



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.959 OF 2016  
WITH  
INTERIM APPLICATION NO.2060 OF 2024

Nasirhusen Mohiddin Jamadar .. Applicant

**Versus**

The State of Maharashtra & Anr. .. Respondents

...  
Mr.Ashutosh Kumbhakoni, Senior Advocate i/b  
Mr.A.M.Kulkarni and Mr.Manoj Badgujar for the  
Applicant.

Mr.J.P.Yagnik, A.P.P. for the State/Respondent.

...

**CORAM: BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.**

**DATED : 18<sup>th</sup> NOVEMBER, 2024**

**ORDER (PER BHARATI DANGRE, J.) :-**

1. The present Application filed by the Applicant, seek relief of quashing and setting aside of C.R.No.53 of 2016, registered with Mahatma Gandhi Chowk Police Station, Miraj on 24/06/2016 against the Applicant, invoking Sections 306 and 34 of the Indian Penal Code (“IPC”), on the ground that on taking into consideration the nature of the accusations levelled against him and the law that has evolved around Section 306 of IPC, no case of whatsoever nature is made out against him and, therefore, continuation of the proceedings against him would be nothing short of abuse of process of court.

M.M.Salgaonkar

2. We have heard learned senior counsel Mr.Kumbhakoni alongwith Mr.A.M.Kulkarni and Mr.Manoj Badgujar for the Applicant.

Despite service of notice, none is present on behalf of Respondent No.2.

Respondent No.1 is represented by learned Additional Public Prosecutor Mr.Yagnik.

3. The subject FIR was registered on the complaint filed by Respondent No.2, son of deceased Bhupal Ramu @ Ramchandra Mali, who left his residence on 20/06/2016 and was to return on the next day, but on his failure to return home, a missing complaint was lodged on 21/06/2016. On 22/06/2016, body of Bhupal was found on the boundary of an agricultural land and on search at his residence, a two page note and from the spot, three written chits were seized. These chits/notes were alleged to be suicide notes, which made reference to the Applicant and his brother Jakirhusain Mohiddin Jamadar.

4. The genesis of the note/chit lied in Regular Civil Suit No.384 of 1986 filed between the members of Hingude family at Miraj, seeking partition and separate possession of the suit properties. The suit was decreed vide judgment dated 01/10/1992 and the decree for partition and separate possession was passed.

Regular Civil Appeal No.632 of 1992 was filed against it and though the same was dismissed, decree came to be modified on 8/11/2020 by the Appellate Court.

M.M.Salgaonkar

Final decree proceedings for preparation of final decree, in terms of the preliminary decree for partition was taken out by the decree-holders, by preferring Final Decree Application No.10 of 2004 and the Court Commissioner appointed towards execution of the decree, suggested partition of the suit property in terms of the plan.

5. The brother of the Applicant, Jakirhusain purchased the undivided share allotted to some of the parties to the aforesaid decree, with the consent of the co-sharers vide registered Sale Deed dated 07/12/2010. Worth it to note that the Sale Deed is exclusively in the name of Jakirhusain Mohiddin Jamadar, as the purchaser and member of Hirgude family as the vendors. The Applicant, in no way, is connected with the said transaction.

6. The Executing Court, on 16/07/2015, passed an order acting upon the report of the Court Commissioner for division/partition of the property in terms of the partition decree and on 03/08/2015, the Executing Court, passed an order, directing issuance of possession warrant in terms of the report of the Court Commissioner.

Jakirhusain was impleaded as Decree Holder No.4 in the final decree proceedings and on 08/01/2016, an order was passed by the Executing Court, by issuing possession warrant in terms of the decree and the report of the Court Commissioner in his favour, in the execution proceedings in the Court of Civil Judge, Junior Division, Miraj. The said order

clearly directed handing over of the possession of the piece of land mentioned in City Survey No.6267, which was purchased by Jakirhusain vide registered Sale Deed and the Bailiff was directed to implement the order, by executing the possession warrant.

