

GAHC010058942024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.Rev.P./113/2024

KANGKAN DAS
S/O BIJOY DAS
R/O VILL- BAMUNPARA
P.O. SATHISAMUKA UNDER PATACHARAKUCHI POLICE STATION,
IN THE DISTRICT OF BAJALI, ASSAM, PIN-781355

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI DIPAK KAKOTI
S/O LATE BISHESWAR KAKOTI
R/O VILL- NIZ SATHISAMUKA
P.O. SATHISAMUKA
UNDER PATACHARAKUCHI POLICE STATION
IN THE DISTRICT OF BAJALI
ASSAM
PIN-78135

Advocate for the Petitioner : MR D K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

18-07-2024

Heard Mr. D.K. Bhattacharyya, learned Counsel for the petitioner and also heard Mr. P.S. Lahkar, learned Addl. P.P. for the State respondent No.1.

Also heard Mr. T. Deowri and Mr. D.S. Deka, learned counsel for respondent No. 2.

2. In this petition, under Section 397 read with Section 401 Cr.P.C., the petitioner, namely, Shri Kankan Das, has put to challenge the legality, propriety and correctness of the order, dated 03.02.2024, passed by the learned Sessions Judge, Bajali and also for quashing the entire proceeding of Sessions Case No. 39/2023, pending before the said court. It is to be noted here that vide impugned order, dated 03.02.2024, the learned Sessions Judge, Bajali had framed charge against the petitioner under Section 306 IPC.

3. The background facts, leading to filing of the present revision petition are adumbrated herein below:-

“Shri Dipak Kakati, the respondent No.2, is an inhabitant of Niz-Sathi Samuka village, under Patacharkuchi P.S. Smti. ‘X’ (Name withheld) was his daughter, who had committed suicide on 06.01.2020, at about 12 O’clock at noon, by hanging from a ceiling fan with one ‘gamocha’. His daughter used to talk with Kankan Das, the present petitioner, from her mobile No. 9101785391 to his mobile No. 9678021266 and his family members were acquainted with the said fact. Therefore, he suspects that Kankan Das is the cause of death of his daughter, who used to talk with his daughter and also sent messages threatening her, prior to the occurrence. Stating inter-alia amongst others, the respondent No. 2, then lodged one FIR with the Officer-in-Charge, Patacharkuchi Police Station on 06.01.2020.

Upon the said FIR the Officer-in- Charge, Patacharkuchi P.S. registered a case, being Patacharkuchi P.S. Case No. 15/2020, under

Section 306 IPC and endorsed women Sub-Inspector (W.S.I.) of Police, namely, Smti. Karpunpuli Doley, to investigate the same. The Investigating Officer (I.O.) then visited the place of occurrence (P.O.), examined the witnesses and prepared sketch map of the P.O. and held inquest on the dead body of the deceased and collected the report and also sent the dead body for autopsy and collected the report. The I.O. also seized the mobile phone of the petitioner with SIM Card No. 9678021266, preparing seizure list. The I.O. also seized one mobile hand set of the deceased with SIM Card No. 9101785391. Thereafter, on completion of investigation, the I.O. had laid charge sheet against the present petitioner, under Section 306 IPC, having found out a prima facie case against him, under the said section of law, before the court of learned Chief Judicial Magistrate, Bajali. The learned Chief Judicial Magistrate, Bajali then committed the case to the court of learned Sessions Judge, Bajali after complying with the provision of Section 207 Cr.P.C., as the offence is triable, exclusively, by the court of Sessions.

Thereafter, the learned Sessions Judge, Bajali, after hearing learned Advocates of both sides, had framed charge under Section 306 IPC against the present petitioner vide impugned order dated 03.02.2024, which is read as under:-

03.02.2024

Accused Kankan Das is present. Heard Learned P.P. (I/C) and Learned counsel for the accused on the point of framing of charge.

Considering the submission and on perusal of the

case record and material furnished by the I/O under section 173 Cr.P.C. it appears that there are grounds for presuming that accused Kankan Das has committed the offence under section 306 IPC.

Accordingly, the charge u/s 306 IPC against the accused Kankan Das is framed. The charge so framed is read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

Accordingly, issue summons to the prosecution witnesses. The prosecution side is to take steps immediately.

Fix:- 26/04/2024 for evidence

Sd/

Sessions

Judge, Bajali, Pathsala”

4. Being highly aggrieved by the said order, dated 03.02.2024, of the learned Sessions Judge, Bajali, the petitioner has approached this court by filing the present petition for quashing and setting aside the impugned order on the following grounds:-

I. That, the Learned Trial Court had framed charges against the petitioner under Section 306 I.P.C. without considering the materials available on record;

II. That, the Learned Trial Court had failed to apply its judicious mind while passing the impugned order dated 03.02.2024,

ignoring the fact that no offense, whatsoever, has been made out against the petitioner;

III. That, the learned Trial Court had passed the impugned order based on unfounded consideration and without proper appreciation of the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, which has resulted in total failure of justice;

IV. That, there being absolutely no materials available on record, the learned trial court exceeded its jurisdiction to go beyond the charge-sheet and to frame a charge against the Petitioner under Section 306 IPC;

V. That, the learned trial court had ignored the essential ingredients of Section 306 IPC, wherein, there should be prima facie materials on record to indicate that it was the accused who had forced/compelled/instigated the deceased to commit suicide;

VI. That, the learned trial court had failed to consider the vital aspect that to attract the provisions of Section 306 I.P.C., the pre-requisite ingredients of abetment as defined under Section 107 I.P.C. ought to be fulfilled and in the present case, there is no materials on record to show that either the petitioner had instigated the deceased to commit suicide or he had intentionally aided her in doing the same; but, no such materials were brought on record by the prosecution while submitting the charge sheet against the petitioner;

VII. That, there was no materials on record to show that the petitioner was talking with the deceased over the phone just before she committed suicide as no CDR of either the petitioner or of the deceased girl was collected although the F.I.R. clearly mentions both the phone numbers of the petitioner and of the deceased. In the absence of such vital documents which could have indicated if at all the petitioner was talking over the phone with the deceased in such a close proximity to compel her to take the drastic steps;

VIII. That, although the mother of the deceased girl stated that various photos and videos of the petitioner and deceased were made viral, the I.O. had not brought any such materials to substantiate such claim. Though the mobile phones of the deceased girl and the petitioner were seized, no FSL report as to its contents and use thereof were submitted, which indicates the absence of materials on record to substantiate the claim of abetment by the petitioner;

XII. That, the impugned order and the proceeding thereof amounts to abuse of the process of law;

5. Mr. Bhattacharyya, learned counsel for the petitioner, besides reiterating the points mentioned herein above, also submits that the impugned order of framing of charge against the present petitioner is an abuse of the process of the law as there are no materials to frame charge against the petitioner under

Section 306 IPC. Mr. Bhattacharyya further submits that in order to establish the charge under Section 306 IPC the prosecution side has to establish the ingredients of Section 107 IPC, but, from the materials collected in the charge sheet, it cannot be said that the prosecution side has succeeded in establishing the same. Mr. Bhattacharyya further submits that the I.O. had not collected the call details record (CDR) of the mobiles of the petitioner and the deceased to substantiate that the petitioner was talking with the deceased before commission of suicide by the deceased. Besides, the learned counsel for the petitioner submits that there is no material to show that the petitioner had instigated the deceased to take such step. Therefore, the learned counsel for the petitioner has contended to invoke the supervisory jurisdiction of this court and to set aside the impugned order as well as the entire proceeding.

5.1. To a pointed query of this court that the petition, having not been filed under Article 227 of the Constitution of India, which confers supervisory power to the High Court, how this court can exercise the supervisory jurisdiction, the learned counsel for the petitioner, referring two case laws:-

(i) *State of Kerela vs. Puttumanaillath Jathavedan Namboodiri reported in (1999) 2 SCC 452;*

(ii) *Ramakrishna Singh And Others vs. Ambika Yadav And Another reported in (2004) 7 SCC 665;*

The learned counsel for the petitioner submits that the jurisdiction under Sections 397 to 401 Cr.P.C. are a group of sections conferring higher and superior courts a sort of supervisory jurisdiction.

