

Reserved on 2.2.2021

Delivered on 10.3.2021

Court No. - 77

Case :- APPLICATION U/S 482 No. - 19450 of 2010

Applicant :- Anand Singh And Others

Opposite Party :- State of U.P. and Others

Counsel for Applicant :- O.P.Rai,A.N.Singh

Counsel for Opposite Party :- Govt.Advocate,Vivek Kumar Singh

Hon'ble Pankaj Bhatia,J.

1. Heard Shri Jai Shanker and Shri O.P. Rai, counsel for the applicants and Shri Vivek Kumar Singh, counsel for the Opposite Party No. 2, learned AGA and perused the record.

2. The present application under Section 482 CrPC has been filed seeking interference of this Court for quashing the chargesheet dated 7.5.2010 as well as the proceedings of Case No. 1687 of 2010 (State Vs. Vikashh and others) arising out of Case Crime No. 76 of 2010, under Section 306 IPC, Police Station Partarpur, District Meerut pending before Special CJM, Meerut.

3. The facts, in brief, are that an First Information Report was lodged by the Opposite Party No. 2 against the applicants and was registered as Case Crime No. 76 of 2010 under Section 306 IPC, Police Station Partarpur, District Meerut. In the said FIR, it was alleged that the marriage ceremony of the daughter of the informant Km. Anu was fixed with the Applicant No. 2 and the

marriage was scheduled to be held on 16.2.2010. It was further stated that on 25.7.2009, the engagement ceremony of the Applicant No. 2 was held with the daughter of the Opposite Party No. 2, on the said date, the Applicants No. 2, 3 and 4 had come to the house of the Opposite Party No. 2 and while departure, they were given gifts, clothes and Rs. 1,000/- each. On the said date, they had demanded one Santro Car, Air Conditioner, Rs. 5 lacs and 20 Tolas of gold for marriage. It was further alleged that on various occasions, the applicants had demanded dowry by calling on the mobile numbers as mentioned in the FIR. Phone calls were also made on the mobile number of the daughter of the Opposite Party No. 2. It is further stated that the Opposite Party No. 2 had on various occasion mentioned the fact regarding the demand of dowry to the mediators of the marriage namely Pramod son of Om Pal, however, Pramod expressed his inability to help the Opposite Party No. 2. It was further stated that after two months of the engagement, the brother of the Opposite Party No. 2, Shaukin and Yogindra along with Prem Singh, Mahak Singh, Sudhir, resident of village Saidpur had gone to the house of the Applicant No. 1 where in their presence, all the four applicants asked for dowry. It was further stated that Vikash, Applicant No. 2 used to threaten the daughter of the Opposite Party No. 2, consequent whereto she got scared. It was further stated that on 1.2.2010, in the night, Vikashh, Applicant No. 2 had called the daughter of Opposite Party No. 2 and had threatened her and further demanded dowry. On the same night, at about 12 O' clock, on account of threat, by

the applicants, she immolated herself. On 2.2.2010, in the morning, the daughter of the Opposite Party No. 2 was shifted to Safdarjung Hospital, Delhi where she, unfortunately, died. Post-mortem was conducted on the deceased Km. Anu and after performing her last rites, the present FIR was lodged on 6.2.2010.

4. After lodging of the FIR, investigation was carried out. The post-mortem report is on record as Annexure No. 2 and the cause of death has been shown to be 'burn shock'. A death summary drawn by the doctor at Safdarjung Hospital, New Delhi is also on record which indicates that patient was burnt (suicidal attempt) when she poured kerosene oil over herself and lit herself on fire. It is further recorded that (as disclosed by the deceased) her marriage was due after 15 days and her in-laws wanted dowry, as a result of which, she took this step. The condition of the patient was critical with 100% deep thermal burns. She was administered life saving drugs and despite all efforts, the patient died on 2.2.2010 at about 4.30 am. During the course of investigation, spot inspection report was prepared by the Investigating Officer and the statements of various person were recorded under Section 161 CrPC, which are contained in Annexure Nos. 3 to the application.

