddy V. State of Andhra Pradesh one of us, Dalveer Bhandari, J. was the author of the judgment), reported in (2010)(1) SCC 750, while interpreting Section 306 I.P.C. held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 I.P.C. there has to be a clear mens rea to commit the offence. It is further stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true and the finding of the High Court that there are no elements of cruelty or dowry related harassment and that the witnesses have improved upon their earlier statements is ignored, then also Section 306 I.P.C.. is not attracted in the facts of the present case.

18. According to the appellants, the present case is a fit case wherein the charges under Section 306 I.P.C. are liable to be quashed for the following sequence of events and reasons:

"On 06.09.2002, Kamatchi, (the deceased in the case) got married to Anandaraj (A-1). After the marriage they lived with two other brothers of the AI and the parent in laws jointly. Deceased is stated to have had cordial relations with every member of the family.

On 7.1.2003, Anandaraj (A-1) and Kamatchi were blessed with one female child. The child was christened as Nithyasree.

On 14.1.2005, the entire family decided to go to 'Adisayam' a Theme park at Madurai to celebrate and enjoy the Pongal Holidays. Kamatchi was prevented from travelling in a Qualis car by Easwari (A-3) and is alleged to have taunted Kamatchi, "if you want to travel by a car please get a car from your parents". Thereafter, leaving Anandaraj, Kamatchi and their child, they proceeded to Madurai to visit the Theme Park 'Adisayam' by a Qualis car.

Anandaraj and his family also proceeded to Madurai to visit the Theme Park and after their visit they returned to their native Karaikudi. Both to and fro, the family traveled by bus.

On 18.01.2005 at about 1.30 p.m. Kamatchi committed suicide at her matrimonial home, using her sari to hang herself.

At about 5.00 p.m. Mr.Duraipandi Nadar, the father of the deceased Kamatchi lodged a complaint before Karaikudi South Police Station. It is the specific allegation in the complaint that A1 and A3 alone are the cause of the suicide of his daughter.

The Sub Inspector of Police, Under Section 174 of Cr.P.C. Registered the said complaint by assigning Cr.No.13/2005.

At about 6.00 p.m. R.D.O. conducted an enquiry and prepared and Mahazar and seized the diary of the deceased, a letter and the sari which was used by her commit suicide.

D.S.P. Karaikudi, examined S.V.Duraipandi, the father of the deceased (L.W.1) and recorded his statement. D.S.P. Karaikudi examined Mrs.Tamil Selvi, the mother of the deceased (L.W.2).

On 19.01.2005 alteration report filed by the D.S.P. under Section 306 and 498 A IPC against A-1 and A-3 alone.

On 3.2.2005 RDO who commenced enquiry from the date of incident itself and examined the records and the statements of various witnesses. He filed a report with a recommendation from the D.S.P. to conduct further investigation to determine the real reasons for the suicide with a specific finding that the suicide death is not due to any dowry harassment. R.D.O. has also recorded the statement of the de facto complainant and the mother of the deceased to the effect that the deceased was having a very cordial relationship with every one in the family including the husband except the A-3 the second daughter in law".

19. All these facts would clearly show and demonstrate that neither at the time of inquest nor during the R.D.O. enquiry or at the time of the complaint by the complainant, who is also the father of the deceased, any allegation was attributed against the appellants and, on the contrary, it was the case of the complainant that allegedly Easwari (A-3) alone was responsible for the suicide of the deceased and this formed the basis of the learned Single Judge to come to the conclusion that Sections 304-B and 498-A-I.P.C. are not attracted.

20. The appellants submitted that there is no allegation against the appellants Velmurugan and Anna Lakshmi, who are arrayed as Accused 4 and 5 respectively in the final report either at the time of lodging of the complaint and registration of FIR or at the time of inquest enquiry or even in the

statements before the R.D.O. On the contrary the complainant has alleged that it is only Easwari (A-3) who is the cause of the suicide. It may be relevant to extract certain portions of the F.I.R., R.D.O. Report and the Alteration Report filed by the respondent.

