

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 31st OF JULY, 2024

CRIMINAL REVISION NO.3473 OF 2024

SANGITA

Versus

THE STATE OF MADHYA PRADESH

Appearance:

(MR. ANURAG BAIJAL, ADVOCATE FOR PETITIONER)

(MS. MEHUL SHUKLA, ADVOCATE FOR RESPONDENT/STATE)

ORDER

The petitioner has filed the present criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, being aggrieved by the impugned order dated 03.04.2024 passed by First Additional Sessions Judge, Sardarpur, District-Dhar (MP), whereby the learned Judge has framed the charge against the petitioner under Section 306 of Indian Penal Code, 1860 (*for short 'IPC'*).

(2) Facts of the case in nutshell is that the petitioner and deceased are husband and wife and their marriage was solemnized on 27.04.2022 under Hindu rites and rituals. Out of their wedlock, a daughter was born. The petitioner and deceased are well educated. The petitioner was working as Teacher in a government school and the husband of the petitioner was working as Labor at Rajgarh, Dhar (MP). The petitioner and her deceased husband are resided at

Rajgarh in the rented house for the last six months. It is stated that petitioner used to harass her husband for doing the household chores. One fateful day on 27.12.2023, the husband of petitioner committed suicide by hanging himself in the residential house. On the same day the police authorities had registered the merg intimation No.70/23 and took the merg statements of the family members of the deceased person and after the lapse of 21 days, the police authorities had registered the FIR on 16.01.2024 against the petitioner under Section 306 of IPC.

(3) After the registration of aforesaid FIR against the present petitioner, the petitioner had filed the bail application before the trial court and on 27.02.2024, the trial court had granted bail to the petitioner. After due investigation, the police authorities had filed the chargesheet before the trial court on 13.02.2024 and the concerned court has thereafter has framed the charge against the present petitioner under Section 306 IPC.

(4) Being aggrieved by the impugned order, the petitioner had filed this revision and has submitted that she was performing her marital responsibilities towards her family and her husband, there is neither any complaint nor any allegation of torture made by the deceased against the petitioner before the alleged incident. The deceased had also not left any suicide note or any dying declaration, therefore, it cannot be said that the petitioner had made any abetment to commit suicide which comes under the parameters of Section 306 of IPC. Hence, prays for allowing of the present revision and setting aside of the impugned order dated 03.04.2024 passed by First Additional Sessions Judge, Sardarpur, District-Dhar (MP).

(5) On the other hand, counsel for the State has opposed the prayer by submitting that due to harassment by the present petitioner, the deceased had committed suicide and hence prays for dismissal of the present revision.

(6) Heard counsel for the parties and perused the entire record.

(7) Before considering the allegations made against the applicant, this Court would like to consider the law governing the field of abetment to commit suicide.

(8) Section 306 of I.P.C. 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.”

(9) “Abetment” is defined under Section 107 of I.P.C. 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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B,

knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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

(10) The Supreme Court in the case of **Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)** reported in (2009) 16 SCC 605, while dealing with the term “instigation”, held as under :-

“16.....instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of ‘instigation’, though it is not necessary that actual words must be used to that effect or what constitutes ‘instigation’ must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. *Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an ‘instigation’ may have to be inferred.* A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by ‘goad’ or ‘urging forward’. The dictionary meaning of the word ‘goad’ is ‘a thing that stimulates someone into action; provoke to action or reaction’ (see *Concise Oxford English Dictionary*); "to keep irritating or annoying somebody until he reacts" (see *Oxford Advanced Learner's Dictionary*, 7th Edn.)."

(11) The Supreme Court in the case of **Praveen Pradhan vs. State of Uttaranchal and Others** reported in (2012) 9 SCC 734 held as under:-

“17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. (2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554).

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC.”

(12) The Supreme Court in the case of **Sanju @ Sanjay Singh Sengar vs. State of M.P.** reported in (2002) 5 SCC 371 has held as under:-

“6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, 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.”

Further, in para 12 of the judgment, it is held as under:

“12. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the

necessary concomitant of instigation.”

(13) The Supreme Court in the case of **Gangula Mohan Reddy vs. State of Andhra Pradesh** reported in **(2010) 1 SCC 750** needs mentioned here, in which Hon'ble Apex Court has held that "abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under section 306 IPC, there has to be a clear *mens rea* to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide. Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out. Hence, appellant's conviction, held unsustainable".

