

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION NO. 1595 of 2019
(FOR QUASHING & SET ASIDE FIR/ORDER)
With
R/CRIMINAL MISC.APPLICATION NO. 6042 of 2019**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

MINAXIBEN KISHORCHANDRA TRIVEDI
Versus
STATE OF GUJARAT & ANR.

Appearance:

Criminal Misc. Application No.1595/2019 :-

MR PREMAL S RACHH(3297) for the Applicant(s) No. 1
MR RAJESH P RAVAL(12185) for the Respondent(s) No. 2
MR TRUPESH KARATHIYA APP for the Respondent(s) No. 1

Criminal Misc. Application No.6042/2019 :-

MR NANDISH H THACKAR (7008) for the Applicant(s) No.1,2
MR RAJESH P RAVAL(12185) for the Respondent(s) No. 2
MR TRUPESH KARATHIYA APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 24/07/2024

CAV JUDGMENT

- Draft amendment supplied in Criminal Misc. Application No.6042/2019 is allowed. To be carried out forthwith.

2. As in both these applications, challenge is for the impugned FIR lodged against the applicants, both these applications are heard together and are being decided by this common judgment.
3. By way of present applications under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC" for short), the applicants have prayed for quashing and setting aside the FIR being C.R. No.I-11/2019 registered with 'B' Division Police Station, Rajkot City for the offences under Sections 306, 504 and 114 of the Indian Penal Code (hereinafter referred to as "IPC" for short") and the proceedings arising out of the impugned FIR.
4. Heard learned advocate, Mr. Premal Rachh for the applicant in Criminal Misc. Application No.1595/2019, learned advocate, Mr. Nandish Thacker for the applicant in Criminal Misc. Application No.6042/2019, learned APP Mr. Trupesh Karathiya for the respondent no.1 – State of Gujarat and learned advocate, Mr. Rajesh P. Raval for the respondent no.2 – Original Complainant.
5. The gist of the FIR is that,
The brother of the original complainant (Prakashbhai – the deceased) married with one Shitalben (the accused no.2) as per Hindu rites and rituals seven years prior to registration of the FIR and out of said wedlock, they have been blessed with two children, one son viz., Prince aged about 4 years and 6 months and one daughter

viz., Drashti aged about 2 years and 3 months at the time of alleged incident, however, the accused no.2 left her matrimonial house and, thereafter, filed an application for maintenance, at that time, son was with the deceased, whereas daughter was with the accused no.2 and in the proceedings of maintenance, an order of Rs.7,000/- was passed by the court concerned but the deceased could not be able to pay the said maintenance amount and to meet with the same, the deceased had borrowed money and paid to his wife (the accused no.2) and her advocate (the accused no.3). It is alleged that for the purpose of settlement, the accused have demanded Rs.7,00,000/- from the deceased and also administered threats. It is alleged that on 21.01.2019, the deceased left the house by saying that he is going to settle the issue and bring his wife and daughter at home but at the parental house of the accused no.2, the deceased had consumed some poisonous substance and tried to commit suicide and, hence, he was taken to hospital, where during the course of treatment, he died. These are the sum and substances of the FIR.

6. Learned advocate, Mr. Premal Rachh appearing for the applicant in Criminal Misc. Application No.1595/2019 submitted that the impugned FIR filed against the applicant is nothing but an abuse of the process of law and none of the ingredients of alleged offences are made out against the applicant inasmuch as the key elements of abetment

for suicide are missing and, hence, the impugned FIR may be quashed and set aside. Learned advocate submitted that there is delay of two days in registration of the impugned FIR and it is an afterthought, which clearly goes on to show that the applicant is wrongly arraigned as accused and in support of this submission, learned advocate has put reliance upon the decision of this Hon'ble Court in case of **Arvindhbai Maganlal Master Vs. State Of Gujarat**, reported in **2015 (1) GLH 149**. Learned advocate submitted that the applicant is an advocate by profession, who is conducting the case of the wife, who had filed an application for maintenance against her husband (the deceased) and being a lawyer, she had discharged her duty by giving legal advice to her client, which she had done and only because of said act of the applicant to give legal advice to her client, she has been arraigned by the complainant as his brother had committed suicide. Learned advocate submitted that the applicant is a lawyer by profession and she is authorized to aid and advice so far as legal issues involved in the matter of her client and she did so, therefore by no stretch of imagination, the act, action, conduct and behaviour of the applicant would not fall under the category of aided, instigation and abetted the deceased to commit suicide.

