

Court No. - 10

1. **Case :-** APPLICATION U/S 482 No. - 6195 of 2016

Applicant :- Dr. J.P. Bhargav And Anr.

Opposite Party :- State Of U.P. Thru. C.B.I. Special Crime Branch Lko And Anr.

Counsel for Applicant :- Naved Mumtaz Ali

Counsel for Opposite Party :- Rishad Murtaza

2. **Case :-** APPLICATION U/S 482 No. - 6205 of 2016

Applicant :- Mr. Rajesh Hans

Opposite Party :- State Of U.P. Thru. C.B.I. Special Crime Branch Lko And Anr.

Counsel for Applicant :- Naved Mumtaz Ali

Counsel for Opposite Party :- Rishad Murtaza

3. **Case :-** APPLICATION U/S 482 No. - 6368 of 2016

Applicant :- Dr. Sarat Chandra Gupta

Opposite Party :- State Of U.P. Thru. C.B.I. Special Crime Branch Lko And Anr.

Counsel for Applicant :- Manish Bajpai, Amit Kumar Srivastava

Counsel for Opposite Party :- Rishad Murtaza, Bireshwar Nath

Hon'ble Dinesh Kumar Singh, J.

1. Heard learned counsel for the applicants and learned counsel for the respondent- Central Bureau of Investigation (for short 'CBI') and gone through record of all the applications.

2. By way of these applications under Section 482 CrPC, the applicants have prayed for quashing of charge-sheet no.06 of 2016 filed in FIR No.0532015S0001, Case No.RC01(S) / 2015 / CBI / SCB / LKO, under Sections 120-B read with Section 306 and 306 IPC and for quashing of the order dated 08.08.2016 passed by the Special Judicial Magistrate (C.B.I.) Lucknow in Case No.03 of 2016 by means of which cognizance of the offence has been taken and the applicants have been summoned to face trial.

3. As it comes out, FIR No.0532015S0001 dated 15.01.2015 came to be registered at Police Station CBI, SCB, Lucknow under Sections 302/120-B IPC by the CBI pursuant to the order dated 03.09.2014 passed by this Court in Writ Petition No.8240 (M/B) of 2013 (Smt. Mithlesh Sharma Vs. State of U.P. and others).

4. This Court, vide the said order, transferred investigation of Crime No.0113 of 2012, under Sections 302/120-B IPC lodged at Police Station Pasgawan, District Lakhimpur Kheri to the CBI.

5. Allegations, as contained in the FIR, are that husband of informant, Smt. Mithlesh Sharma, Mahendra Kumar Sharma (deceased), aged about 55 years, was posted at Community Health Center, Pasgawan, District Lakhimpur Kheri as Senior Clerk; he was on leave from 02.11.2011 to 26.11.2011 on account of marriage of his daughter; on returning back, he was shown to be absent from office for the said period and lock of his almirah, kept in his office, was broken opened and certain documents and files were missing from the almirah; the deceased informed Chief Medical Officer (for short "CMO"), Dr. J.P. Bhargav about breaking lock of the almirah and missing of the files and documents; the CMO asked him to handover charge to Rajesh Hans; the deceased was directed to join his service at Primary Health Center, Bijuwa.

6. It is alleged that the deceased requested the CMO to issue order of his transfer in writing and enquire about missing of the documents, files and cheques, as they were connected with National Rural Health Mission (for short 'NRHM') Scam. It was further alleged that the case of NRHM Scam was being conducted by the CBI and the deceased was apprehensive of the interrogation/questioning by the CBI regarding missing of documents and files; the CMO assured the deceased that he would look into the matter regarding missing of files and documents and asked him to join at Primary Health Center, Bijuwa; on 30.01.2012, the deceased sent a letter to the CMO in respect of alleged missing of files and documents, but he did not join service and remained at his home; on 06.02.2012, Rajesh Hans, Clerk, Dr. S.C. Gupta, Superintendent, Kuldeep Mishra, President, Community Health Center, Pasgawan, and Munna Lal Verma, Secretary, U.P. Health Ministerial Association, Lakhimpur Kheri came to house of the deceased and told him that CMO had ordered him to join service at Bijuwa and some necessary documents were to be signed which in-turn had to be submitted to the investigating team of the CBI; the deceased had assured the aforesaid persons that he would go to Pasgawan next day; on 07.02.2012, the deceased left his house for Pasgawan and did not return after considerable time.

7. On 02.02.2012, Neeraj Sharma, son of the deceased, gave an information at the Police Station Kotwali Sadar, Lakhimpur Kheri, informing therein that his father had been missing since 07.02.2012; on 15.02.2012, the informant, wife of the deceased, received information that dead-body of her husband was lying at Community Health Center, Pasgawan; on this information, the informant reached at Community Health Center, Pasgawan and noticed numerous injuries on body of her husband, having mud and blood stained; the informant believed that her husband was killed by Rajesh Hans, S.C. Gupta, Kuldeep Mishra, Munna Lal Verma at the instance of Deputy CMO, Balbir Singh and CMO, J.P. Bhargav as her husband was an honest man and was not connived with them in their misdeeds/corruption.

8. Postmortem of cadaver of the deceased was conducted on 16.02.2012 and during the postmortem examination two lacerated wounds and four contusions were found on body of the deceased and the Doctor was of the opinion that death was due to shock and asphyxia as a result of smothering.

9. The FIR came to be registered on complaint of wife of the deceased, alleging therein homicidal death of her husband, naming the applicants as accused. On 18.02.2012, a suicide-note dated 07.02.2012 was recovered from pocket of the deceased. The suicide-note, on English translation would read as under:-

"Sir I would request that I applied for leave from 02.11.2011 to 26.11.2012 for performing marriage of my daughter; the superintendent gave permission for leave, however, later on, the leave was not sanctioned; I was transferred in quick succession from 2008; illegal proceedings have been started and in my absence lock of my office was broken and relevant papers relating to RCHM voucher and cheque books were misplaced; Dr. Balbir Singh, A.C.M.O, who is officer of RCHM, had handed over the work to Rajesh Babu, clerk; in my almirah vouchers from 2005-06 to 2008-09 were also available; the vouchers and cheques for 2009-10 and 2010-11 of Community Health Center, Pasgawan were also available in the almirah; from 2008 to 2011 my transfer was made time & again; in 2009, I took the charge of Community Health Center, Pasgawan in the month of October/November, however, Dr. Balbir Singh, A.C.M.O, transferred me to Dhaurahara and, thereafter,

accepting Rs.20,000/- bribe from him, the same was cancelled; now I have been again transferred by Dr. Balbir Singh, A.C.M.O and Dr. J.P. Bhargav, saying that he was going out of mind and Dr. Balbir Singh demanded bribe of Rs.50,000/-, which I refused to give; for this reason I had committed suicide; therefore, accused of this murder are Dr. Balbir Singh, Dr. S.C. Gupta, Rajesh Babu and Dr. J.P. Bhargav.

Sd/-

M.K. Sharma

07.02.2012

Note: whatever charge I held, I had already given to Rajesh Babu on 21.01.12 and 02.02.12 and now I am not having any charge."

10. Vide order dated 03.09.2014 passed in Writ Petition No.8240 (M/B) of 2013 preferred by informant, Smt. Mithlesh Sharma, the Division Bench of this Court passed the following order:-

Considering the facts and circumstances of the case, submission made by the learned counsel for the petitioner and the learned A.G.A. and Sri Amarjeet Singh Rakhra, learned counsel for the C.B.I. it reveals that according to the FIR itself the murder of the deceased Mahendra Kumar Sharma, Head Clerk of C.H.C. Pasgawan district Lakhimpur is related with the N.R.H.M. scam and the state Government has already made request to the Union of India to hold the investigation of this case by C.B.I. vide his letter dated 26.2.2012 but the request of the State Government was rejected only because no case pertaining to Lakhimpur Kheri relating to N.H.R.M. is being investigated by the C.B.I. its communication was made to the Chief Secretary, U.P. Government Lucknow vide letter dated 17.7.2012 but at present the position is otherwise because the cases pertaining to Lakhimpur Kheri relating to N.H.R.M. scam is being investigated by C.B.I. and according to the post mortem examination report prepared by a penal of doctor, the cause of death of the deceased Mahendra Kumar Sharma was smothering, he had sustained ante mortem injuries also, only on the basis of the recovery of the suicide note by the local Police, it may not be said at this stage that it was a case of suicide. In any case, if the cause of death is