21. In the R.D.O. Report dated 3.2.2005, the following statement of the complainant is extracted :

"My son-in-law Thiru M.Anandraj is running a provision shop at Karaikudi of his own. In that his brother Mohan is also having a share. My son-in-law looked after my daughter in good manner. All of them in their house treated my daughter in a good way. He informed that Smt.Eswari, wife of Mohan alone used to quarrel with my daughter often. Due to her torture alone my daughter might have hanged herself and committed suicide. In the death, apart from Smt.Eswari, he informed that no other is having any part. He has also stated that there is no dowry harassment in the death. (emphasis added)"

22. Again in the said Report the R.D.O. concludes as under :

"From the inquest it can be found that the death did not happen due to dowry harassment. The reason is that even the father and mother of the deceased girl said the death has not happened due to dowry harassment. Therefore, I inform that the death is not caused due to dowry harassment. Further, the father and mother of the deceased girl said that the death is caused due to the torture of Smt.Easwari. Therefore, the police may take up the case for investigation and on proper investigation the cause for the death may be found out."

23. Again in the Alteration Report by 'D.S.P.', the following is recorded :

"It is found that the deceased Kamatchi committed suicide only due to the harassment by her husband Anandaraj and his elder brother's wife Eswari often demanding car as dowry from her parents."

24. Again in the F.I.R. the only allegation is that:

"My son-in-law Anandraj and Easwari, wife of Mohan have abetted my daughter Kamatchi to commit suicide. They are responsible for my daughter's death. Therefore, I request that action may be taken against Anandaraj and Easwari alone for the death of my daughter."

25. The appellants also submitted that the entire case of the prosecution does not reveal even remote connection of the appellants with the commission of an offence punishable under Section 306 I.P.C.

26. The case of the prosecution is that on 14th January,2005, the deceased wanted to use the family car to go to the Theme Park at Madurai from Karaikudi along with other family members but she was denied the permission to use the car. At that juncture Easwari (A-3) taunted the deceased that if



she wanted to go around in a car, she has to get a car from her parents. These words deeply hurt the deceased and she had committed suicide on 18th January, 2005 at 1.30 p.m. at her matrimonial home.

27. The appellants submitted that even if the prosecution story that she was denied permission to use the car on 14th January, 2005 and the suicide had taken place on 18th January, 2005 is believed, it cannot be said that the suicide by the deceased was the direct result of the expressions exchanged between the deceased and Easwari (A-3) on 14th January, 2005. Viewed from the aforesaid circumstances independently, still the ingredients of the "abetment"

are totally absent in the case at hand. In these facts and circumstances, to compel the appellants to face the rigmarole of a trial would be an abuse of law.

28. The appellants also submitted that there is no material on record to proceed against the appellants for an offence punishable under Section 306 I.P.C. No conviction can be recorded in absence of legal evidence. According to the appellants, any further proceeding in this case will be an abuse of the process. According to them, this is a fit case warranting interference by this Court.

29. The appellants contended that the genesis of the prosecution is on the basis of the complaint preferred by the father of the deceased Kamatchi. He had categorically stated that his daughter had committed suicide due to the taunts of Easwari (A-3).

According to the complainant, his son-in-law, Anandraj (A-1) and the said Easwari (A-3) alone were responsible for the death of his daughter.

30. The appellants also contended that in pursuance to that complaint, the R.D.O. held an inquest by examining few witnesses including the father, the mother and the brother-in-law (sister's husband) of the deceased and others. In their statements, none of them had stated any dowry harassment against the accused or any other member of the family of the accused. On the contrary, they have categorically stated that there was no dowry harassment suffered by the deceased in her in-law's house. Thus, the requirement to bring home the ingredient of the offence Under Section 304-B I.P.C., namely, the 'dowry' demand as found by the learned Single Judge was absent in the prosecution case. They contended that the High Court has held that no allegation of cruelty against the appellants were found from the very inception and the charge under Section 498-A was liable to be quashed. In this background, by no stretch of imagination, the appellants can ever be convicted under Section 306 IPC.

31. The appellants submitted that the summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence, both oral and documentary, in support thereof and would that be sufficient for the complainant to succeed in bringing home the charge against the

accused? It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before the summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to point out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

32. The appellants submitted that the prosecution must produce evidence before the Court, which is capable of being converted into legal evidence after the charges are framed. In this case admittedly, there is no legal evidence connecting the appellants with any crime, much less the offences alleged, as the materials are not capable of being converted into legal evidence. Hence, in the absence of any material which can be converted into legal evidence, the proceedings as against the appellants under Section 306 IPC are also liable to be quashed.