(14) In the case of **State of West Bengal vs. Orilal Jaiswal and Another** reported in **(1994) 1 SCC 73**, the Supreme Court has held that "This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the

cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that that accused charged of abetting the offence of suicide should be found guilty.”

(15) The Supreme Court in the case of **M. Mohan vs. State represented by the Deputy Superintendent of Police** reported in **AIR 2011 SC 1238** has held 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. The intention of the Legislature 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 this act must have been intended to push the deceased into such a position that he/she committed suicide.”

(16) The Supreme Court in the case of **Kishori Lal vs. State of M.P.** reported in **(2007) 10 SCC 797** has held in para 6 as under:-

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the

doing of that thing. These things are essential to complete abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. “Abetted” in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

(17) The Supreme Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh** reported in **(2001) 9 SCC 648** has held that “a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

(18) The Supreme Court in the case of **Kumar @ Shiva Kumar vs. State of Karnataka** decided on 01.03.2024 in **Criminal Appeal No.1427/2011** has also laid down the same law.

(19) If the facts of this case are considered, then it is clear that it can be summarized as under:-

(i) Sometimes in the month of July, 2016, applicant had run

away from the house after jumping from the boundary wall and ultimately she was recovered from Budhar square.

(ii) When the applicant came back to her matrimonial house for the second time, then her behaviour towards her in-laws was not good.

(iii) The deceased used to tell his mother that applicant is not in habit of giving food in time and even sometimes he go to the duty without having meals.

(iv) The deceased used to tell his mother that when he goes to his duty, then the applicant after leaving her child in the neighbourhood, is in habit of going to market along with other persons for shopping purposes.

(v) It was the deceased who was doing the work of mopping, cleaning as well as washing of clothes.

(vi) The applicant was in habit of visiting her parental home without permission of the deceased.

(vii) On 19/06/2021, applicant went to her parental home to attend the marriage of her elder brother.

When the deceased attended the said function, he found that applicant was dancing which was objected by the deceased and on that issue, there was quarrel between the applicant and deceased.

(viii) On 18/07/2021, applicant insisted that they would go back to Pali and when the deceased replied that he would not go because he wants to talk to his mother in the night, then the applicant insisted and forcibly took him to Pali Project and thereafter deceased committed suicide.

(20) Not preparing the food in time, compelling the husband to do the work of mopping, cleaning as well as washing clothes, dancing in the marriage of her own brother, compelling the deceased to immediately go back to their place of resident i.e. Pali Project and going to the market along with other persons for shopping purposes, cannot be said to be an abetment.

(21) Section 107 of I.P.C. 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

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Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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

(22) The allegations which have been made against the petitioner are of trivial in nature which generally took place in every house. Even counsel for the complainant could not point out that even if the entire allegations which have been made against the petitioner are treated as true, then how the offence under Section 306 of IPC would be made out. Even counsel for the State could not point out that how the ingredients of abetment can be inferred in the light of allegations made against the petitioner.

(23) Even if the entire allegations are accepted, it cannot be presumed that there was any instigation on the part of the petitioner. In cases of abetment of suicide, there must be proof of direct or indirect acts or incitement of commission of suicide. Acts involve

multifaceted and complex attributes of human behaviour and reactions or in the cases of abetment, Court must look for cogent and convincing proof of acts of incitement of commission of suicide. Instigation means to goad, urge forward, provoke, incite, urge or encourage to do an act.

(24) If the allegations made against the petitioner are considered in the light of law laid down by Supreme Court as already referred in previous paragraphs, this Court is of considered opinion that no case is made out warranting prosecution of the petitioner.

(25) Accordingly, charge under Section 306 of IPC which was framed by the Court below against the petitioner cannot be upheld.

(26) Resultantly, the order dated 03.04.2024 passed by First Additional Sessions Judge, Sardarpur, District-Dhar (MP) in Session Trial No.15 of 2024 is hereby set aside. Petitioner is discharged from the aforesaid charge.

(27) Accordingly, this Criminal Revision succeeds and is hereby allowed, in aforesaid terms.

(28) Certified copy, as per Rules.

Arun/-

**(HIRDESH)
J U D G E**