5. The statement of Opposite Party No. 2 was recorded in which he stated before the Investigating Officer that Vikash was employed in Navy and was drawing good salary and the house was also alright. The marriage proposal was initiated by one Pramod son of Om Pal, who was also mediating in between the

families. He further deposed that Vikash and his family members were greedy since the very inception, however, the opposite parties were under the impression as the job of Vikash is good and the house is alright, they had thought that they would do maximum possible. He further deposed that on 25.7.2009 father and mother of Vikash along with his sister Anshu alias Chinki had also came to the house of the Opposite Party No. 2 and were given decent welcome. He further deposed that on the date of the engagement, the father and mother of Vikash and his sister had demanded Santro Car, Air Conditioner, Rs. 5 lacs and 20 Tolas of gold as dowry. On the said date, a lot of relatives and the villagers were present. On the said date, at the time of departure, family members of Vikash were given Rs. 1,000/- each as well as clothes and were also given proper respect. It was further deposed that after demanding articles as dowry, the applicants used to call on the phone numbers mentioned therein as well as on the phone number of the daughter of the Opposite Party No. 2 through phone numbers as disclosed in the statements. They used to demand dowry time and again and used to pressurize the Opposite Party No. 2 as well as his daughter for demand of dowry. It was further deposed that a request was made to Pramod, who was mediator, however, he did not help. As the engagement had happened, the family member of the Opposite Party No. 2 were silent on account of fear that the marriage may be broken. It was further stated that after about two months of the engagement ceremony, Yogendra and Shaukin as well as Prem Singh, Mahak Singh and Sudhir Singh, all resident of

village Saidpur had gone to the house of the applicants, however, the applicants did not agree to any of the efforts of the Opposite Party No. 2 and insisted that the articles of dowry should be paid on the date of marriage i.e. 16.2.2010. It was further stated that, on account of demand of dowry, the daughter of Opposite Party No. 2 got worried and was under fear. It was further stated that Vikash used to call the daughter of the Opposite Party No. 2 and further used to threaten her for getting dowry. On 1.2.2010, Vikash had called the daughter of the Opposite Party No. 2 and had threatened her, as a result thereof and on account of tension, the daughter of the Opposite Party No. 2 had closed door at about 12 midnight and poured kerosene oil on herself and immolated herself. Ultimately, she died at Safdarjung Hospital. On hearing cries, the informant as well as his wife and his brothers came to the room of Anu and before they could open her door, she was completely burnt. Even the electricity fittings, the mattress, bedsheets and curtains had caught fire. The informant immediately took his girl to Safdarjung Hospital. It was also deposed that during the treatment, the daughter of the Opposite Party No. 2 had told them that on account of persistent demand of dowry by Vikash and his mother, father and sister, she had immolated herself.

6. The statement of the wife of the informant Brijesh was also recorded, who deposed to the effect that there was a persistent demand of dowry and despite mediation, no solution could be found and on account of persistent demand of dowry, the

daughter of Opposite Party No. 2 out of fear and tension immolated herself.

7. The statement of one Rajkumar son of Sukhbir Singh was also recorded, who deposed that on 1/2.2.2010 at night at about 12 O' clock, on hearing cries, came to house of Ravindra Singh. When he came he saw that Km. Anu was badly burnt and was taken to Safdarjung Hospital where she died in morning. He further deposed that in-laws of Anu have demanded heavy dowry and on account of tension, she had immolated herself.

8. In the statement of one Shaukin, brother of the Opposite Party No. 2 has also deposed to the effect that niece of Shaukin, Km. Anu was engaged with Vikash and that marriage was due on 16.2.2010. He further deposed that since, from the very beginning, demand of dowry was being made and on account of tension, in the night of 1.2.2010, the niece Km. Anu burnt herself to death and committed suicide. He further stated that just prior to immolation, Vikash had called Anu and on account of the acts of applicants Anu had to commit suicide and this fact was disclosed by Anu before the doctor at Safdarjung Hospital, Delhi. Similar statement was also recorded by one Yogendra Singh, uncle of Km. Anu, who deposed to the same effect and also deposed before the doctor that she had committed the suicide on account of demand of dowry by Vikash and his family members. A statement of one Prem Singh son of Kaale Singh was recorded wherein he deposed that the marriage was scheduled to be held on 16.2.2010 and Vikash and his family members demanded dowry as they were very greedy. As the

articles of dowry could not be readied, Km. Anu, on account of tension, committed suicide by burning herself.

9. The statement of one doctor Neha Chauhan, who was working in the Burn and Plastic Surgery Department at Safdarjung Hospital, Delhi was also recorded who had herself prepared medico-legal report wherein she deposed that in the presence of Opposite Party No. 2, Km. Anu had disclosed, before dying, that her marriage was scheduled after 15 days and as there was persistent demand of dowry from the in-laws of Km. Anu, she was very disturbed and as such, she poured kerosene oil and lit herself on fire. Statement of one Mahak Singh was also recorded, who deposed to the same effect and on the same lines as the Opposite Party No. 2. The statement of S.S.I. was also recorded wherein he submitted the call detail records with respect to the calls made on the phone numbers of the Opposite Party No. 2. A spot inspection plan was also prepared. Based upon the depositions as discussed hereinabove, the chargesheet was filed on 7.5.2010 under Section 306 IPC.

10. It is worthwhile to mention that prior to the filing of the chargesheet, the applicants had approached this Court by filing a Criminal Misc. Writ Petition No. 2503 of 2010 wherein interim protection from arrest was granted to the applicants vide order 16.2.2010.

11. Counsel for the applicants argues that even if assuming all the allegations to be gospel truth, no offence under Section 306 IPC can be said to be made out and as such, the chargesheet is liable to be quashed.

12. Counsel for the Opposite Party No. 2 had defended the chargesheet and mainly argues that from the perusal of the statements on record, it is clear that the deceased committed suicide on account of persistent demand of dowry and on account of the such persistent demand, she had no other option but to commit suicide and thus, prays that the application is liable to be dismissed.

13. Counsel for the applicants places reliance on the judgments in the case of **Gurjit Singh Vs. State of Punjab, 2019 0 Supreme (SC) 1300, State of West Bengal Vs. Indrajit Kundu & Ors, 2019 0 Supreme (SC) 1164, Heera Lal & another Vs. State of Rajasthan, 2017 0 Supreme (SC) 400, Mahavir Mahto @ Mahabir Mahto & Ors. Vs. State of Jharkhand and another, 2014 0 Supreme (Jhk) 558** as well as the Judgment of Supreme Court in the case of **Arnab Manoranjan Goswami Vs. State of Maharashtra and others, 2020 SCC Online SC 964.**

14. In the light of the judgments as referred to above, the counsel for the applicants argues that for driving home a charge of abatement of suicide punishable under Section 306 IPC, it is essential that the abetment, as described under Section 107 of the IPC, should exist, failing which the chargesheet under Section 306 IPC is liable to be quashed. He argues that on the basis of the statements so recorded in the chargesheet as well as in the FIR, the allegations are with regard persistent demand of dowry and nothing more or anything else and in the absence of any positive act, which led or compelled the person to commit

the suicide, summoning/trial under Section 306 IPC is not possible.

15. Counsel for the Opposite Party No. 2, on the other hand, argues that this Court in exercise of powers under Section 482 of the CrPC is not suppose to act as a Trial Court and is not expected to intricately discuss evidence on record in exercise of powers under Section 482 CrPC. He, thus, argues that from the arverments as contained in the chargesheet, it cannot be said that no case is made out. He has placed reliance upon the judgment of the Supreme Court in the case of **Praveen Pradhan Vs. State of Uttranchal, (2012) 9 SCC 734, Chitresh Kumar Chopda Vs. State (Government of NCT of Delhi) (2009) 16 SCC 605,** judgment of the Supreme Court in the case of **Gur Bachan Singh Vs. Satpal Singh, 1990 Cr.L.J. 562** as well as judgment of the **Supreme Court in the case of Amit Kapoor Vs. Ramesh Chander & another, (2012) 9 SCC 460.**

16. Before proceeding to decide the case, as argued, it is essential to quote Section 306 IPC, which is quoted 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.”