33. The appellants has placed reliance on a judgment of this Court in Mahendra Singh & Another v. State of M.P. 1995 Supp. (3) SCC 731. In this case the allegations levelled were 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."

34. This Court while acquitting the appellant observed that neither of the ingredients of abetment are attracted on the statement of the deceased.

35. In the instant case, what to talk of existence of instances or illustrations of instigation, there are no specific allegations levelled against the appellants. On a careful perusal of the entire material on record, no offence under Section 306 IPC can be made out against the appellants, in view of our clear and definite finding that there is no material whatsoever against the appellants much less positive act on the part of the appellants to instigate or aid in committing the suicide.

36. The main substantial questions of law which arise in this appeal are whether the conviction of the appellants under Section 306 I.P.C. is sustainable and whether in the facts and circumstances of this case, the High Court was justified in not quashing the proceedings against the appellants under its inherent powers.

37. We would like to deal with the concept of 'abetment'. Section 306 of the Code deals with 'abetment of suicide' 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."

38. The word 'suicide' in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. 'Sui' means 'self' and 'cide' means 'killing',

thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

39. In our country, while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under section 309 of I.P.C.

40. 'Abetment of a thing' has been defined under section 107 of the Code. We deem it appropriate to reproduce section 107, which reads as under:

"107. Abetment of a thing - A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly - Intentionally aides, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with section 107 reads as under:

"Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

41. Learned counsel also placed reliance on yet another judgment of this court in Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618, in which a three-Judge Bench of this court had an occasion to deal with the case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. This Court in paragraph 20 has examined different shades of the meaning of "instigation". Para 20 reads as under:

"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."

42. 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 accused-appellant having abetted commission of suicide by Seema (appellant's wife therein) may necessarily be drawn.

43. In *State of West Bengal v. Orilal Jaiswal & Another* (1994) 1 SCC 73, 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 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.

44. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009 (16) SCC 605, had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goadings". 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 straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

45. 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.

46. 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.

47. In *V.P. Shrivastava v. Indian Explosives Limited and Others* (2010) 10 SCC 361, this court has held that when prima facie no case is made out against the accused, then the High Court ought to have exercised the jurisdiction under section 482 of the Cr.P.C. and quashed the complaint.

48. In a recent judgment of this Court in the case of *Madan Mohan Singh v. State of Gujarat and Anr.* (2010) 8 SCC 628, this Court quashed the conviction under Section 306 IPC on the ground that the allegations were irrelevant and baseless and observed that the High Court was in error in not quashing the proceedings.

49. In the instant case, what to talk of instances of instigation, there are even no allegations against the appellants. There is also no proximate link between the incident of 14.1.2005 when the deceased was denied permission to use the Qualis car with the factum of suicide which had taken place on 18.1.2005.

50. Undoubtedly, the deceased had died because of hanging.

The deceased was undoubtedly hyper-sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question remains to be answered is whether the appellants can be connected with that unfortunate incident in any manner?

51. On a careful perusal of the entire material on record and the law, which has been declared by this Court, we can safely arrive at the conclusion that the appellants are not even remotely connected with the offence under Section 306 of the I.P.C.. It may be relevant to mention that criminal proceedings against husband of the deceased Anandraj (A-1) and Easwari (A-3) are pending adjudication.

52. Next question which arises in this case is that in view of the settled legal position whether the High Court ought to have quashed the proceedings under its inherent power under Section 482 of the Criminal Procedure Code in the facts and circumstances of this case?

53. This Court had an occasion to examine the legal position in a large number of cases. In R.P. Kapur v. State of Punjab AIR 1960 SC 866, this Court summarized some categories of cases where the High Court in its inherent power can and should exercise to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

54. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, according to the court, the process against the accused can be quashed or set aside :

- "(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

55. This court in *State of Karnataka v. L. Muniswamy & Others* (1977) 2 SCC 699, observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

56. In *Madhu Limaye v. The State of Maharashtra* (1977) 4 SCC 551, a three-Judge Bench of this court held as under:-

".....In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible."