5.2. The learned counsel for the petitioner has referred following case laws in support of his submission:-

(i) *Ramesh Kumar vs. State of Chhattisgarh reported in (2001) 9 SCC 618;*

(ii) *V.P. Singh etc. vs. State of Punjab and Others reported in 2022 SCC Online SC 1999;*

(iii) *State of West Bengal vs. Indrajit Kundu and Others reported in (2019) 10 SCC 188;*

(iv) *S.S. Chheena vs. Vijay Kumar Mahajan and Another reported in (2010) 12 SCC 190;*

(v) *Madhu Limaye vs. The State of Maharashtra reported in (1977) 4 SCC 551;*

(vi) *M.E. Shivalingamurthy vs. Central Bureau of Investigation reported in (2020) 2 SCC 768;*

(vii) *Shabbir Hussain vs. The State of Madhya Pradesh and Ors. Special Leave to Appeal (Crl.) No(S). 7284/2017;*

(viii) *Vikramjit Kakati vs. State of Assam, reported in 2022 SCC Online SC 967;*

6. Per contra, Mr. P.S. Lahkar, the learned Addl. P.P. has supported the impugned order, so passed by the learned trial court. Mr. Lahkar submits that existence of a strong prima-facie case is the requirement for framing charge in terms of Section 228 Cr.P.C. Mr. Lahkar further submits that in the case in hand, there are sufficient materials and even CDR was also there, but, the same were not enclosed with the charge sheet. Mr. Lahkar also submits that the impugned order suffers from no infirmity or illegality, and therefore, Mr. Lahkar contended to dismiss this petition. Mr. Lahkar has referred following case law in support of his submission:-

(i) *Ashok Debverma Alias Achak Debarma vs. State of Tripura, reported in (2014) 4 SCC 747*

7. On the other hand Mr. T. Deori, the learned counsel for the respondent No.2, submits that the learned trial court had rightly framed charge against the petitioner under Section 306 IPC. Referring to a decision of Hon'ble Supreme Court in ***Amit Kapoor vs. Ramesh Chander and Another, reported in (2012) 9 SCC 460***; Mr. Deori submits that at the initial stage of framing of a charge, the court is concerned not with proof, but, with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove his guilt, and all that the court has to see at that stage is that the material on record and the facts would be compatible with the innocence of the accused or not. Mr. Deori also submits that there was positive act on the part of the petitioner as he was talking with the deceased before her commission of suicide and that there are also materials to suggest that various photos and video of the petitioner and the deceased was made viral and unless veracity of such materials are tested in cross-examination, it cannot be said that there is no

prima-facie materials to frame charge against the petitioner and it is premature to arrive at a conclusion that there are no material against the petitioner. Mr. Deori also submits that the learned trial court, having considered all the materials, had framed charge against the petitioner and that no case is made out for quashing of the entire proceeding. Therefore, it is contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the record of the learned trial court and also gone through the case laws referred by learned Advocates of both sides.

9. It appears that though the present petition is filed under Section 397 read with Section 401 Cr.P.C., challenging the legality, propriety and correctness of the order, dated 03.02.2024, passed by the learned Sessions Judge, Bajali, yet, another prayer is also being made for quashing the entire proceeding of Sessions Case No. 39/2023, pending before the said court. However, this petition is not preferred under Section 482 Cr.P.C., to invoke inherent power of this court to quash the entire proceeding. Even then this court would examine the issue, notwithstanding absence of the section in the petition, as the prayer is being made.

10. That being so, it would be appropriate to discuss the scope of jurisdiction under Sections [397](#) and [482](#) of the Code and the jurisdictional distinction.

SCOPE OF JURISDICTION UNDER SECTIONS 397 AND 482 CR.P.C.

11. In catena of decisions of Hon'ble Supreme Court had deliberated upon this

issue. In the case of *Amit Kapoor* (*supra*), having discussed the scope of jurisdiction under Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, enlisted the principles with reference to which the courts should exercise such jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

- 1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
- 2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
- 3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing

of charge.

- 4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.
- 5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.
- 6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.
- 7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.
- 8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a ‘civil wrong’ with no ‘element of criminality’ and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

- 9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
- 10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.
- 11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.
- 12) In exercise of its jurisdiction under **Section 228** and/or under **Section 482**, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.
- 13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined

to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14) Where the charge-sheet, report under **Section 173(2)** of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

12. What can be crystallized from the aforesaid discussion is that the power of quashing criminal proceedings, particularly, the charge framed in terms of **Section 228** of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The test to be applied at that stage is whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. Meticulous examination of the evidence is not needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Court cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is

concerned primarily with the allegations taken as a whole whether they will constitute an offence or not. It is the duty of the courts to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender. The Court would not embark upon the critical analysis of the evidence at that stage.

13. Also it can be crystallized that the process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose. Where it is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. The courts may also interfere where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14. As the main grievance of the petitioner herein this case is framing of charge against him under Section 306 IPC by the learned trial court, vide

impugned order dated 03.02.2024, this court deemed it also necessary to understand the law, regarding framing of charge, as has been laid down by the Hon'ble Supreme Court in catena of decisions.

THE LAW REGARDING FRAMMING OF CHARGE:-

15. The lead case in this regard is *Union of India vs. Prafulla Kumar Samal & Anr.*, reported in (1979) 3 SCC 4, wherein the Hon'ble Supreme Court held that:-

"7. Section 227 of the Code runs thus:-

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing

of evidence and probabilities, which is really his function after the trial starts. At the stage of section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

16. In the case of *Niranjan Singh Karam Singh Punjabi vs. J. Bhimraj Bijja*, reported in AIR 1990 SC 1962, Hon’ble Supreme Court, after considering its earlier case law on the subject has stated as under:-

- “(1) That the Judge while considering the question of framing the charges under Section 227 of the code has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
- (2) Whether the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the

trial.

(3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion, but not grave suspicion against the accused he will be fully within his rights to discharge the accused.

(4) That in exercise his jurisdiction u/s 227 of the code the Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouth-piece of the prosecution, but has to consider the broad possibilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting the trial.

17. Again in the case of *Superintendent and Remembrancer of Legal affairs, West Bengal vs. Anil Kumar Bhunja*, reported in (1979) 4 SSC 247 Hon'ble Supreme Court observed in paragraph 18 of the judgment as under:

"The standard of test, proof and judgment which is

to be applied finally before finding, the accused guilty or otherwise is not exactly to be applied at the stage of Section 227 or 228 of the Criminal Procedure, 1973. At this stage, even a very strong suspicion found upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify in respect of the commission of that offence.”

18. In a later decision, in the case of *State of Maharashtra vs. Somnath Thapa*, reported in AIR 1996 SC 1744, the Hon’ble Supreme Court was of the view that:-

“If there is a ground for assuming that the accused has committed the offence, that Court can justifiably say that the prima facie case against him exist and frame charge against him for doing that offence.”

18.1. It was further observed that:-

“The aforesaid show that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is

required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into the materials brought on record by the prosecution has to be accepted as true at that state.”

19. In the case of *State of West Bengal -vs.- Mohd. Khalid & Anr.*, reported in (1995) 1 SCC 684, Hon’ble Supreme Court quoted with approval its observation in *Stree Atyachar Virodhi Parishad case*, reported in (1989) 1 SCC, 715, held that while considering the question of framing of charge, the Court has to see as to whether materials brought on record reasonably connects the accused with the crime. No more is required to be enquired into.

20. In the case of *State of Delhi vs. Gyan Devi and Others*, reported in (2002) 8 SCC 239 Hon’ble Supreme Court reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. In the case of *State of Madhya Pradesh vs. S.B. Johari*, reported in (2002) 2 SSC 57 it was held that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial.

21. In the case of *State of Maharashtra vs. Priya Sharan Maharaj and Others*, reported in (1997) 4 SSC 393, it was held that at Sections 227 and 228 stage the Court is required to evaluate the materials and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense of the broad probabilities of the case.

22. In the case of *State of Orissa vs. Debendra Nath Padhi*, on 29.11.2004, in Appeal (Crl.) No. 497 of 2001, a three judge bench of Hon'ble Supreme Court has held that-

“All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated yet it is implicit in the decisions. It seems to

have not been specifically so stated as it was taken to be well settled proposition."

23. Again in the case of *Sajjan Kumar vs. Central Bureau of Investigation*, reported in (2010) 9 SCC 368, Hon'ble Supreme Court having taken into account various cases decided earlier on the subject of framing of charge has summarized the principle which are to be kept in mind by the Court at the stage of framing of charge for discharge of accused under Sections 227 and 228 of the Cr.P.C.

"(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this

stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of **Sections 227 and 228**, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives

rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

23.1. It is also held that:-

- a. It is clear that at the initial stage if there is a strong suspicion which led the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused;
- b. If the evidence which the prosecution possess to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross examination or reverted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

24. In the case of *M.E. Shivalingamurthy v. CBI*, reported in (2020) 2 SCC 768, so referred by learned counsel for the petitioner, Hon'ble Supreme Court has enunciated the legal principle in respect of discharge as under:-

17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

24.1. It is further held in para No.18 as under:-

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J & K v. Sudershan Chakkar reported in (1995) 4 SCC 181. The expression, “the record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of

the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi reported in (2005) 1 SCC 568

25. Thus, what can be crystallized from the aforesaid discussion is that the requirement of law, while framing charges, are not the concrete evidences. The requirement is the *prima facie* case. If there is a strong suspicion, which led the Court to think that there is ground for presuming that the accused has committed an offence, then the court can frame charge against the accused. If the evidence, which the prosecution side posses to adduce, proves the guilt of the accused, even if fully accepted before it is challenged in cross examination or reverted by the defence evidence, if any, cannot show that the accused committed the particular offence, then there would be no sufficient ground for proceeding with the trial and the court can discharge the accused.

26. As the petitioner has challenged the order of framing charge against him under Section 306 IPC, now, let it be seen the legal requirement of the said section.

LAW REGARDING OFFENCE UNDER SECTION 306 IPC:-

27. While dealing with the requirement of Section 306 IPC Hon'ble Supreme Court in *Chitresh Kumar Chopra v. State (NCT of Delhi)*, reported in (2009) 16 SCC 605, has held that where the accused, by his acts or by a continued course of conduct, creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be

inferred. To draw the inference of instigation it all depends on facts and circumstances of the case: whether the acts committed by the accused will constitute direct or indirect act of incitement to the commission of suicide is a matter which is required to be considered in the facts and circumstances of each case. As such we are of the view that the judgments relied on by the learned counsel for the State would not assist in supporting his arguments.

28. In the case of *Indrajit Kundu (supra)* Hon'ble Supreme Court has held that calling the deceased by the respondents' No. 2 and 3, who were father and mother-in-law of the deceased, as call girl and remaining silent on the part of respondent No.1, her husband, on such utterance, and the suicide committed by the victim cannot be said to be the result of any action on the part of the respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide.

29. In the case of *Ramesh Kumar v. State of Chhattisgarh, reported in (2001) 9 SCC 618* Hon'ble Supreme Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word "instigation", it is held in para 20 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.”

30. In the case of *S.S. Chheena v. Vijay Kumar Mahajan*, reported in (2010) 12 SCC 190, while dealing with abatement, Hon’ble Supreme Court has held as under:-

“24. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay

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

30.1. Again in para No. 25, Hon'ble Supreme Court has held 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.

31. Again in the case of *V.P. Singh etc. vs. State of Punjab and Others*, reported in 2022 SCC OnLine SC 1999, Hon'ble Supreme Court has held as under:-

14. In the conspectus of the different judgments referred to in that case it was opined that the words "instigation" and "gloating" should be

intention to provoke, incite or encourage the doing of an act by the latter. While each person's suicidability pattern is different from others, each person has his own idea of self-esteem and self-respect and therefore it was difficult to lay down any straightjacket formula in dealing with such cases. In this context paragraph 25 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.”

- 32.** In the case of *Ramesh Kumar (supra)* Hon'ble Supreme Court has held 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 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.

33. Thus, from the conspectus of judgments discussed herein above, it becomes apparent that in order to constitute the offence under Section 306 IPC, there must be an abatement that involves mental process of instigating a person or intentionally aiding a person in doing of a thing. There must be an active act or direct act on the part of the accused, 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.

34. Now, adverting to the case in hand, this court find from the scanned copy of the record of the learned trial court that the I.O. had examined as many as 13 witnesses during investigation and cited as many as 15 witnesses, including the Doctor and the Investigating Officer, and also enclosed as many as six documents with the charge sheet. The documents are (i) Sketch Map (ii) One P.M. Report, (iii) Three seizure lists (iv) One dead body challan (v) One inquest report (vi) One bail bond. I have carefully gone through the same. Also I have gone through the FIR and the scanned copy of the record of the learned trial court which also comprises of the Case Diary.

35. That, perusal of the FIR, the Charge Sheet and the P.M. Report and other documents enclosed with the charge sheet as well as statement of the witnesses examined under Section 161 Cr.P.C. reveals following facts and circumstances:-

(i) The deceased was a student of science stream of H.S.
Second year of Patacharkuchi Bidyapeeth;

(ii) She had love affairs with Kankan Das, an ex-student
of the said school;

(iii) During the time of past Laxmi Puja photo and videos
of her and Kankan Das got viral and there was also a
rumour that they were indulged in bad activities in
the School;

(iv) On 05.01.2020, at about 9 am she got up from bed.
Thereafter, her brother found her weeping while

talking over mobile phone at about 11.45 am;

- (v) Her mother, on being reported by her brother, came there and found her weeping saying ‘hello’ --- ‘hello’----;
 - (vi) Her mother then took away her mobile phone and left for taking her bath;
 - (vii) Thereafter, her mother found the door of her room closed and inspite of asking she did not open the door;
 - (viii) Thereafter, her brother peeped into the room with the help of a tool and found her hanging from the ceiling fan;
 - (ix) Her mother then raised alarm and then neighbour came and broke open the door and found her hanging from the ceiling fan. And then her father was informed;
 - (x) While her father had arrived at home, she was brought down and laid on a bed. The matter was reported to police and police arrives at the place of occurrence and held inquest on the dead body and sent the same to post mortem examination;
 - (xi) One Oppo Mobile handset, with SIM No. 9101785391 belonging to the deceased was seized by police in presence of witnesses;
 - (xii) One Redme Mobile handset with sim No. 9678021266

belonging to Kankan Das was seized by police in presence of witnesses;

(xiii) Her family members are of the opinion that she committed suicide on account of being disreputed and severing of relationship with her by Kankan Das;

(xiv) An FIR has been lodged naming the present petitioner Shri Kankan Das, accusing him of being responsible for death of the daughter of the informant, who, had threatened her while talking with her beforehand, and also sent messages to her;

36. It is well settled that critical analysis of the said materials is not permissible. Also the court is not called upon to hold a full fledged enquiry or to appreciate evidence collected by the investigating officer, as held by Hon'ble Supreme Court in the case of *Amit Kapoor (supra)*. Thus, applying the test, as to whether the uncontroverted allegations, as made out from the record of the case and the documents enclosed therewith prima-facie established or not, to the aforementioned facts and circumstances, this court is of the considered view that a strong prima-facie case appears to be made out against the petitioner.

37. In the given factual scenario, this court is unable to record concurrence with the submission of learned counsel for the petitioner that there was no positive act on the part of the petitioner in committing suicide by the deceased. There is material to suggest that prior to committing suicide the deceased was talking with the petitioner. She was weeping while talking with him. It is fact

that the I.O. had not enclosed the CDR analysis of the mobile numbers of the deceased and the petitioner to establish the said fact. The learned counsel for the petitioner has rightly pointed this out. But, the learned Addl. P.P., drawing attention of this court to the record of the learned trial court, submitted that in fact the I.O. had collected the said CDR, but, not enclosed the same with the Charge Sheet. Under these circumstances, this court is of the view that this aspect of the matter will get unravelled only after a full-fledged trial. Whether absence of CDR analysis would lend to acquittal or conviction, this court is not entitled to examine at this stage in view of the decision of Hon'ble Supreme Court in **Amit Kapoor (supra)** and also in the case of **Sajjan Kumar (supra)** at para No. 17.7.

38. Further, there was also an incident of getting viral the photographs and videos of the deceased and the petitioner. Rumour was also there that the deceased and the petitioner were indulged in bad activities in the School. He had severed his relationship with the deceased. He had also threaten her while talking and sent messages to her. At this stage it cannot be said that these acts are not positive act on the part of the petitioner. *Prima facie* these facts appear to be positive act on the part of the petitioner. The accused had, by his continued course of conduct, had created such circumstances, that the deceased was left with no other option except to commit suicide. That being so, as held in the case of **Ramesh Kumar (supra)** in para No.20, an instigation may have been inferred.

39. It is well settled that at the time of framing of the charges, the probative value of these materials cannot be gone into. Thus, it appears from the materials placed on record that the commission of offence by the accused was

possible and there is grave suspicion that he is the cause of death of the deceased, which the mother of the deceased had stated in her statement under Section 161 Cr.P.C.

40. The submission of learned counsel for the petitioner received due consideration of this court. But, in view of the facts and circumstances discussed herein above, this court is unable to record concurrence to the same.

41. I have gone through the decisions of Hon'ble Supreme Court in the case of *Vikramjit Kakati (supra)*, so referred by learned counsel for the petitioner. In the said case the only eye witness to the occurrence had not implicated the petitioner of that case, in her statement under Section 161 as well as under Section 164 Cr.P.C. Besides, the name of the petitioner had not been mentioned in the complaint as perpetrator of the crime. Under such circumstances Hon'ble Supreme Court has allowed the appeal preferred by the petitioner and quashed the charge so framed against him by the learned trial court.

42. In the case of *V.P. Singh (supra)* a student was reprimanded for misconduct in the College and on endeavor to take disciplinary action and call the father, though the parent did not turn up and subsequently, the child committed suicide. Before doing so, he sent an SMS to his brother viz. Mr. Himmat Wahi. The purport of the message, so written, was an intimation that he was jumping into the deep side of the river. He stated that amongst all, he loved his mother the most and wanted his father not to be troubled. On the complaint of the father, an FIR No.62 of 2008 was registered at P.S. Sardar Rupnagar District, Punjab on 29.4.2008, under Section 306 of Indian Penal Code (IPC) on the complaint that the said suicide was instigated by the three

accused i.e. the teacher, the Head of the Department and the Principal. Then examining the factual matrix and also taking note of the legal position, as propounded in the case of *Indrajit Kundu (supra)* and *Ramesh Kumar (supra)* Hon'ble Supreme Court found not an iota of material on record even assuming the complete charge sheet to be correct which could lead to a conviction in a case of abetment as there was absence of the necessary ingredients to make the offence and thereafter, allowed the appeal.

43. In the case of *Shabbir Hussain (supra)* due to certain matrimonial dispute, Roshan Bee, wife of deceased Firoz Khan moved to her parental home, on 10.09.2014. Thereafter, on 22.09.2014, Firoz Khan committed suicide in his house by consuming poison and also left four suicide notes. On filing of a complaint by Shabbir Hussain, brother of the deceased – Firoz Khan, Crime No. 1403/2014, was registered against respondent Nos.2 to 4 under Section 306/34 IPC. After investigation, charge sheet was filed against respondent Nos.2 to 4 and trial commenced against respondent Nos.2 to 4. Thereafter, respondent Nos.2 to 4 preferred a Criminal Revision No.725/2016 under Section 397/401 Cr.P.C. before the High Court of Madhya Pradesh at Indore. The High Court allowed the Criminal Revision filed by respondent Nos.2 to 4, aggrieved by which, the petitioner has preferred a special leave petition before the Hon'ble Supreme Court. Thereafter, Hon'ble Supreme Court has held that the allegations against Respondent Nos. 2 and 4 is that they harassed the deceased. There is no other material on record which indicates abetment. Thereafter, Hon'ble Supreme Court had affirmed the judgment of the High Court by holding that High Court did not commit any error in allowing the Criminal Revision.

44. There is no quarrel at the bar in respect of the proposition of law, so laid

down in the aforementioned cases. However, the background facts of those cases are quite different from the present case. That being so, the ratio laid down therein would not help the petitioner any more.

45. Thus, having examined the impugned order dated 03.02.2024, in the light of the facts and circumstances on the record and also in the light of the ratio laid down in the cases discussed herein above, this court is of the view that the same suffers from no illegality or infirmity requiring interference of this court. It is well settled that the power of quashing the charge framed in terms of Section 228 Cr.P.C., should be exercised very sparingly and with circumspection and that too in rarest of rare cases, as held in the case of *Amit Kapoor (supra)* and also in *Ram Brikash Singh (supra)*.

46. It is to be noted here that in the given fact and circumstances of the record as discussed herein above, no two view is possible. Even for the sake of argument, it is accepted that two views are possible, yet, in exercising revisional jurisdiction, this court cannot substitute its view for that of the trial court as held in the case of *Helper Girdharbhai vs. Saiyed Mohammad Mirsaheb Kadri and Ors.*, reported in AIR 1987 SC 1782.

47. In the result, I find this petition devoid of merit and accordingly the same stands dismissed. The parties have to bear their own cost. Interim order passed earlier, stands recalled.

JUDGE