17. Thus, for trial for the charges under Section 306 IPC, it is essential that there should exist material on record to demonstrate that the act was done on account of abetment.

18. Section 107 IPC defines abetment 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 authorized 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.”

19. The scope of Section 306 IPC read with Section 107 IPC has been elaborately discussed in the case of **Arnab Manoranjan Goswami Vs. State of Maharashtra and others, 2020 SCC Online SC 964**. The Supreme Court has held as under:

“54. The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation

for assessing the contents of the FIR. These provisions have been construed in the earlier judgments of this Court in *State of West Bengal v. Orilal Jaiswal, Randhir Singh v. State of Punjab, Kishori Lal v. State of MP* (“*Kishori Lal*”) and *Kishangiri Mangalgi Goswami v. State of Gujarat*. In *Amalendu Pal v. State of West Bengal*, Justice Mukundakam Sharma, speaking for a two judge Bench of this Court and having adverted to the earlier decisions, observed:

“12..It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

55. The Court noted that before a person may be said to have abetted the commission of suicide, they “must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide”. Instigation, as this Court held in *Kishori Lal* (supra), “literally means to provoke, incite, urge on or bring about by persuasion to do anything”. In *S S Chheena v. Vijay Kumar Mahajan*, a two judge Bench of this Court, speaking through Justice Dalveer Bhandari, observed:

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that

in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

56. *Madan Mohan Singh v. State of Gujarat* was specifically a case which arose in the context of a petition under Section 482 of the CrPC where the High Court had dismissed the petition for quashing an FIR registered for offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of which indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had other complaints including the deduction of 15 days' wages from his salary. The suicide note named the accused-appellant. In the decision of a two judge Bench of this Court, delivered by Justice V S Sirpurkar, the test laid down in *Bhajan Lal* (supra) was applied and the Court held:

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

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

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

57. Dealing with the provisions of Section 306 of the IPC and the meaning of abetment within the meaning of Section 107, the Court observed:

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

58. The Court noted that the suicide note expressed a state of anguish of the deceased and “cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide”. Reversing the judgment of the High Court, the petition under Section 482 was allowed and the FIR was quashed.

59. In a concurring judgment delivered by one of us (Dhananjaya Y. Chandrachud J) in the decision of the Constitution Bench in *Common Cause* (supra), the provisions of Section 107 were explained with the following observations:

“458. For abetting an offence, the person abetting must have intentionally aided the commission of the crime. Abetment requires an instigation to commit or intentionally aiding the commission of a crime. It presupposes a course of conduct or action which (in the context of the present discussion) facilitates another to end life. Hence abetment of suicide is an offence expressly punishable under Sections 305 and 306 IPC.”

60. More recently in *M Arjunan v. State (represented by its Inspector of Police)*, a two judge Bench of this Court, speaking through Justice R. Banumathi, elucidated the essential ingredients of the offence under Section 306 of the IPC in the following observations:

“7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language

will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

61. Similarly, in another recent judgment of this Court in *Ude Singh v. State of Haryana*, a two judge Bench of this Court, speaking through Justice Dinesh Maheshwari, expounded on the ingredients of Section 306 of the IPC, and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision, in the following terms:

“38. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit

suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

39. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. *As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide.* But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of *mens rea* on the part of the accused in such cases would be examined with reference to the

actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

62. Similarly, in *Rajesh v. State of Haryana*, a two judge Bench of this Court, speaking through Justice L. Nageswara Rao, held as follows:

“9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged

with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

63. In a recent decision of this Court in *Gurcharan Singh v. State of Punjab*, a three judge Bench of this Court, speaking through Justice Hrishikesh Roy, held thus:

“15. As in all crimes, *mens rea* has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove *mens rea*, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased.”

64. In *Vaijnath Kondiba Khandke v. State of Maharashtra*, a two judge Bench of this Court, speaking through Justice U.U. Lalit, dealt with an appeal against the rejection of an application under Section 482 of the CrPC, for quashing an FIR registered under Sections 306 and 506 read with Section 34 of the IPC. A person serving in the office of the Deputy Director of Education Aurangabad had committed suicide on 8 August 2017. His wife made a complaint to the police that her husband was suffering from mental torture as his superiors were getting heavy work done from her husband. This resulted in him having to work from 10 AM to 10 PM and even at odd hours and on holidays. The specific allegation against the appellant was that he had stopped the deceased's salary for one month and was threatening the deceased that his increment would be stopped. This Court noted that there was no suicide note, and the only material on record was in the form of assertions made by the deceased's wife in her report to the police. The Court went on to hold that the facts on record

were inadequate and insufficient to bring home the charge of abetment of suicide under Section 306 of the IPC. The mere factum of work being assigned by the appellant to the deceased, or the stoppage of salary for a month, was not enough to prove criminal intent or guilty mind. Consequently, proceedings against the appellant were quashed.”

20. The Court also took notice of the earlier judgment of the Supreme Court in the case of **Praveen Pradhan (supra)** as well as in the case of **Narayan Malhari Thorat v. Vinayak Deorao Bhagat, (2019) 13 SCC 598** and while referring the scope of exercise of powers under Section 482 CrPC, the Court has recorded as under:

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

21. Thus, from the law, as laid down and discussed elaborately by the Supreme Court in the case of **Arnab Manoranjan Goswami (supra)**, what is culled out is that for driving home the charge under Section 306 IPC, it is essential that there

should exist specific material/assertion so as to demonstrate that the abettor/accused had done any act positive so as to goad, urge forward, incite or encourage to do the act of suicide.

22. I have perused the entire statements of the informant as well as witnesses collected during the filing of the chargesheet.

23. In sum and substance, the allegations are that the applicants used to demand dowry and were persistent in their demand, and on account of the opposite parties being unable to procure the goods, as demanded as dowry, the daughter of Opposite Party No. 2, on account of fear and tension, committed dastardly act of suicide and as a result thereof, unfortunately, died. The allegation, even if are treated to be gospel truth, falls short of specific assertion to the effect that the applicants had, in any way, instigated by their acts or otherwise to carry out an act of committing suicide so as to punish them under Section 306 IPC. Even assuming the statement of the doctor, which refers to the statement of the deceased made before the said doctor, to be a dying declaration, it does not disclose any act of abetment, direct or indirect, which may be called instigation to commit the act of suicide. Once the specific ingredients of the offence are not made out, prima facie, even accepting all the statements to be true, the summoning of the applicants as well as filing of the chargesheet under Section 306 IPC suffers from an error apparent.

24. Coming to the judgments relied upon by the Opposite Party; the first being the judgment in the case of **Praveen Pradhan (supra)** which relates to the deceased being harassed at the work place. It was related to an employee being charged under Section 306 IPC wherein the Supreme Court considered the case laws relating to punishment under Section 306 IPC and laid as under:

“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.

19. Thus, the case is required to be considered in the light of the aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellant, upon non-fulfilment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been forced to work continuously for long durations in the factory, vis-à-vis other employees which often even entered to

16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, “had there been any other person in his place, he would have certainly committed suicide” is what makes the present case distinct from the aforementioned cases. Considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this Court as regards the impugned judgment and order [Criminal Miscellaneous Application No. 420 of 2006, decided on 5-1-2012 (Utt)] of the High Court. The appeal is, therefore, dismissed accordingly.”

25. In the present case, there is nothing on record whatsoever to demonstrate that there exist any instigation at the instance of the applicants to force the daughter of the Opposite Party No. 2 to commit suicide. Even in the statement given to the doctor by the deceased herself, there is no whisper with regard to the fact that she was instigated to commit that unfortunate act. In the present case, there is no utterance of any word which is having any semblance of death/suicide, which was committed by the daughter of the Opposite Party No. 2. In fact, Supreme Court itself in Paragraph Nos. 13, 14, 15, 16 and 17 referred to earlier judgments to the same effect that to charge a person under Section 306 IPC read with Section 107 IPC, there should be something more positive so as to try a person under Section 306 IPC.