smothering, it may not be said to be suicide but it requires a through investigation, only on the basis of suicide note, the inference cannot be drawn that the deceased has committed suicide because the suicide note may be obtained in writing of the deceased under pressure and coercion etc. it also requires a proper investigation, in such circumstances we are of the opinion that it is a case in which Mahendra Kumar Sharma has lost his life, may be related with the N.H.R.M. scam. The N.H.R.M. pertaining to Lakhimpur is also pending investigation by the C.B.I. therefore, we direct that the investigation of case crime no. 113 of 2012 under section 302/120-B I.P.C. P.S. Pasgawan district Lakhimpur Kheri shall be done by the C.B.I. and S.P. Lakhimpur Kheri is directed to ensure that all the documents and other material collected during investigation by the I.O. shall be handed over to a competent officer of the C.B.I. and the C.B.I. shall take necessary steps to take investigation of this case in his hand."

11. Subsequent to taking over the investigation by the CBI, a medical board was constituted by the Head of Department, Forensic Medicine, All India Instituted of Medical Sciences, New-Delhi (for short 'AIIMS'). The Medical Board of the AIIMS opined vide report dated 17.09.2015 that injury nos. 1 and 2 were postmortem artifacts produced by maggot infestation, which were misinterpreted earlier by board of doctors as lacerated wounds and injury nos. 3 to 6 were simple blunt force injures. The experts of AIIMS opined cause of death as asphyxia as a result of combined effect of aluminium phosphide. The medical board of the AIIMS opined that death of deceased, Mahendra Kumar Sharma could be around 7-10 days prior to its recovery. The medical board of the AIIMS also concluded that the death was suicidal one.

12. On the aforesaid finding of the Medical Board of the AIIMS, the CBI came to the conclusion that the deceased, Mahendra Kumar Sharma committed suicide and filed charge-sheet under Sections 120-B read with Section 306 and 306 IPC against the applicants on the basis of suicide-note.

13. The said suicide-note was recovered from pocket of jacket (*sadri*) of the deceased, Mahendra Kumar Sharma during search of his government quarter. The same was sent along with admitted handwriting/signature of the deceased to FSL, Mahanagar, Lucknow. The experts of the FSL, Lucknow vide opinion dated 03.03.2012 opined that handwriting /signature on the suicide-note were written by the same person. In order to rule out any error, the suicide-note was also sent to CFSL, Bhopal by the CBI, which also opined that the suicide-note was written by the deceased, Mahendra Kumar Sharma himself.

14. On behalf of the applicants, Mr. Naved Ali, learned counsel, has submitted that mere mention of the names of the applicants in the suicide-note would not make them culpable as the basic ingredients of instigation was conspicuously absent; there was nothing in the suicide-note, which would lead to a reasonable apprehension of instigating the deceased to commit suicide. The learned counsel has further submitted that there were reasons for the deceased to make false allegations against the applicants. Even if the contents of the suicide-note, in question, are taken at their face value then also same would not constitute any abetment/instigation on behalf of the applicants to constitute an offence under Section 306 IPC. It was revealed in the investigation that the deceased, before committing suicide, had spoken to one Ashish Katiyar, District Correspondent, Sudarshan News Channel, Lakhimpur Kheri which was recorded on his mobile phone. The deceased was threatening to commit suicide in the said conversation on account of his alleged harassment. This conversation is part of the investigation conducted by the CBI. As per the CBI, Reporter Ashish Katiyar had later on apprised Dr. S.C. Gupta, Superintendent, Community Health Center, Pasgawan about telephonic conversation he had with the deceased. The transcript of the telephonic conversation between the deceased and Ashish Katiyar

and between the deceased and Dr. S.C. Gupta, Superintendent, Community Health Center, Pasgawan has been placed on record as Annexure-8 to the Application No.6195 of 2016.

15. In the said conversation with Ashish Katiyar, Reporter, the deceased was threatening to commit suicide, however, this threatening of committing suicide by the deceased was not communicated to the applicants. There is nothing on record to demonstrate the knowledge about the intention of the deceased to commit suicide and, therefore, there was no occasion for the applicants to have dissuaded the deceased from doing so. Except for suicide-note and the conversation between the deceased and the Reporter, Ashish Katiyar, there is nothing on record to suggest any abetment of suicide by the applicants. Charge-sheet does not disclose entire facts, rather there is concealment and the learned Magistrate, without proper application of mind, has taken cognizance and summoned the applicants.