Being aggrieved by the said order, a writ petition was instituted in this Court (Writ Petition No.12598 of 2015) and by order dated 04/02/2016, this Court confirmed the order of the Executing Court, in particular, the order issuing possession warrant.

In compliance, on 26/04/2016, Jakirhusain was handed over the actual/physical possession of the property purchased by him under the registered Sale Deed and allotted to the share of his vendors, in terms of the execution of partition decree.

7. As far as the Applicant is concerned, he had no role to play in the entire episode, but to continue the narration, when Jakirhusain was handed over the possession of the property, Bhupal Mali, the father of the Complainant, was harassing the two brothers, as he staked his claim in the said portion of the suit property, which was purchased by the brother of the Applicant, with which he had no concern and the entitlement of Jakirhusain was established through the series of orders passed by the competent court, pursuant to which, he came in possession of the said piece of land.

8. Special Civil Suit No.73 of 2014 was filed by some family members of the Complainant in which Jakirhusain alone was

impleaded as a respondent and the Applicant was never a party to the said proceedings. The plaint in the suit came to be rejected on 01/12/2014.

However, the deceased carried a grudge against the family of Jakirhusain and despite recognition of his rights through legally adopted proceedings, he was not ready to accept the verdict.

9. The Applicant, being a law graduate, was engaged in private practice and he shifted to Miraj from Sangli. The Applicant had performed inter-religion marriage against the wishes of his family members and in fact, it is the specific assertion of the Applicant that the relationship with his family members alongwith his brother, Jakirhusain, was severed to such an extent that they were not even on talking terms. In the year 2004, the Applicant got selected in the judicial service and, thereafter, was posted at distinct places and at the time when the subject C.R. is registered, he was serving as Judge, Small Causes Court at Nagpur.

The Applicant had purchased his own house in the year 2011-12 at Sangli, with an intention that he shall be able to reside independent of his family in the same area, where he had his roots.

10. According to the learned senior counsel Mr.Kumbhakoni, the Applicant had no concern with the deceased, Bhupal Mali or the Complainant, as only during his vacations and that too for a brief span, he used to visit Miraj, but he is implicated with

malafide intention and ulterior motive, despite the fact that he has no connect with the property that was subject matter of the litigation or with the persons involved in the Civil Suits, which is the genesis of event, giving rise to the complaint in issue.

The suicide note also only make reference to Jakirhusain Mohiddin Jamadar, where the deceased had written that he was responsible for finishing him and his sacrifice will not go waste and even he will finish him. Near the place where the body of Bhupal was found, it was surrounded by bottles containing poisonous medicine and three chits were found lying. The Complainant, therefore, alleged that Jakirhusain and his brother Nasirhusen are responsible for his death and being fed up with the harassment caused to his father, he had committed suicide.

11. When the Applicant approached this Court, by filing the present Application, on the first date of hearing i.e. on 12/08/2016, by way of ad-interim relief, this Court directed that though the investigation in the subject C.R. shall continue, no coercive action shall be taken against the Applicant and this order continue to operate till date.

On completion of investigation, the charge-sheet has been filed and by amending the Application, the same is placed on record.

When the material in the charge-sheet is carefully perused, it is the case of the Complainant that the possession of two and half gunthas of land from City Survey No.6267 was taken by Jamadar Vakil, without their permission.

M.M.Salgaonkar

According to the Complainant, after taking possession, Jakirhusain had arranged Kanduri in the cowshed and after feeding people, pieces of mutton and bones were thrown there, which had caused mental harassment to his entire family and from that time, his father was annoyed. As per the Complainant, some time in past, his father was also assaulted by Jamadar Vakil and he is alleged to have threatened him by saying, "in my house, there are four lawyers and two Judges and, therefore, he can do anything, anytime, anywhere".

A statement of Jayendra Balasaheb Patil, which forms part of the charge-sheet, is with reference to Bhupal Ramu Mali, who was providing necessary instructions for the court cases to be conducted and according to him, the mother-in-law of Bhupal Mali as well his wife and other relatives were required to attend the court proceedings and whenever they used to cross-path, Jakirhusain used to threaten by saying that in his house, there are four lawyers and two Judges and he will see to it that they do not even get service of lawyer and this was told by Bhupal Mali to Jayendra Patil. In his statement, it is also stated that Nasirhusen had visited the house in the month of May and he had also threatened Bhupal to vacate the place and remove the cowshed and from this time, Bhupal was under tremendous pressure and was unable to focus on anything.

The statement of Jayendra Patil is recorded under Section 164 of the Criminal Procedure Code, where he referred to his last conversation with the deceased and has narrated that he was frustrated on account of his failure in the legal

proceedings as well as the threats given by Jakirhusain Jamadar.

Jayendra Patil do not even refer to the present Applicant in his 164 statement, recorded by Magistrate.

12. The material in the charge-sheet placed before us, will have to be appreciated in the light of the provision, which punishes abetment of suicide under Section 306 of IPC.

Section 306 read with Section 107 of IPC, has been subject matter of interpretation of various decisions and it is well settled, that to attract the offence of abetment of suicide , proof of direct or indirect acts of instigation or incitement of suicide by the accused and that too proximate to the time of occurrence must be necessarily established. The cardinal principle is identified to be *mens rea* to abet the suicide and despite a suicide note, *prima facie*, revealing harassment, unless the proof of instigation to commit suicide is offered, it is held that a person cannot held guilty of having abated suicide within the meaning of Section 306.

It is equally well settled that the charge under Section 306 of IPC is not sustainable on the allegation of harassment, without there being any positive act, proximate to the time of occurrence of the incident on part of the accused, which led or compelled the person to commit suicide.

13. The three segments of Section 107 of IPC, which prescribe as to what would amount to 'abetment' defines abetment as instigation of a person to do a particular thing. Its



second limb define it with reference to engaging in a conspiracy, with one or more other persons, whereas under the third segment, abetment is founded on intentionally aiding the doing of thing, either by act or commission.

To convict a person under Section 306 of IPC, it necessarily require a proof of direct or indirect acts of incitement to the commission of suicide and it is a well received interpretation that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing.

In *Madan Mohan Singh Vs. State of Gujarat*<sup>1</sup>, a case which arise in the context of a petition under Section 482 of CrPC, where the High Court dismissed the Petition for quashing an FIR registered for offences under Sections 306 and 249(b) of IPC, where the FIR was registered on the complaint of the spouse of the deceased, who was working as a driver with the accused. The driver had been rebuked by the employer and later was found dead, as he had committed suicide. A suicide note was relied upon in the FIR, where the driver had alleged that he had not been given a fixed vehicle like the other drivers and in addition, there was deduction of 15 days wages from his salary. The suicide note named the appellant/accused and in this background, the Apex Court observed thus :-

“10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence muchless under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person

---

1 (2010) 8 SCC 628

in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

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

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

14. In *M.Arjunan Vs. State*<sup>2</sup>, the Apex Court elucidated the essential ingredients of Section 306 in the following words :-

“7. The essential ingredients of the offence under Section 306 IPC are; (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/ abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

15. In *Ude Singh Vs. State of Haryana*<sup>3</sup>, the relevant factors to be taken into consideration, whether a case would fall within the ambit of Section 306, were expressed in the following words :-

<sup>2</sup> (2019) 3 SCC 315

<sup>3</sup> (2019) 17 SCC 301

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

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions abovereferred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased”

16. In *Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.*<sup>4</sup>, by taking review of the entire law revolving around Section 306 of IPC, in the backdrop of the fact where the FIR

<sup>4</sup> (2021) 2 SC 427

recited that the spouse of the informant had a company, carrying on the business of architecture, interior design and engineering consultancy and according to the informant, her husband was under pressure, as he did not receive money for the work carried out by him. The FIR recited that the deceased was called at the office of the appellant and spoken to his Accountant for payment of money. The deceased left behind the suicide note stating that his money is stuck and he named the persons, the owners of the respective companies, who are not paying his legitimate dues.