7. Learned advocate has drawn attention of this Court towards the document produced at Page No.43 of the

compilation, which is withdrawal purshis dated 08.06.2016 filed by the parties and the document produced at Page No.44 of the compilation, which is compromise purshis dated 29.10.2015 signed by the wife. Learned advocate has also drawn of this Court towards the compromise agreement executed between the parties mentioning the terms and conditions. After referring to aforesaid documents, learned advocate submitted that after execution of the said documents, the accused – wife started residing with the deceased and his family but thereafter also, mental and physical harassment was continued at their hands and, thereafter, the wife was deserted from her matrimonial house along with minor daughter. Learned advocate submitted that because of the above facts, the accused – wife was constrained to file an application under the Domestic Violence Act and, thereafter, an application for interim maintenance, wherein an order of maintenance was passed by the court concerned and the said order was challenged before the higher forum by preferring appeal, however, the said appeal had also been rejected by the court concerned. Learned advocate submitted that in fact, the deceased – husband was not in a position to pay interim order and, hence, he tried to convince the accused – wife to come back to her matrimonial home but the accused – wife was not ready and agreeable due to bad experience of the deceased and her in-laws in

past. Learned advocate submitted that the deceased – husband has tried to reconcile the dispute by arranging meeting with her and her advocate and during interregnum period, the husband has borrowed money from others but despite the said fact, he could not be able to pay entire outstanding dues of maintenance and due to which, he had gone into pressure and he had tried his level best to get back the custody of wife by burring all differences and settling the dispute with the wife but at the relevant time, the wife declined to come with the deceased as earlier point of time, she had settled the dispute upon promises of the deceased and then after, once again harassment was continued to be meted out to her by her husband and in-laws, therefore, she had demanded lump-sum amount of Rs.7,00,000/- towards permanent alimony and at that point of time, the applicant has taken stand in favour of the wife as an advocate of the wife and, therefore, charge of abetment has been leveled against her. Learned advocate submitted that as stated above, it was a matrimonial dispute going on between the husband and wife, wherein the applicant, who has nothing to do with the commission of crime.

8. Learned advocate submitted that in fact, key elements of *mens rea* i.e. aiding, instigating and abetting to do certain act as envisaged under Section 107 of the IPC for constitute an offence under Section 306 of the IPC are missing as there

was no instigation on the part of the applicant upon the deceased to commit suicide. In support of this submission, learned advocate has put reliance upon the decision of the Hon'ble Supreme Court in case of **Velmurugan Vs. State Represented by the Deputy Superintendent Of Police**, reported in (2011) 3 SCC 626 as well as order dated 10.04.2015 passed by this Hon'ble Court in Criminal Misc. Application No.16032/2024. Learned advocate has referred to the said decisions and submitted that the case of the applicant is squarely covered by the said decisions and, therefore, the impugned FIR may be quashed and set aside. Learned advocate further submitted that so far as the offence under Section 504 of the IPC is concerned, none of the ingredients of the alleged offence are made out against the applicant and not only that, there is no allegation with regard to the intention to insult and/or to provoke the deceased to take such drastic steps.

9. Learned advocate submitted that the applicant is a reputed advocate practicing in Rajkot and Jamnagar districts since 1990 and is having high reputation in the society and whatever she has done, is in discharge of her duty as she is engaged in the profession of advocacy and as a part of her profession, she had acted in a legal manner to support her client in legal proceedings arising out of the matrimonial disputes between the parties, however for the reasons best known to the

respondent no.2, the applicant is arraigned as accused. Learned advocate submitted that it is not a case of the prosecution that she had acted in a illegal manner and by suppressing certain facts behind the back of the deceased, certain orders were obtained. Learned advocate submitted that the legitimate proceedings were instituted by the wife against her husband, wherein after considering and appreciating the material available on record, an order of maintenance in favour of the wife is passed by the competent court, which was upheld by the appellate court subsequently.