16. Mr. Naved Ali, learned counsel, has further submitted that on 15.10.2011 one Dr. Gopal Singh, Medical Officer-II had submitted a complaint regarding dereliction of duty and misconduct by the deceased to CMO, Lakhimpur Kheri. Subsequently, on 20.10.2011, Dr. Balbir Singh, Deputy CMO, Lakhimpur Kheri was entrusted with the inquiry into the said complaint against the deceased by Dr. J.P. Bhargav, CMO, Lakhimpur Kheri. On 21.10.2011, Dr. Balbir Singh, Deputy CMO, submitted his inquiry report to CMO, Lakhimpur Kheri wherein the allegations levelled by Dr. Gopal Singh Medical Officer-II, in his complaint against the deceased, were found to be true. In pursuance to the recommendation made by Dr. Balbir Singh the deceased was transferred from Community Health Center, Pasgawan to Primary Health Center, Bijuwa on administrative grounds along with the direction to relieve him from his duty with immediate effect.

On behalf of the applicants, Mr. Naved Ali has also submitted that on 05.11.2011, Dr. S.C. Gupta, the then Superintendent,

Community Health Center, Pasgawan, wrote a letter to the deceased to give charge to Avdhesh Kumar Mishra, Clerk and, on 01.02.2011 the deceased was relieved of his charge on the ground that repeated reminders and communications to handover the charge were not responded by the deceased. On 01.12.2011, Mr. Avdhesh Kumar Mishra, Clerk wrote to the CMO, Dr. J.P. Bhargav that the deceased had not yet handed over the charge to him. Dr. S.C. Gupta, Superintendent wrote a letter to the CMO, requesting him to take an action against the deceased as he was not handing over the charge. Rajesh Hans was given additional charge of Community Health Center, Pasgawan on 03.12.2011 and the deceased was transferred to Primary Health Center, Patراسي same day, which is situated near CMO officer. Kuldeep Mishra, Clerk at Community Health Center, Nighasan was given additional charge of Community Health Center, Bijuwa. CMO, Lakhimpur Kheri vide Office Memorandum dated 15.12.2011 constituted a five members team comprising of three gazetted officers to break open almirah of the deceased in order to facilitate provision of documents and material to Mr. Rajesh Hans, who had replaced the deceased in the capacity of Senior Clerk, Community Health Center, Pasgawan. On 07.12.2011, the almirah of the deceased was broken opened and inventory of the articles/documents was prepared by the said team. The material would demonstrate that despite various letters and reminders to handover the charge, the deceased did not hand over the charge of Community Health Center, Pasgawan. On 07.01.2012, the CMO, Lakhimpur Kheri ordered for launching of criminal proceeding by lodging FIR against the deceased. After much persuasion, on 27.01.2012 the deceased handed over only half of his charge and 11 documents were not handed over by the deceased. The deceased had assured handing over complete charge on 25.01.2012, but he remained absent from his office and did not respond to the telephonic calls made by the

Superintendent of the Community Health Center not by his clerk. On 02.02.2012, the deceased handed over some more documents, which he possessed in Community Health Center, Pasgawan, which were signed by two clerks and simultaneously evaluated by the Superintendent, Community Health Center, Pasgawan. The deceased addressed a letter on the same day i.e. 02.02.2012 to the Superintendent, Community Health Center, Pasgawan, assuring him that he would handover certain documents on 06.02.2012.

On behalf of the applicants, it has also been submitted that the CBI, while filing charge-sheet, did not take into account these official documents and, only on the basis of the suicide-note and conversation between the deceased and Ashish Katiyar, Reporter, the impugned charge-sheet had been filed. There was no connection and co-relation with the NRHM Scam. Not even an iota of evidence was found by the CBI during the course of investigation, which can even remotely connect the applicants with the NRHM Scam. Neither the applicants had been prosecuted nor they were wanted with respect to NRHM Scam. The applicants had clean antecedents and they enjoyed good reputation in the department and society. The applicants had unblemished and spotless service record. There is no cogent and credible evidence collected by the CBI for commission of the offence for which the impugned charge-sheet had been filed against the applicants and, therefore, it is submitted that the impugned charge-sheet as well as the impugned proceedings is liable to be quashed.

17. On behalf of the respondent, CBI, Mr. Anurag Kumar Singh, learned counsel, has opposed these applications and submitted that Mr. Ashish Katiyar visited Community Health Center, Pasgawan and telephonic conversation with deceased was made heard to Dr. S.C. Gupta, the then Superintendent, Community Health Center, Pasgawan, who promised to convey the same to CMO, Dr. J.P. Bhargav and Deputy CMO, Dr. Balbir Singh. Mr. Ashish Katiyar, Reporter also

tried to contact Dr. J.P. Bhargav, but Dr. J.P. Bhargav could not be available and, thereafter dead-body of the deceased was found at the Community Health Center, Pasgawan in his government quarter. Dr. J.P. Bhargav, Dr. S.C. Gupta, Dr. Balbir Singh and Rajesh Hans had come to know about the recorded conversation, wherein the deceased was saying that he would commit suicide due to acts of his harassment. It is further stated that the investigation further revealed that Dr. J.P. Bhargav, Dr. S.C. Gupta, Dr. Balbir Singh and Rajesh Hans despite knowing the conversation between the deceased and Reporter, Mr. Ashish Katiyar did not take any initiative to save life of the deceased and accused, in connivance with each other, put the deceased under tremendous pressure. Their acts had driven the deceased to commit suicide. It is further submitted that the applications are liable to be dismissed as there was sufficient evidence available on record in support of the prosecution case at the stage of taking cognizance in which the material collected during the course of investigation was considered. The learned Magistrate, after considering the material, has summoned the applicants as accused and, there is no illegality in the impugned order passed by the learned Magistrate, summoning the applicants to face trial for the offence under Sections 120-B read with Section 306 and 306 IPC.

18. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. There has to be a positive act on the part of the accused to instigate or aid in committing suicide. If there is no positive act on behalf of the accused to instigate or aid in committing suicide, offence under Section 306 cannot be said to be made out. In order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit the offence. There should be an active act or direct act, which led the deceased to commit suicide. The overt act must be such a nature that the deceased must find himself having no option but to an end to his life. That act must

have been intended to push the deceased into such a position that he/she commit suicide. In the suicide-note, only allegation is that the deceased was being frequently transferred and he was being harassed by the applicants. For demanding bribe, the deceased never made any complaint to any authority and the same could not be believed. The facts disclose that the deceased himself was not handing over the charge despite numerous reminders and he was not joining the place of his transfer. The deceased himself was guilty of dereliction of duty. For performing official acts, without there being any intention to push the deceased to commit suicide, the offence under Section 306 IPC against the applicants cannot be said to be attracted. On a plain reading of the suicide-note itself reflects that there was no abetment on the part of the applicants for committing suicide by the deceased.

19. Paras-13, 14 and 15 of the case reported in **(2015) 9 SCC 639 (State of Kerala and others Vs. S. Unnikrishnan Nair and others)** read as under:-

13. In Netai Dutta [(2005) 2 SCC 659 : 2005 SCC (Cri) 543] , a two-Judge Bench, while dealing with the concept of abetment under Section 107 IPC and, especially, in the context of suicide note, had to say this: (SCC p. 661, paras 6-7)

“6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned

Single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal.”

14. *In M. Mohan [(2011) 3 SCC 626 : (2011) 2 SCC (Cri) 1] , while dealing with abetment, the Court has observed thus: (SCC p. 638, paras 44-45)*

“44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are 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.”

15. *As far as Praveen Pradhan [(2012) 9 SCC 734 : (2013) 1 SCC (Cri) 146] , is concerned, Mr Rao, has emphatically relied on it for the purpose that the Court had declined to quash the FIR as there was a suicide note. Mr Rao has drawn our attention to para 10 of the judgment, wherein the suicide note has been reproduced. The Court in the said case has referred to certain authorities with regard to Section 107 IPC and opined as under: (SCC p. 741, paras 18-19)*

“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 a 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 of the High Court."