17. Recording a *prima facie* case, on the application of the test, which has been laid down by the Court in a consistent line of authorities of which note was taken, it was concluded that it cannot be said that the appellant was guilty of having abated the suicide, within the meaning of Section 306 of IPC. The Apex Court specifically observed thus :-

“62. ....Prima facie, on the application of the test which has been laid down by this Court in a consistent line of authority which has been noted above, it cannot be said that the appellant was guilty of having abetted the suicide within the meaning of Section 306 IPC. These observations, we must note, are prima facie at this stage since the High Court is still to take up the petition for quashing. Clearly however, the High Court in failing to notice the contents of the FIR and to make a prima facie evaluation abdicated its role, functions and jurisdiction when seized of a petition under Section 482 CrPC. The High Court recited the legal position that the jurisdiction to quash under Section 482 has to be exercised sparingly. These words, however, are not meaningless incantations, but have to be assessed with reference to the contents of the particular FIR before the High Court. If the High Court were to carry out a prima facie evaluation, it would have been impossible for it not to notice the disconnect between the FIR and the provisions of Section 306 IP. The failure of the High Court to do so has led it to adopting a position where it left the appellant to pursue his remedies for regular bail under Section 439. The High Court was clearly in error in failing to perform a duty which is entrusted

to it while evaluating a petition under Section 482 albeit at the interim stage.

63. The petition before the High Court was instituted under Article 226 of the Constitution and Section 482 CrPC. While dealing with the petition under Section 482 for quashing the FIR, the High Court has not considered whether prima facie the ingredients of the offence have been made out in the FIR. If the High Court were to have carried out this exercise, it would (as we have held in this judgment) have been apparent that the ingredients of the offence have not prima facie been established. As a consequence of its failure to perform its function under Section 482, the High Court has disabled itself from exercising its jurisdiction under Article 226 to consider the appellant's application for bail. In considering such an application under Article 226, the High Court must be circumspect in exercising its powers on the basis of the facts of each case. However, the High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of State power."

18. In a comparatively recent decision delivered on 03/10/2024 by the Hon'ble Apex Court in the case of ***Nipun Aneja & Ors. Vs. State of Uttar Pradesh***<sup>5</sup>, once again the legal position revolving around Section 306 of IPC was reiterated in the backdrop of the fact that the deceased, who was an employee of Hindustan Lever Limited and serving in the company for past 23 years, committed suicide in his hotel room in Lucknow. His brother lodged a first information report and attributed that for last one year, his brother was tensed because of wrong behaviour of some of his officers and he was informed by his brother that the Company was offering VRS scheme and he was being compelled to accept the same.

The complainant, therefore, alleged that the officers of the Company were responsible for instigating his brother to take such a weak step, as he was being pressurised to accept the VRS scheme, which was being made applicable as CRS (Compulsory Retirement Scheme). Upon the charge-sheet

---

<sup>5</sup> 2024 INSC 767

being filed, culminating into the criminal proceedings and when the High Court declined to quash the proceedings, the Apex Court noted thus :-

“12. *Prima facie*, it appears that two things weighed with the High Court. First, the two police statements of the colleagues of the deceased referred to above & secondly, the act on the part of the appellants in handing over the letter to all the salesman present in the meeting including the deceased containing instructions therein to do the work of mechanising. This according to the High Court amounted to demotion.”

Gainfully reproducing the observations made in *Geo Varghese Vs. State of Rajasthan & Anr.*<sup>6</sup>, as well as the observations in *M.Arjunan* (supra), it was concluded that for the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. The observations of Their Lordships in paragraph 21 deserve a reproduction :-

“21. The ingredients to constitute an offence under Section 306 of the IPC (abetment of suicide) would stand fulfilled if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide. Further, as the extreme action of committing suicide is also on account of great disturbance to the psychological imbalance of the deceased such incitement can be divided into two broad categories. First, where the deceased is having sentimental ties or physical relations with the accused and the second category would be where the deceased is having relations with the accused in his or her official capacity. In the case of former category sometimes a normal quarrel or the hot exchange of words may result into immediate psychological imbalance, consequently creating a situation of depression, loss of charm in life and if the person is unable to control sentiments of expectations, it may give temptations to the person to commit suicide, e.g., when there is relation of husband and wife, mother and son, brother and sister, sister and sister and other relations of such type, where sentimental tie is by blood or due to physical relations. In the case of second category the tie is on account of official relations, where the expectations would be to discharge the obligations as provided for such duty in law and to receive the considerations as provided in law. In normal circumstances, relationships by sentimental tie

---

6 (2021) 19 SCC 144

cannot be equated with the official relationship. The reason being different nature of conduct to maintain that relationship. The former category leaves more expectations, whereas in the latter category, by and large, the expectations and obligations are prescribed by law, rules, policies and regulations.”

19. The term ‘instigation’, in Section 107 is assigned a definite meaning to goad, urge forward, provoke, incite or encourage to do an act. If a person who has committed suicide is hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it is not safe to hold him guilty of abetment of suicide. It is only when an accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws him to commit suicide, he may be guilty of abetment of suicide because of presence of instigation and mens rea. Since two persons may possess different mental capacity to deal with a situation, the yardstick to be applied shall vary as human behaviour is a complex phenomenon and what may apply to one may not apply to the other.

20. In the present case, at the outset, we must note that the Applicant, a Judicial Officer, was never involved in the pending lis, as the suit property was purchased by his brother exclusively and only he was party to the litigation. There is no reason for the deceased to have implicated the Applicant, as he was not connected with the dispute at all. The material in the charge-sheet in form of statements implicating the Applicant, are too far fetched and definitely fall short of any instigation/incitement and a bare reference to his presence in Miraj in the

month of May, where he is alleged to have threatened the deceased and asked him to vacate the subject property is not sufficient to attract instigation/incitement, as the offence is registered on 24/06/2016. In any case, even it is not the allegation of the prosecution that the Applicant abetted the suicide by instigating or inciting the deceased in any manner, as 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 part of the Applicant to instigate or aid in commission of suicide by the deceased, he cannot be convicted for an offence punishable under Section 306 of IPC.

In order to attract the offence under Section 306, clear mens rea to commit the offence has to be established, as it requires active/direct act, leading the deceased to commit suicide left with no other option, but in the present case, the material in the charge-sheet falls short of proving the ingredients of Section 306 and, hence, in our view, by exercising the inherent power conferred under Section 482, the purpose of it being to prevent the abuse of process or to secure the ends of justice, we deem it appropriate to safeguard the interest of the Applicant.

In absence of we exercising the power, the Applicant will have to unnecessarily face the rigmarole of trial, which ultimately would result in acquittal, as no material in the charge-sheet collected by the prosecution attract the ingredients of Section 306 of IPC and we would be failing in discharge of our duty, if we do not step in and save the Applicant from undergoing the long drawn process of trial, as the material in the charge-sheet through close scrutiny, do not



in any manner, establish the ingredients of abetment of suicide under Section 306 of IPC against him.

For the reasons recorded above, we are satisfied that human liberty, which is the most cherished constitutional value, must be protected by us, by exercising the inherent power conferred under Section 482 of the Criminal Procedure Code.

For the reasons above, we quash and set aside FIR bearing C.R.No.53 of 2016 dated 24/06/2016 registered against the Applicant with Mahatma Gandhi Chowk Police Station, Miraj for the offences punishable under Section 306 and 34 of IPC.

21. Criminal Application No.959 of 2016 is allowed in the aforestated terms.

In view of disposal of the Application, nothing survives in the Interim Application and it also stands disposed off.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)