10. Learned advocate has put reliance upon the decision of this Court in case of **Chandresh Vasantbhai Malani Vs. State of Gujarat**, reported in **2024 (2) GLH 472** and submitted that in the said decision, this Court has considered the aspect of 'abetment of suicide' and considering the facts of the said case, this Court has allowed the said quashing petition and quashed the FIR impugned therein.
11. Learned advocate, Mr. Nandish Thacker appearing for the applicants in Criminal Misc. Application No.6042/2019 submitted that he is adopting the submissions canvassed by learned advocate for the applicant appearing in Criminal Misc. Application No.1595/2019. Learned advocate, however, submitted that the applicants are the mother-in-law and wife of the deceased, who have been wrongly roped in the commission of crime by the brother of the

deceased by filing impugned FIR. Learned advocate submitted that it is found out from the contents of the FIR that there was matrimonial dispute going on between the husband and wife and, hence, they had taken the legal recourse by approaching to the court by preferring an application filed under the provision of the Domestic Violence Act and an application filed under Section 125 of the CrPC for maintenance and in the proceeding of 125 CrPC, an application for interim maintenance was also preferred, which was considered by the Hon'ble Court and, thereafter, process was initiated for the recovery of the amount of arrears, which the deceased could not be able to pay the said amount and, hence, he committed suicide but for that, there was no instigation or abetment for suicide at the hands of the applicants, which attracts the alleged sections. Learned advocate submitted that on the day of incident, when the deceased had come to the residence of applicants, he was carrying one bottle containing some poisonous substance and, thereafter, he consumed it in the presence of the applicants and other family members and committed suicide. Learned advocate further submitted that when the deceased was shifted to hospital for the purpose of getting preliminary treatment, his dying declaration was recorded, wherein he has narrated the aforesaid aspects. Learned advocate submitted that the deceased has consumed poisonous

substance on 22.01.2019 and he died on 24.01.2019 and during interregnum period, his dying declaration was recorded by the Executive Magistrate and the concerned IO has recorded his statement under Section 161 of the CrPC, wherein he has stated in a very categorical terms that with sold intent to settle the dispute and bury the difference with his wife, he had gone to the house of his wife and tried to persuade her but he could not get success in his attempt, due to which, he had taken out bottle of poisonous substance and consumed it and as soon as his wife had come to know about the said fact, immediately she had thrown the said bottle and called nearby Rickshawala and took the deceased to hospital for the purpose of getting preliminary treatment, where she stayed till arrival of the family members of the deceased and as soon as the family members of the deceased had reached there, she left the hospital as there was inimical terms between them. Learned advocate submitted that the act, action, conduct, behavior and approach of the applicant clearly goes on to show that immediately she had taken the deceased to the hospital for the purpose of getting preliminary treatment and if the intention of the applicant was to instigate the deceased then, she would not have taken him to the hospital. Learned advocate, therefore, submitted that from the above facts, it is clear that there was no instigation and/or abetment for

suicide by the accused, which attracts the alleged sections.

12. Learned advocate has put reliance upon Section 107 of the IPC, which provides for "Abetment of a thing", Section 108 of the IPC, which provides for "Abettor" and Section 306 of the IPC, which provides for "Abetment of suicide" and submitted that bare reading of the contents of the FIR, it does not reveal that ingredients of instigation or abetment as alleged in the impugned FIR are made out against the applicants
13. Learned advocate for the applicants has put reliance upon following decisions,
 - (1) the judgment of the Hon'ble Apex Court in case of **Madan Mohan Singh Vs. State of Gujarat**, reported in 2010 (3) GLH 270;
 - (2) the judgment of the Hon'ble Apex Court in case of **Gangula Mohan Reddy Vs. State of Andhra Pradesh**, reported in (2010) 1 SCC 750;
 - (3) the judgment of the Hon'ble Apex Court in case of **Sonti Rama Krishna Vs. Sonti Shanti Sree**, reported in 2009 (1) SCC 554;
 - (4) the judgment of the Hon'ble Apex Court in case of **Kailashi Bai Vs. Aarti Arya & Anr.**, reported in 2009 (3) GLH 148;
 - (5) the judgment of the Hon'ble Apex Court in case of **Netai Dutta Vs. State of West Bengal**, reported in 2005 (2) SCC 659;
 - (6) the judgment of this Hon'ble Court in case

of **A.K. Chaudhary & Anr. Vs. State of Gujarat & Ors.**, reported in **2005 (3) GLH 444**;