20. The Supreme Court in **(2019) 17 SCC 301 (Ude Singh and others Vs. State of Haryana)**, extensively surveyed essentials of offence of abetment of suicide, as defined under Section 306 IPC, and summarized the principles. It has been held that in cases of alleged abetment of suicide, there must be cogent and convincing proof of direct or indirect act(s) of incitement to the commission of suicide. Mere allegation of harassment of the deceased by any person would not be sufficient to attract the offence of abetment of suicide unless there is such action on the part of accused which compelled the deceased to commit suicide. It is also relevant that such an offending action ought to be proximate to the time of occurrence. It has been further held that psyche, sensitivity / hypersensitivity of victim are

relevant and material considerations. Each case is required to be examined on its own facts and taking note of all the surrounding factors, having bearing on the actions and psyche of the accused and the deceased. The Supreme Court in para-16 of *Ude Singh and others Vs. State of Haryana's* case (supra) has explained the essentials of abetment of suicide which read as under:

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

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

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

16.2. *We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set-ups, education, etc. Even the response to the ill action of eve teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."*

21. The Supreme Court in the case reported in **(2021) 2 SCC 427 (Arnab Manoranjan Goswami Vs. State of Maharashtra and others)** has held that a person, who is said to have abetted commission of suicide, must have played an active role by an act of instigation or by doing certain acts to facilitate the commission of suicide. Paras 50 and 51 of *Arnab Manoranjan Goswami Vs. State of Maharashtra and others's* case (supra) read as under:-

"50. *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 W.B. v. Orilal Jaiswal [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 : 1994 SCC (Cri) 107] , Randhir Singh v. State of Punjab [Randhir Singh v. State of Punjab, (2004) 13 SCC 129 : 2005 SCC (Cri) 56] , Kishori Lal v. State of M.P. [Kishori Lal v. State of M.P., (2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] (“Kishori Lal”) and Kishangiri Mangalgiri Goswami v. State of Gujarat [Kishangiri Mangalgiri Goswami v. State of Gujarat, (2009) 4 SCC 52 : (2009) 2 SCC (Cri) 62] . In Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Mukundakam Sharma, J., speaking for a two-Judge Bench of this Court and having adverted to the earlier decisions, observed : (SCC p. 712, para 12)

“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.”

51. 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 [Kishori Lal v. State of M.P., (2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] , “literally means to provoke, incite, urge on or bring about by persuasion to do anything”. In S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] , a two-Judge Bench of this Court, speaking through Dalveer Bhandari, J., observed : (SCC p. 197, para 25)

“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.”

22. Mr. Anurag Kumar Singh, learned counsel for the respondent-CBI has, however, placed reliance upon judgment rendered by the Supreme Court reported in *(2012) 9 SCC 734 (Praveen Pradhan Vs. State of Uttaranchal and another)* to submit that offence of abetment by instigation depends upon intention of the person who abets and it is not dependent upon act which is done by the person who has abetted. Instigation has to be gathered from the circumstances of a particular case and in the present case from the circumstances it is clear that the deceased was harassed in the hands of the applicants and, therefore, he committed suicide. He has, therefore, submitted that the impugned charge-sheet and proceedings are not to be quashed. He has also placed reliance upon the judgment of the Supreme Court reported in *(2012) 9 SCC 460 (Amit Kapoor Vs. Ramesh Chander and another)* to submit that the Court is required to consider record of the case and documents submitted therewith to find out whether strong suspicion for commission of offence by the accused would arise and prove him guilty.

23. From the aforesaid discussions, it is evident that the deceased perceived harassment by the applicants as he was transferred in frequent successions on administrative grounds. There is nothing on record to suggest any mens-rea for instigating or abetting the suicide by the applicants. The suicide-note, as has been extracted herein above even does not remotely suggest that the accused-applicants had any intention to aid, instigate or abet the deceased to commit suicide. Transferring the deceased, asking him to handover the charge and not sanctioning earned leave by itself would not constitute the offence of abetment to commit suicide. There is no evidence collected by the CBI to suggest that the applicants intended by such act to instigate the deceased to commit suicide. This Court is of the view that all ingredients of instigation of abetment to commit suicide are completely absent in the material collected during the course of

investigation and, therefore, it cannot be said that the accused-applicants have committed any offence under Section 306 IPC. There is no offending action proximate to the time of occurrence on the part of the applicants, which would have led or compelled the deceased to commit suicide. Perceived of harassment by the deceased in the hands of the accused-applicants cannot be a ground for invoking the offence under Section 306 IPC as it cannot be said that the accused-applicants have abetted the commission of suicide by playing any active role or by an act of instigation or doing certain acts to facilitate commission of suicide.

24. In the light of the aforesaid discussions, this Court is of the view that the applications are to be **allowed** and the impugned charge-sheet and the impugned proceedings are to be *quashed*.

25. **Ordered accordingly.**

Order Date :- 6.7.2022

MVS/-