57. This court in *Madhavrao Jiwajirao Scindia & Others v.*

*Sambhajirao Chandrojirao Angre & Others* (1988) 1 SCC 692, observed in para 7 as under:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary

stage."

58. In *Janta Dal v. H.S. Chowdhary and Others* (1992) 4 SCC 305 the court observed as under :

"131. Section 482 which corresponds to Section 561-A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "Quod lex alicui concedit, concedere videtur id sine quo ipsa, esse non potest" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

59. In *Emperor v. Khwaja Nazir Ahmad* AIR 1945 PC 18 and *Lala Jairam Das v. Emperor* AIR 1945 PC 94 the Judicial Committee has taken the view that Section 561-A of the old Code which is equivalent to Section 482 of the Cr.P.C. gave no new powers but only provided that already inherently possessed should be preserved. This view holds the field till date.

60. In *Dr Raghubir Sharan v. State of Bihar* (1964) 2 SCR 336, this court observed as under

"... [E]very High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice .... Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers ...."

61. In the said case, the court also observed that the inherent powers can be exercised under this section by the High Court (1) to give effect to any order passed under the Code; (2) to prevent abuse of the process of the court; (3) otherwise to secure the ends of justice.

62. In *Connelly v. Director of Public Prosecutions* 1964 AC 1254, Lord Ried at page 1296 expressed his view "there must always be a residual discretion to prevent anything which savours of abuse of process" with which view all the members of the House of Lords agreed but differed as to whether this entitled a Court to stay a lawful prosecution.

63. In *Kurukshetra University and Another v. State of Haryana and Another* (1977) 4 SCC 451, this court observed as under:

"Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Thus, the High Court in exercise of inherent powers under Section 482, Criminal Procedure Code cannot quash a first information report more so when the police had not even commenced the investigation and no proceeding at all is pending in any Court in pursuance of the said FIR."

64. In *State of Haryana & Others v. Bhajan Lal & Others* reported in (1992) Suppl.1 SCC p.335, this court had an occasion to examine the scope of the inherent power of the High Court in interfering with the investigation of an offence by the police and laid down the following rule: [SCC pp. 364-65, para 60: SCC (Cri) p.

456, para 60].

"The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution."

65. In *State of Haryana & Others v. Bhajan Lal & Others* (supra), this court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

66. In *G. Sagar Suri & Another v. State of UP & Others* (2000) 2 SCC 636, this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil in nature.

67. In *State of A.P. v. Golconda Linga Swamy and Another* (2004) 6 SCC 522, this court observed as under:-

"Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent

jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid aliunde concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

68. This court in *Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another* (2005) 1 SCC 122, observed thus:-

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

69. In *Devendra and Others v. State of Uttar Pradesh and Another* (2009) 7 SCC 495, this court observed as under:-

"There is no dispute with regard to the aforementioned propositions of law. However, it is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing."

70. In *State of A.P. v. Gourishetty Mahesh and Others* 2010 (11) SCC 226, this court observed that the power under section 482 of the Code of Criminal Procedure is wide and they require care and caution in its exercise. The interference must be on sound principle and the inherent power should not be exercised to stifle the legitimate prosecution. The court further observed that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is up to the High Court to quash the same in exercise of its inherent power under section 482 of the Code.

71. In the light of the settled legal position, in our considered opinion, the High Court was not justified in rejecting the petition filed by the appellants under Section 482 of the Cr.P.C. for quashing the charges under Section 306 I.P.C. against them. The High Court ought to have quashed the proceedings so that the appellants who were not remotely connected with the offence under Section 306 I.P.C. should not have been compelled to face the rigmaroles of a criminal trial.

72. As a result, the charges under Section 306 I.P.C. against the appellants are quashed.

73. Consequently, the impugned judgment is set aside and the appeal arising out of Special Leave Petition (Crl.) No. 2687 of 2010 filed by the appellants is allowed and disposed of.

Crl. Appeal No. 611 of 2011 (arising out of SLP Crl.) No. 2550/2010)

74. In view of the decision in Criminal Appeal arising out of Special Leave Petition (Crl.) No. 2687 of 2010, this appeal is also allowed and disposed of.

.....J (DALVEER BHANDARI) .....J (SURINDER SINGH NIJJAR) New Delhi;

March 1, 2011