14. Referring to the aforesaid decisions as well as referring to the principle of law laid down by the Hon'ble Apex Court in case of **State of Haryana Vs. Bhajan Lal**, reported in **AIR 1992 SC 604** as well as in case of **R.P. Kapur Vs. State of Punjab**, reported in **AIR 1960 SC 866 : 1960 Cri LJ 1239**, learned advocates appearing for the applicants in both matters have submitted that the impugned FIR is required to be quashed and set aside. It is, therefore, urged that the present application may be allowed.
15. Learned APP, Mr. Karathiya has opposed the grant of present application with a vehemence and submitted that the ingredients of the alleged offences are made out and there are statements of the witnesses recorded by the concerned IO, which clearly goes on to show that the applicants have committed alleged offences. Learned advocate submitted that bare perusal of the contents of the FIR clearly goes on to show that there was constant mental and physical torture at the hands of the accused, which led the deceased to commit suicide and the said fact is supported by the documents collected during the course of investigation. It is, therefore, urged that the present application may not be allowed.
16. Learned advocate, Mr. Rajesh Raval appearing for

the respondent no.2 has also opposed the present application with a vehemence and submitted that if the Hon'ble Court would make a cursory glance upon the allegations leveled in the FIR, in that event, it would be found that the applicants have committed alleged offences and specific role of each accused is clearly spelt out. Learned advocate submitted that the accused no.2 – wife married with the deceased and stayed in the matrimonial house hardly for 2-3 months and on the contrary, she forced the deceased to reside separately. Learned advocate submitted that it is true that proceedings under the Domestic Violence Act as also under the 125 of the CrPC for maintenance were filed, however, same were withdrawn not on the ground of settlement as stated and it was the efforts of the deceased husband to bring the wife back and, hence, the said settlement had taken place. Learned advocate submitted that in the application filed under Section 125 of the CrPC, an order of maintenance was passed but because of poor financial condition, it was difficult for the deceased to pay the arrears of amount of maintenance and, hence, there was constant pressure upon the deceased by the accused. Not only that, for the recovery of the said amount, all the accused used to visit the house of the deceased, where the deceased was threatened to make the payment of the outstanding dues and because of the threats

administered by the accused, the deceased had made some payment of the maintenance amount by borrowing from others. Learned advocate submitted that even for full and final settlement, there was constant mental harassment and torture upon the deceased to make the payment of Rs.7,00,000/- by all accused persons. Learned advocate submitted that while deciding the present application, the conduct of the accused – wife is also required to be taken into consideration because though the deceased had died, the accused – wife did not attend the funeral, which clearly goes on to show her criminal mind. Learned advocate submitted that in fact, on the day of incident, the deceased – husband had gone to the house of the accused – wife with a hope that after persuading, the accused – wife will be brought back along with minor children but on the contrary, the accused – wife did not agree with the proposal of the deceased – husband and, therefore, he felt bad and consumed poisonous substance and thereby committed suicide. Learned advocate submitted that because of the mental and physical harassment at the hands of the accused persons, the deceased – husband has taken such drastic steps to put an end to his life and, hence, no leniency may be shown upon the accused. Learned advocate, therefore, urged that these applications may be rejected.

17. Having heard learned advocates for the respective parties and on perusal of the contents of the FIR,

the issue falls for my consideration is to whether the case is made out for invoking inherent powers of this Court?

18. At the outset, it is apt to refer the law laid down by the Hon'ble Apex Court in case of **Bhajan Lal (supra)**. The relevant para reads as under:

"In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.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 or the inherent powers u/s 482 of the Code of Criminal Procedure which we have extracted and reproduced above, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list of 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 F.I.R. 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, no 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 ground 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 proceeding 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,

(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."

19. The Hon'ble Apex Court in case of **R.P. Kapur (supra)** has summarised some categories of cases where inherent power can and should be exercised to quash the proceedings, which are as under,

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its 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.
20. In view of the ratio enunciated by the Hon'ble Apex Court in the aforesaid decisions as well as other decisions, it is required to be noted that whenever the accused come before the Court invoking either the inherent powers under Section 482 of the Criminal Procedure Code for quashing and setting aside the FIR impugned essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, in that event, in such circumstances, the Court owes a duty to look into the FIR with care and a little more closely. The Court while exercising its jurisdiction under Section 482 of the CrPC need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.
21. Therefore taking into consideration the above factual aspects, if the facts of the case on hand are carefully examined, in that event, it is found out from the record that applicants have been arraigned as accused in connection with FIR being C.R. No.I-11/2019 registered with 'B' Division Police Station, Rajkot City for the offences under

Sections 306, 504 and 114 of IPC. It is the specific case of the applicant that the deceased committed suicide on account of the abetment for suicide. It is also found out that the dispute was between the husband and wife, which led the wife to leave her matrimonial house due to constant harassment to her by her husband. Not only that, the wife instituted two different applications i.e. one under the Domestic Violence Act and second under Section 125 of the CrPC for maintenance but during interregnum period, settlement was arrived at between the parties and based on the said settlement, the matters have been withdrawn. Even an agreement of settlement has been executed by and between the parties mentioning the terms and conditions and then, the wife started residing with the husband but thereafter also, mental and physical harassment was continuously meted out upon the wife by the husband and due to constant mental and physical torture, the wife has not left with any other option except leaving her matrimonial house along with minor daughter. Thereafter for the purpose of survival, demand was made by the wife to pay maintenance as ordered by the court concerned, which the husband was not in a position to pay and efforts were being made by him to bring the wife back but because of past conduct, the wife refused to go back at her matrimonial home. And one fine morning, the husband reached to the house of the

wife and request was made to accompany the deceased but it was denied and at that point of time, the husband consumed poisonous substance carried along with him and committed suicide, however, the wife took him to hospital for the purpose of getting treatment but during treatment, he died. All above facts clearly goes on to show that it was a matrimonial dispute but there was no instigation or abetment for suicide.

22. It is also found out that the applicant of Criminal Misc. Application No.1595/2019 is an advocate by profession, who was discharging her duty by giving legal recourse to the accused – wife but at no point of time, she came across with the deceased – husband except in the court premises, where the litigations were going on and, hence, it cannot be said that there was instigation and/or abetment for suicide by the said applicant. Now so far as the applicants of Criminal Misc. Application No.6042/2019 are concerned, who are mother-in-law and wife of the deceased – husband. However admittedly, the brother of the deceased has lodged the impugned FIR despite the fact that the deceased was alive for two days and was under treatment at hospital and not only that, his dying declaration has also been recorded, however, the said dying declaration does not mention about the instigation and/or abetment for suicide, the dying declaration is silent about the said aspect, which clearly ruled

out the possibility of implication of the accused in the aforesaid commission of crime.

23. At this juncture, before adverting to the issue involved in the matter, I would like to refer to certain case laws wherein the Hon'ble Apex Court as well as different High Courts have very succinctly crystallized the position of law so far as Sections 306 and 107 of the Indian Penal Code are concerned. This Court in recent decision in case of **Chandresh Vasantbhai Malani (supra)** has considered the issue involved in the present matter considering the decision of the Hon'ble Supreme Court, in the case of **Geo Verghese Vs. State of Rajasthan**, reported in **AIR 2021 SC 4764**. In the said decision of the Hon'ble Supreme Court, it has been observed and held as under:

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

"306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may

extend to ten years, and shall also be liable to fine.”

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

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same. Abetment is defined under Section 107 of IPC 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 aids, by any act or illegal omission, the doing of

that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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

16. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh¹ has defined the word ‘instigate’ as under :-

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

17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr.² , it was observed as

under:-

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

18. In a recent pronouncement, a two-Judge Bench of this Court in the case of Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.³, while considering the co-relation of Section 107 IPC with Section 306 IPC has observed as under :-

“47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of

the 14 (2014) 4 SCC 453 PART I 33 CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self restraint imposed by law, has the jurisdiction to quash the investigation —and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in State of Haryana vs Bhajan Lal (Bhajan Lal) include a situation where the allegations made in the FIR 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. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in Kamal Shivaji Pokarnekar vs State of Maharashtra.

48. The striking aspect of the impugned judgment of the High Court spanning over fifty-six pages is the absence of any evaluation even prima facie of the most basic issue. The High Court, in other words, failed to apply its mind to a 15 1992 Supp. 1 SCC 335 16 (2019) 14 SCC 350 PART I 34 fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 of the CrPC. The High Court, by its judgment dated 9 November 2020, has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant's prayer for interim bail and relegated him to the remedy under Section 439 of the CrPC. In the meantime, liberty has been the casualty. The High Court having failed to evaluate prima facie whether the

allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 of the IPC, this Court is now called upon to perform the task.”

19. In the case of M. Arjunan Vs. State, Represented by its Inspector of Police⁴, a two-Judge Bench of this Court has expounded the ingredients of Section 306 IPC in the following words:-

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

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23. In the backdrop of the above discussion, we may now advert to the

facts of the present case to test whether the ingredients of offence under Section 306 IPC exist, even prima-facie, to continue with the investigations.

24. The FIR recites that victim boy was under deep mental pressure because the appellant herein had harassed and insulted him in the presence of everyone and he was not willing to go to school on 25.04.2018 but was persuaded to go to school by the complainant. When he returned from the school, again he was under very much pressure and on being enquired told that today again he was harassed and insulted by the GEO, PTI Sir (the appellant). The boy was informed that the parents have been called to school next day and this brought him under further severe pressure and tension."

24. In the aforesaid decision of the Hon'ble Supreme Court in the case of **Geo Varghese (supra)**, the Hon'ble Supreme Court has observed and held as under:

"32. Considering the facts that the appellant holds a post of a teacher and any act done in discharge of his moral or legal duty without their being any circumstances to even remotely indicate that there was any

intention on his part to abet the commission of suicide by one of his own pupil, no mens rea can be attributed. Thus, the very element of abetment is conspicuously missing from the allegations levelled in the FIR. In the absence of the element of abetment missing from the allegations, the essential ingredients of offence under section 306 IPC do not exist."

25. As discussed hereinabove, the accused no.1 is mother-in-law, the accused no.2 is wife of the deceased, whereas the accused no.3 is an advocate by profession, who is taking care of legal remedy of the accused no.2. However bare perusal of the contents of the FIR coupled with the documents produced on record by learned advocates for the applicants, it cannot be said that there was any intention on their part to abet the commission of suicide to the deceased and therefore no *mens rea* can be attributed. Thus, in the opinion of this Court, the very element of abetment is missing from the allegations levelled in the FIR and in absence of the element of abetment from the allegations, the offence under Section 306 of the IPC would not be attracted.
26. Having regard to the provisions of Sections 107 and 306 of the Indian Penal Code and the principle laid down by the Hon'ble Supreme Court in various decisions referred to in the case of Lalitbhai

Vikramchand Parekh Vs. State of Gujarat delivered in Criminal Misc. Application No.16032 of 2014 & allied matters decided on 10th April, 2015, it is apparent that in a case under Section 306 of the IPC, there should be correct *mens rea* to commit the offence under this section and there should be direct and active role by the accused, which led the deceased to commit the suicide, that is to say that there cannot be same evidence of "instigation" or "initial assistance" by the accused to commit suicide by the victim/deceased. Further in order to bring the case within the purview of 'Abetment' under Section 107 of the IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused, which in the facts of the present case, is lacking.

27. What is "Abetment of a thing" has been described in Section 107 which reads as under: -

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

First. —Instigates any person to do that thing; or

Secondly. —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. —Intentionally aids, by any act or illegal omission, the doing of that

thing.

Explanation 1. -A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

28. In the facts of the present case, clause secondly and thirdly in Section 107 will have no application. Now, the question remains is as to whether the applicants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have *mens rea* to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide. In the present case, taking the contents of the FIR and the statements of the witnesses as correct, it is impossible to conclude that the applicants instigated the deceased to commit suicide. By no stretch of the imagination, the alleged acts of the applicants can amount to instigation to commit suicide.

29. At this juncture, it would be beneficial to

reproduce the relevant provision contained in Section 306 IPC pertaining to Abetment of suicide.

“306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

30. From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306 IPC, the basic and essential ingredients of the offence namely where the death was suicidal and whether there was an abetment and instigation on the part of the accused as contemplated in Section 107 IPC have to be established.
31. It is found out from the provision of IPC that the provision of IPC does not define the word “suicide” but the ordinary dictionary meaning of suicide is self-killing. The word is derived from a modern latin word suicidium, sui means oneself and cidium means killing. Thus, the word suicide implies an act of self-killing. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

32. The scope and ambit of inherent powers of the Court under Section 482 Cr.P.C. or the extraordinary power under Article 226 of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, the High Court has inherent power to act *ex debito justitiae* i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed. Thus, from the aforesaid discussion, I am of the opinion that the allegations in the first information report if taken at its face value and accepted in their entirety, they do not constitute the offence alleged. Therefore in view of the above facts of the case, in my considered opinion, the impugned FIR is nothing but a sheer abuse of the process of law and if the same is allowed to be continued, in

that event, it would be nothing short of abuse of process of law and travesty of justice. Hence, this is a fit case, wherein the inherent power under Section 482 of the CrPC should be exercised for the purpose of quashing and setting aside the impugned FIR. Therefore, the present application deserves to be allowed.

33. In the result, both these applications are allowed partly. The impugned FIR being C.R. No.I-11/2019 registered with 'B' Division Police Station, Rajkot City as well as proceeding being Criminal Case No.1190/2020 pending before the court of the learned Judicial Magistrate First Class, Rajkot arising out of the impugned FIR pursuant to filing of the chargesheet are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam