

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 5798 of 2017**

**With
R/CRIMINAL MISC.APPLICATION NO. 6103 of 2017**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**DR.RAJESHKUMAR SOMABHAI KATARA, ASST.PROFESSOR
MICROBIOLOGY
Versus
STATE OF GUJARAT & ANR.**

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Appearance in CRMA 5798 OF 2017:

MR BHAVIK R SAMANI(8339) for the Applicant No. 1

H K NAYAK(7511) for the Respondent No. 2

MR RJ GOSWAMI(1102) for the Respondent No. 2

MS MONALI BHATT, APP for the Respondent No. 1

Appearance in CRMA 6103 OF 2017:

MR AJ YAGNIK for the Applicant No. 1

MR MANOJ SHRIMALI for the Applicant No. 1

H K NAYAK(7511) for the Respondent No. 2

MR RJ GOSWAMI(1102) for the Respondent No. 2

MS MONALI BHATT, APP for the Respondent No. 1

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 28/08/2024

CAV JUDGMENT

1. As both the petitions arise out of the same FIR, with consent of learned advocates appearing for the parties, they are heard together and disposed of by this common judgment and order.

2. For deciding these petitions, the facts of Criminal Misc. Application No.6103 of 2017 are taken into consideration.

3. By way of preferring present application under section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused No.1, seek to invoke the inherent powers of this Court, inter alia, praying for the following main reliefs:

"(A) Your Lordships be pleased to admit and allow this Criminal Misc. Application;

(B) Your Lordships further be pleased to quash and set aside the complaint being C.R.No. I-20/2017 registered with Chandkheda Police Station, Ahmedabad - Annexure-A for the offences alleged therein, filed by the respondent no.2 - original complainant, in the facts and circumstances of the case and in the interest of justice."

4. The brief facts as narrated in the FIR can be summarized thus:

4.1. That the accused no.1, who is the wife of the deceased, is having extramarital affairs with accused no.2 and the said fact has come to the notice of the

deceased son of the complainant, due to which, the deceased son of the complainant was upset. The deceased warned the accused No.1 to cut her relations with accused No.2 otherwise he will commit suicide. In spite of that, the accused No.1 continued her relations with accused No.2 and thereby both the accused persons have abetted and instigated the deceased to commit suicide.

5. Heard learned advocates Mr. A. J. Yagnik and Mr. Bhavik Samani for the applicants and learned APP Ms. Monali Bhatt for the respondent - State and learned advocate Mr. R. J. Goswami for respondent No.2 - complainant.

6. Learned advocate Mr. A. J. Yagnik has submitted that as per the case of the prosecution, the so-called incident is occurred on 11.01.2017 and FIR is filed on 30.01.2017. Thus, there is gross delay of 19 days in registering the FIR and complainant has not mentioned any reason for such delay in registering the FIR. He has further submitted that complainant is the mother-in-law of the accused No.1. He has further submitted that generally in matrimonial lief, wife commits suicide and husband is shown as an accused but the case on hand is a case wherein the husband has committed suicide and wife has been shown as an accused. It is the specific case of the prosecution that the span of marriage life of the accused No.1 -

applicant with the deceased is of 13 years and due to the said wedlock one baby girl born and at present the said girl is residing with the accused No.1 - wife. It is alleged in the FIR that the accused No.1 - wife of the deceased had developed extramarital relations with her paramour i.e. accused No.2 and due to the said relations, the husband had gone into depression and ultimately committed suicide and therefore FIR has been registered against the accused persons.