26. The next judgment cited by the counsel for the Opposite Party No. 2 is in the case of **Chitresh Kumar Chopda (supra)** wherein the Supreme Court with respect to scope of Section 107 IPC elaborated and discussed the phrase ‘instigate’ and after referring to the various

judgments and after referring to the suicide note held that, on the basis of the material on record, it cannot be said that any inference of the appellant having instigated were expected. The Supreme Court recorded as under:

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See *Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya* [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] .)

27. In the present case, even if submissions of are taken on their face value to be gospel truth, there is nothing material or ground for even for presuming that the applicants could be held guilty for committing the offence under Section 306 IPC.

28. The next case is of **Amit Kapoor (supra)** which relates to quashing of the chargesheet under Section 306 IPC. The Supreme Court considered the scope of exercise of jurisdiction by the Trial Court under Section 228 CrPC and held that at the initial stage of framing of charges, the Court is not concerned with the proof but merely strong

suspicion that accused has committed the offence, which if put to trial could prove him guilty. The Court also lucidly dealt with the scope of the powers under Section 397 CrPC as well as Section 482 CrPC and laid down certain guidelines for exercise of powers under Section 482 CrPC. The tests laid down by the Supreme Court in exercise of powers under Section 482 CrPC are as under:

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the

offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredient of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine

whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

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

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

Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ; *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] ; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] ; *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] ; *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703] ; *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] ; *State of U.P. v. O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] ; *Ganesh Narayan Hegde v. S. Bangarappa* [(1995) 4 SCC 41 : 1995 SCC (Cri) 634] ; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869] ; *Shakson Belthissor v. State of Kerala* [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412] ; *V.V.S. Rama Sharma v. State of U.P.* [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] ; *Chundururu Siva Ram Krishna v. Peddi Ravindra Babu* [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] ; *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] ; *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] ; *Lalmuni Devi v. State of Bihar* [(2001) 2 SCC 17 : 2001 SCC (Cri) 275] ; *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] ; *Savita v. State of Rajasthan* [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta v. State of Gujarat* [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] .]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to

quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

29. In the facts of the case in hand, the Supreme Court in exercise of its power refused for quashing of the charge as framed against the appellant therein.

30. In the present case, even applying the scope of exercise of powers under Section 482 CrPC, I am of the firm view that from the statements so recorded and as discussed above do not even contain any averments with regard to the instigation for commission of offence under Section 306 IPC.

31. The next judgment cited is in the case of **Gur Bachan Singh (supra)** wherein the Supreme Court was dealing with the offence under Section 306 IPC relating to the suicide or accidental death of a newly wedded girl, who died on account of burn injuries in the light of the provisions of Section 113A of the Evidence Act. The said judgment hinges upon the presumption available under Section 113A of the Evidence Act and has no relevance to the facts in the present case.

32. On the basis of the facts, as discussed above and the law as referred to hereinabove, although the death of the daughter of the Opposite Party No. 2 was an unfortunate event, the material on record fall hopelessly short of any positive act as defined under Section 107 of the IPC which can even have the semblance of instigation or any conspiracy on the part of the applicants or any intentional aid for the commission of the act of suicide by the

daughter of the Opposite Party No. 2 so as to frame charge under Section 306 IPC. Consequently, the application is allowed and the chargesheet dated 7.5.2010 as well as proceedings of Case No. 1687 of 2010 (State Vs. Vikashh and others) arising out of Case Crime No. 76 of 2010, under Section 306 IPC, Police Station Partarpur, District Meerut pending before Special CJM, Meerut is quashed. However, the materials on record, prima facie, disclose an offence committed by the applicants under Section 4 of Dowry Prohibition Act and read with Section 7 (1) (b) of the Dowry Prohibition Act, the Magistrate ought to have taken cognizance under Section 4 of the Dowry Prohibition Act. Accordingly, it is directed that the applicants shall be tried for offences under Section 4 of the Dowry Prohibition Act. The applicants shall appear before the concerned Court within one month from today for trial in accordance with law.

Order Date :- 10.3.2021

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