7. Learned advocate Mr. Yagnik has further submitted that if this Hon'ble Court would make cursory glance upon the body of the FIR, in that event, it would be found out that applicant - accused No.1 has neither abetted, instigated and/or aided in any form, which ultimately drive the deceased to commit suicide by leaving him with no other option than to take the said extreme step. It is the settled proposition of law that 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. By bare perusal of the impugned FIR, it is found out that the same is registered with *mala fide* intention and oblique motive to harass and pressurize the applicant and her family members and the said FIR is nothing but sheer abuse of process of law and

therefore the same is required to be quashed in the interest of justice. Learned advocate Mr. Yagnik has further submitted that it is found out from the material available on record that four months before the date of incident the deceased has lost his job due to some injury sustained by him and since then he was jobless. He has further submitted that the deceased was very much sceptical about his wife's relationship with accused No.2 and he has taken data of call recordings from the mobile of his wife and after going through the WhatsApp chat he had gone into depression and ultimately committed suicide. He has further submitted that for the sake of arguments, if the WhatsApp chats and call recordings are believed to be true and correct, even though the same cannot constitute any offence as alleged in the FIR. It is the specific case of the prosecution that accused No.1 - wife of the deceased is serving in B. J. Medical College, Civil Hospital, Ahmedabad since last three years and before that she was serving as laboratory technician at Community Health Center, Adalaj and at that relevant point of time accused No.2 was posted there as a Doctor and thereafter they had developed relations with each other and as soon as the said fact has come to the notice of the deceased husband, he remained upset and he has gone through the conversations made by the accused through WhatsApp chat and call recording and after going through certain WhatsApp chats and call recordings

made between his wife and accused No.2, the deceased has committed suicide. Learned advocate Mr. Yagnik has submitted that a CD was also supplied by the prosecution and he had gone through the conversations made in the said CD but he did not find any objectionable conversations in the said CD. He has further submitted that though the applicant has not developed any relations with accused No.2, however, for the sake of arguments, if the allegation levelled against the applicant - wife is to be accepted as it is that she had developed extramarital affair with any third person then also the said act of the wife would not fall under the act of abetment and/or instigation to the deceased to commit suicide and therefore it can safely be said that the offences alleged in the FIR are not made out against the applicant - wife.

8. Learned advocate Mr. Yagnik has put reliance upon the decision of the Hon'ble Apex Court in the case of ***K. V. Prakash Babu v. State of Karnataka***, reported in ***2016 LawSuit (SC) 1103*** and submitted that the ratio laid down by the Hon'ble Apex Court in the said decision would squarely applicable to the case on hand. He has further submitted that in the said case, wife has committed suicide as the husband has developed extramarital relations with another woman. Learned advocate Mr. Yagnik has submitted that in the aforesaid decision, the Hon'ble Apex Court has held

that husband is not guilty of abetment but that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. Mental cruelty varies from person to person, depending upon intensity and degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending ones life. He has further submitted that keeping in mind the aforesaid observations made by the Hon'ble Apex Court, if this Hon'ble Court would make cursory glance upon the contents of the FIR in question, in that event, no offence is made out against the applicant - wife of the deceased. Learned advocate Mr. Yagnik has further submitted that the charge of adultery under Section 497 IPC is not levelled against the applicant - wife but if the said charge would have been levelled against her, in that event, as per the decision of the Hon'ble Apex Court in the case of **Joseph Shine v. Union of India**, reported in **(2019) 3 SCC 39**, the Constitution Bench of Hon'ble Apex Court held Section 497 as unconstitutional. Learned advocate Mr. Yagnik has further submitted that immediately after the registration of the FIR, applicant - wife of the deceased has approached this Court and considering the allegations levelled in the impugned FIR, averments made in the memo of the application as well as arguments canvassed by learned advocate, the Coordinate Bench of this Court has found substance in

the application and protected the applicant and therefore since then the investigation is stayed. He, therefore, urged that the FIR impugned may be quashed qua the applicant - accused no.1.

9. In support of his submissions, learned advocate Mr. Yagnik has put reliance upon the following case laws:

1. In the case of Pinakin Mahipatray Rawal v. State of Gujarat, reported in (2013) 10 SCC 48;
2. In the case of Ghusabhai Raisangbhai Chorasiya v. State of Gujarat, reported in (2015) 11 SCC 753;
3. In the case of Lalitbhai Vikramchand Parekh v. State of Gujarat rendered in Criminal Misc. Application No.16032 of 2014;
4. In the case of Dakshaben Rajeshbhai Gadvi v. State of Gujarat rendered in Criminal Misc. Application No.33263 of 2016;
5. Joseph Shine v. Union of India, reported in (2019) 3 SCC 19; and
6. Gurjit Singh v. State of Punjab, reported in (2020) 14 SCC 264.

10. Learned advocate Mr. Bhavik Samani for applicant of Criminal Misc. Application No.5798 of 2017 has adopted the arguments canvassed by learned advocate Mr. A. J. Yagnik. However, in addition to that, he has submitted that it is the specific case of the prosecution that applicant - original accused no.2

and wife of the deceased were working together at CHC, Adalaj. But, in fact applicant was never posted at the said Community Health Center. He has further submitted that the applicant was serving at Government Medical College, Bhavnagar and thereafter transferred to B. J. Medical College in the year 2011. He has further submitted that applicant - accused No.2 was knowing the wife of the deceased as she was serving staff in the department. He has further submitted that for the purpose of proving the charge of guilt against the accused persons, the prosecution has to prove the *mens rea* on the part of the applicants accused to commit the said offence. He has further submitted that in the instant case, the important ingredient of *mens rea* so as to bring home the charges of Section 306 and 107 IPC is missing in the instant case. It is an admitted position of fact that applicant has never come into contact with the deceased and there was no communication and discussion between them regarding the issue involved in this matter and in absence of any communication between the applicant and deceased, applicant accused cannot be held liable for the commission of crime. He has further submitted that in the case of ***M. Mohan v. State Represented the Deputy Superintendent of Police***, reported in ***(2011) 3 SCC 626***, the Hon'ble Apex Court has held that, 'Abetment involves mental process of instigating or intentionally aiding a person in doing of a thing. There should be clear

mens rea to commit offence under Section 306. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide.' He has further submitted that the deceased was mentally disturbed and he was a patient of depression. It is specifically stated in the FIR that the deceased was a qualified engineer and he was unemployed for last four months as he lost his job and there were frequent quarrels between the husband and wife. He, therefore, urged that the FIR in question may be quashed qua the applicant - accused No.2.

11. Learned advocate Mr. R. J. Goswami for respondent No.2 - original complainant has objected present applications with vehemence and submitted that it is the specific case of the prosecution that accused No.1 - wife of the deceased has developed extra-marital affairs with her paramour i.e. accused No.2 and said fact has come to the notice of the deceased husband as accused No.1 was in regular touch with accused No.2 and there were WhatsApp chats between the accused No.1 and accused no.2. It is the case of the prosecution that the said fact has come to the notice of the complainant after the death of the deceased. A CD containing all those data has been collected by the brother of the deceased which was sent to the FSL and as per the opinion of FSL analyst

the data preserved in the CD are genuine. Learned advocate Mr. Goswami has submitted that the entire case of the prosecution hinges upon the documentary evidence i.e. the conversations took place between the wife of the deceased and accused No.2 and therefore the evidence is required to be led in that regard and without leading the evidence, the prosecution would not be in a position to prove those facts. Thus, this is the premature stage to decide the applications of the applicants - accused. Learned advocate Mr. Goswami has further submitted that immediately after the registration of the FIR, within no time, applicants have approached this Court and obtained the order of stay and therefore the investigation could not have been reached to its logical conclusion. He has further submitted that the facts of the present case are quite different, distinct and dissimilar than the facts of the case laws relied on by the learned advocates appearing for the applicants. He has further submitted that the so-called incident is occurred in the year 2017 and we are in the year 2024 and during the interregnum period, nothing has happened and therefore free hand is required to be given to the investigating officer to carry out the investigation and submit report to the appropriate authority. Thus, this is a fit case where this Hon'ble Court may not have to exercise its inherent powers in favour of the applicants. He, therefore, urged that these applications may be

dismissed at threshold.

12. Learned APP Ms. Monali Bhatt has objected present applications with vehemence and submitted that this is a unique case, where, instead of wife, husband has committed suicide and immediately after the occurrence of the incident husband was shifted to the hospital where he declared as dead by the hospital authority. Thereafter, after some time, phone of the deceased was checked by the brother of the deceased wherein a particular folder in the name of Preeti is uploaded and upon opening the said folder, conversations took place between the wife of the deceased and accused No.2 were found and after going through the said conversations, the complainant has thought it fit to register the FIR. At the time of registration of the FIR, complainant has already supplied CD of the said conversations which were taken place between the accused persons. The CD is also sent to the FSL and as per the opinion of the FSL analyst, prima facie, the contents of the CD are found to be genuine. She has further submitted that the investigating officer has already prepared the transcript of the said CD. Learned APP Ms. Bhatt has tendered the transcript of the correspondence took place between the accused persons as well as statement of the witnesses and submitted that if this Hon'ble Court would make cursory glance upon the contents of the said documents, in that event, it

would be found out that wife of the deceased has developed extra-marital affairs with accused No.2 and said fact has come to the notice of the deceased. Learned APP Ms. Bhatt has further submitted that accused No.2 - wife has specifically mentioned in the chat that her husband (deceased) has told her that if she would not make change in her behaviour then he has to separate from her. Therefore, wife was well within the knowledge of the said fact that if she will not cut her relations with accused No.2, in that event, some untoward incident would have been occurred and even though she had continued her relations with the accused no.2. Therefore, on the basis of the documents collected by the investigating officer it can safely be said that there was mens rea on the part of the accused persons and therefore the said set of evidence is required to be led before the Court by leading evidence. Learned APP Ms. Bhatt has submitted that in fact during the interregnum period, Investigating Officer has recorded statements of certain witnesses and if this Hon'ble Court would make a cursory glance upon the said statements, in that event, it would be found out that all the witnesses have supported the case of the complainant and entire sequence of events of incident clearly goes on show that due to illicit relations developed by the wife, husband has committed suicide. Learned APP Ms. Bhatt, therefore, submitted that considering the aforesaid factual aspects of the matter, the

applications may be dismissed.

13. Having heard the learned counsel appearing for the parties and having gone through the material placed on record, it is found out from the record that applicants have been arraigned as accused in connection with FIR being C.R.No.I-20/2017 registered with Chandkheda Police Station, Ahmedabad for the offence punishable under Sections 306 and 114 of the Indian Penal Code. It is the specific case of the prosecution that the son of the complainant committed suicide on account of the fact that his wife - accused No.1 was having extramarital relations with accused No.2 and as soon as he came to know about the said fact, he was upset and ultimately he took an ultimate decision of committing suicide.

14. 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. The Hon'ble Supreme Court, in the case of **Geo Verghese v. State of Rajasthan, reported in AIR 2021 SC 4764**, 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.”

15. In the facts of the present case, second and third clauses of 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 as correct, it is impossible to conclude that the applicants have instigated the deceased to commit suicide. By no stretch of imagination, the alleged act of the applicants can amount to instigate the deceased to commit suicide.

16. At this stage, I would like to refer and rely upon the decision of the Hon'ble Apex Court in the case of ***K. V. Prakash Babu*** (*supra*), wherein, the Hon'ble Apex Court has observed and held as under:

"19. Having said that we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of the IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify."

17. As observed by the Hon'ble Apex Court in the aforesaid decision, the involvement of accused No.1 in an extra-marital affair with accused No.2 may not invite conviction under Section 306 IPC. Even for the sake of arguments, if the contents of the FIR are to be accepted as it is, it cannot be said that there was any intention on the part of the applicants to

abet the commission of suicide by the deceased, who is the husband of accused No.1 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 IPC would not be attracted.

18. Now, I would like to refer the decision rendered by this Court in the case of **Lalitbhai Vikramchand Parekh v. State of Gujarat**, Criminal Misc. Application No.16032 of 2014 and allied matters decided on 10th April, 2015, wherein the following observations were made:

"25. Taking note of various earlier judgments, in M. Mohan u. State Represented the Deputy Superintendent of Police, (2011) 3 SCC 626. the Supreme Court held that "Abetment involves mental process of instigating or intentionally aiding a person in doing of a thing. There should be clear mens rea to commit offence under Section 306. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide."

26. On a close reading of the above provisions of the IPC, and the principles laid down by the Supreme Court in various decisions, it is apparent that in a case under Section 306 IPC, there should be clear mens-rea to commit the offence under this Section and there should be direct or active act by the accused, which led

the deceased to commit suicide, that is to say that there must be some evidence of "instigation", "cooperation" or "initial assistance" by the accused to commit suicide by the victim/deceased.

27. In [Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrajirao Angre](#), (1988) 1 SCC 692 the Supreme Court observed vide Para 7 that:

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

It was a proposition relating to criminal prosecution.

28. In [Madan Mohan Singh v. State of Gujarat](#), (2010) 8 SCC 628. the Supreme Court quashed the proceedings under [Section 306](#) IPC on the ground that the allegations were irrelevant and baseless and observed that the High Court was in error in not quashing the proceedings.

29. Accepting the allegations made against the applicants by the prosecution as it is, they do not constitute the offence of abetment. I am conscious of the fact that five persons of one family lost their lives on account of drastic step taken by them for no reason. It is very difficult to understand the mental state of mind of such persons who take an extreme step of putting an end to their life voluntarily by committing suicide."

19. Having regard to the provisions of [Sections 107](#) and [306](#) of the Indian Penal Code and the principle [laid down by](#) the Hon'ble Apex Court in various decisions referred to in the case of Lalitbhai Vikramchand Parekh (supra), it is apparent that in a case under [Section 306](#) of the Indian Penal Code, 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.

20. The Hon'ble Apex Court in the recent decision in case of ***Mahmood Ali & Ors. v. State of U.P. & Ors.***, rendered in ***Criminal Appeal No.2341 of 2023***, observed and held as under:

"11. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of [State of Haryana v. Bhajan Lal](#), AIR 1992 SC 604. The parameters are:-

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

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

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

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, 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, providing efficacious redress for the grievance of the aggrieved party.

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

We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of [Bhajan Lal](#) (supra).

12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under [Section 482](#) of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under [Article 226](#) of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction

under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution 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. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

13. In [State of Andhra Pradesh v. Golconda Linga Swamy](#), (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and

whether any offence is made out even if the allegations are accepted in toto.

6. In [R.P. Kapur v. State of Punjab](#), AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(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.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under [Section 482](#) of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it

would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....” (Emphasis supplied)

21. The scope and ambit of inherent powers of the Court under Section 482 Cr.P.C. or the extra-ordinary power under Article 226 of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, this Court has inherent power to do real and substantial justice, or to prevent abuse of the process of the Court. At the same time, 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, this Court can exercise its inherent power or extra-ordinary power if the Court 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, I am of the considered view 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 and the chances of an ultimate conviction after full-fledged trial are bleak and continuation of criminal prosecution against the applicants accused is merely an empty formality and

wastage of prestigious time of the Court.

22. I am conscious of the pain and suffering of the complainant, who is the mother of the deceased. It is also very unfortunate that the deceased has lost his life but as observed by the Hon'ble Apex Court in the case of Geo Verghese (supra), the sympathy of the Court and pain and suffering of the complainant, cannot translate into a legal remedy, much less a criminal prosecution.

23. In the result, the applications succeed and are hereby allowed. Accordingly, the FIR being C.R.No. I-20/2017 registered with Chandkheda Police Station, Ahmedabad for the offence punishable under Sections 306 and 114 of the Indian Penal Code and consequential proceedings arising out of the said FIR are hereby quashed and set aside qua the applicants.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI