

A.F.R.
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Court No. - 53

Case :- APPLICATION U/S 482 No.21503 of 2015

Applicant(s):- Rahul Kushwaha

Opposite Party(s) :- State of UP and Another

Counsel for Applicant(s) :- Abhilasha Singh, Ashutosh Yadav, Deepak Rana, Dharmendra Singhal, Rajesh Kumar Srivastava, S. Lal, Shivendra Raj Singhal

Counsel for Opposite Party(s) :- Akhilesh Chandra Shukla, Govt. Advocate, Kartikeya Bhargava, Swapnil Sinha

Hon'ble Sandeep Jain, J.

1. The present application has been filed for the following reliefs:-

"1. Allow this application; and/or,

2. Quash the impugned order dated 13.03.2015 passed by the learned Additional Sessions judge, Court No.14, Ghaziabad in Criminal Revision No.22 of 2015, Rahul Kushwaha v. Geeta Bainsla; and/or,

3. Quash the impugned order dated 21.10.2014 passed by the learned Additional Chief Judicial Magistrate, Court No.05, Ghaziabad in Complaint Case No.49 of 2012, Geeta Bainsla v. Rahul Kushwaha u/s 306,354,506 IPC, P.S. Modi Nagar, District Ghaziabad; and/or,

4. Quash entire proceedings of Complaint Case No.49 of 2012, Geeta Bainsla v. Rahul Kushwaha u/s 306,354,506 IPC, P.S. Modi Nagar, District Ghaziabad pending in the court of the learned Additional Chief Judicial Magistrate, Court No.05, Ghaziabad; and/or,

5. Direct both the subordinate courts below to decide and dispose of the bail application of the petitioner on the same day; and/or,

6. Stay further proceedings of Complaint Case No.49 of 2012, Geeta Bainsla v. Rahul Kushwaha, u/s 306,354,506 IPC, P.S. Modi Nagar, District Ghaziabad pending in the Court of ACJM, Court No.05, Ghaziabad during the pendency of the present criminal misc. application before the Hon'ble Court; and/or,

7. Pass such order or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The factual matrix of the case is that Km. Jyoti was the minor daughter of the first informant, Smt. Geeta Baisla, and was studying in Class XI at TRM School Modi Nagar at the relevant time. It is alleged that the applicant, Rahul Kushwaha, who was employed therein as a teacher of Physics, had developed an improper and lustful interest in Km. Jyoti and, from time to time, made indecent gestures towards her and attempted to outrage her modesty, which conduct was resisted and protested by her.

3. It is further alleged that the applicant repeatedly pressurized Km. Jyoti to take private tuition from him, which she declined. Upon such refusal, he allegedly threatened that he would fail her in the examinations and would also have her family eliminated. It was further asserted that the applicant used to boast that his uncle, Babli @ Gyanchand, was a political leader and that his relative, Dabbu, was a notorious criminal who wielded terror in Modi Nagar.

4. According to the first informant, Km. Jyoti used to disclose these incidents to her mother, and the matter was also brought to the notice of the Principal of the aforesaid school. The Principal allegedly assured the family that no untoward incident would occur with Km. Jyoti. However, it is alleged that on account of the complaint having been made, the applicant developed animosity towards Km. Jyoti and threatened to fail her in the examination unless she submitted to his demands.

5. It is further alleged that on 25.03.2011, while Km. Jyoti was appearing in her examination, the applicant, despite not being assigned invigilation duty in that room, entered the examination hall, behaved indecently with her, snatched her answer-book, and

threatened that unless she established contact with him, he would not allow her to pass the examination. He is also alleged to have used obscene language and issued threats. On account thereof, Km. Jyoti raised an alarm and telephonically informed the first informant, whereupon the latter reached the school along with police personnel. A complaint was again made to the Principal, who reprimanded the applicant, and Km. Jyoti was thereafter permitted to continue her examination. It is alleged that while leaving, the applicant threatened that he would avenge the said incident.

6. The first informant further alleged that despite complaints being made to the police, no action was taken, as the applicant had, by use of influence, obstructed any legal proceedings against him. Again, on 02.04.2011, the applicant allegedly attempted to outrage the modesty of Km. Jyoti, regarding which another complaint was made to the Principal. It is further alleged that in retaliation, the applicant, in collusion with his associates, fabricated false injuries and procured registration of an FIR against Naresh the brother of the first informant, at Police Station Modi Nagar.

7. It is further stated that her husband arrived on leave on 18.04.2011 then the entire incident was disclosed to him, then her husband submitted an application on 19.04.2011 to the Senior Superintendent of Police, Ghaziabad seeking registration of an FIR at Police Station Modi Nagar, on which FIR was ordered to be registered. It is alleged that on 20.04.2011 at about 7:00 p.m., the applicant along with his accomplices came to the residence of the first informant and threatened her with dire consequences unless she withdrew her complaint. Another representation was thereafter submitted to the SSP Ghaziabad, who ordered arrest of the accused persons, but again no action ensued.

8. It is further alleged that Km. Jyoti subsequently reappeared in the examination and her answer-book was evaluated by other teachers, whereupon she passed the examination. However, the applicant and his associates allegedly continued attempts to implicate the family in false cases. According to the first informant, due to the persistent harassment and defamation caused by the conduct of the applicant, the reputation and mental peace of Km. Jyoti stood gravely affected, and ultimately on 29.07.2011 she committed suicide.

9. It is the further case of the first informant that despite attempts, the FIR regarding the said incident was not registered. It is alleged that the police neither conducted inquest proceedings nor post-mortem examination of the deceased. Consequently, the first informant was constrained to move an application under Section 156(3) Cr.P.C. on 15.11.2011, which was allowed on 19.11.2011, and pursuant to the order of the court, an FIR being Case Crime No.781 of 2011 came to be registered on 26.11.2011 against the applicant under Section 306,354,506 IPC at P.S. Modi Nagar, District Ghaziabad.

10. After investigation, a final report was submitted on 09.01.2012, which was challenged by the first informant by means of a protest petition dated 17.02.2012. The said protest petition was allowed by the A.C.J.M., Court No.5, Ghaziabad on 01.09.2012, and further investigation was directed. Upon further investigation, yet again final report was submitted on 28.01.2013 on the ground that the first informant had not informed the police promptly, no treatment was undertaken and the body of the deceased Km. Jyoti has been cremated surreptitiously and that no post-mortem had been conducted to prove that she died due to the poisoning, hence the applicant has not committed any offence.

11. A second protest petition was thereafter filed on 20.03.2013, which was allowed. By order dated 10.05.2013, the learned ACJM, court no.5, Ghaziabad rejected the final report and treated the protest petition as a complaint case. Thereafter, the first informant, Smt. Geeta Baisla, was examined under Section 200 Cr.P.C., and her witnesses, namely Naresh (PW-1), Gyanendra (PW-2), Shyamo (PW-3), and Sunita (PW-4), were examined under Section 202 Cr.P.C.

12. All the aforesaid witnesses deposed that at the relevant time Km. Jyoti was studying in TRM Public School, Modi Nagar, where the applicant taught Physics. They stated that the applicant used to harass Km. Jyoti, made indecent gestures, pressurized her to take tuition from him, and threatened that if she refused, he would fail her in examinations. It has further come in evidence that due to such behaviour, Km. Jyoti remained under severe mental stress and used to narrate the incidents to her mother and other family members.

13. The witnesses further deposed that complaints were made to the Principal, who assured that no untoward incident would take place in the school. However, owing to such complaints, the applicant allegedly became hostile towards Km. Jyoti and threatened to ruin her reputation by using his political influence.

14. It was also stated that on 25.03.2011, while Km. Jyoti was appearing in an examination, the applicant, though not posted as invigilator in that room, entered the hall, misbehaved with her, snatched her answer-book, and declared that he would not permit her to sit in the examination. This incident was reported to the Principal, and upon receiving information, Smt. Geeta Baisla also reached the school. Police personnel were called, whereafter the applicant was reprimanded and Km. Jyoti was permitted to continue the examination.

15. The witnesses further stated that the oppressive conduct and indecent behaviour of the applicant continued thereafter. Again on 02.04.2011, the applicant acted indecently with Km. Jyoti and attempted to molest her, which was complained to the police and Principal, which angered the applicant, who alongwith his accomplices managed to get fabricated false injuries on his body and in collusion with the police, got registered a false report against complainant's brother Naresh. It was further stated that complainant's husband, who was in Army, arrived home on 18.04.2011 on leave, who was told about this, who complained to SSP Ghaziabad on 19.04.2011, on which Police Station Modi Nagar was directed to register FIR, which angered the applicant. It was also alleged that the applicant alongwith his accomplices visited the residence of the first informant on 20.04.2011 at about 7:00 p.m. and threatened her with dire consequences if she continued to pursue complaints against him. It has also been stated that the applicant managed to have Km. Jyoti declared failed in the examination and her result withheld, though subsequently, upon complaint by the first informant, she was allowed to reappear and passed with good marks.

16. All the witnesses consistently asserted that the applicant, bearing hostility on account of resistance offered by the first informant and her family, continued to harass and defame Km. Jyoti for illicit relations, and being unable to bear such sustained humiliation and mental persecution, she ultimately committed suicide by consuming poison on 29.07.2011. It was further asserted that Km. Jyoti was compelled to commit suicide by the applicant.

17. It is pertinent to note that on the basis of the aforesaid statements of the complainant and her witnesses, the applicant was summoned to face trial by the learned A.C.J.M., Court No.5, Ghaziabad, vide order dated 21.10.2014 under Sections 306, 354 and 506 IPC. The said

summoning order was challenged by the applicant by filing Criminal Revision No. 22 of 2015, which came to be dismissed by the learned Additional Sessions Judge, Court No.14, Ghaziabad, vide order dated 13.03.2015. By means of the present application, both the aforesaid orders have been assailed.

18. Learned counsel for the applicant submitted that the allegations levelled by the first informant are wholly false and devoid of substance. It was contended that the police investigated the matter twice and, finding no truth in the allegations, submitted final reports, which were erroneously rejected by the Magistrate. It was further submitted that although the first informant alleged harassment since April 2011, no prompt FIR was lodged. It was also argued that the alleged acts of harassment occurred in April 2011, whereas the suicide took place on 29.07.2011, and therefore there existed no live nexus or proximate link between the alleged conduct and the act of suicide.

19. It was further contended that since Km. Jyoti allegedly committed suicide at her parental residence, it was incumbent upon the family members to inform the police and ensure post-mortem examination and viscera analysis, which alone could have conclusively established poisoning as the cause of death. In the absence of such evidence, the prosecution case is rendered doubtful. It was even suggested that there was sufficient material to infer that Km. Jyoti may have died in an incident of honour killing at the hands of her own family members. It was lastly submitted that even if the entire prosecution version is accepted at face value, no offence under Section 306,354 and 506 IPC is made out. Accordingly, it was prayed that the application under Section 482 Cr.P.C. be allowed and the criminal proceedings be quashed.

20. Per contra, learned AGA submitted that from the statements recorded under Sections 200 and 202 Cr.P.C., a prima facie case clearly emerges that Km. Jyoti was subjected to persistent harassment, indecent conduct, and repeated attempts were made to molest her, which cumulatively drove her to commit suicide. It was submitted that at the present stage the Court is not required to conduct a mini-trial, nor to appreciate the defence of the accused or adjudge the likelihood of conviction. It was contended that sufficient prima facie material exists to justify the summoning order and continuation of proceedings. Accordingly, it was prayed that the application be rejected.

21. I have heard learned counsel for the parties and perused the record.

22. The Apex Court in the case of *Neeharika Infrastructure Private Limited vs. State of Maharashtra and Others (2021) 19 SCC 401 (By Three Judges)*, while delineating the scope of inherent jurisdiction under Section 482 Cr.P.C. and enumerating the circumstances in which criminal proceedings may be quashed, held as under:

“13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the “rarest of rare cases”. (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.

13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur* [*R.P. Kapur v. State of Punjab*, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and *Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

23. The Apex Court in the case of ***Veena Mittal vs. State of UP in Criminal Appeal No.122 of 2022*** decided on 24.01.2022, held as under:-

“6. ..It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash...”

24. The Apex Court in the case of ***Mahmood Ali and others vs. State of UP and others (2023) 15 SCC 488*** while elucidating the parameters governing the exercise of inherent jurisdiction under Section 482 Cr.P.C. in cases alleging false, frivolous, and vexatious criminal proceedings, held as under:-

“11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

12. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs

have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

25. The Apex Court in the case of *Prakash and Others vs. State of Maharashtra and Another 2024 SCC OnLine SC 3835*, while expounding the essential prerequisites for the invocation of Section 306 read with Section 107 of the IPC, has held as under:

“13. Section 306 of the IPC has two basic ingredients-first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.

14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well-established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide.

*16.****

17. This Court held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing. Therefore, without a positive act on the part of the accused to instigate or aid a person in committing suicide, conviction cannot be sustained. This Court further observed that 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 of IPC, there has to be a clear mens rea to commit the offence. Abetment also requires an active act or direct act which led the deceased to commit suicide seeing no other option and that act must have been intended to push the deceased into such a position that he committed suicide. However, this Court has cautioned that since each person reacts differently to the same provocation depending on a variety of factors, it is impossible to lay down a straightjacket formula to deal with such cases. Therefore, every such case has to be decided on the basis of its own facts and circumstances.

25. Relying on the decision in the case of Sanju @ Sanjay Singh Sengar vs. State of MP (2002) 5 SCC 371, this Court in the case of Gurjit Singh vs. State of Punjab(2020) 14 SCC 264 set aside the conviction under Section 306 of the IPC as it was clear from the evidence on record that there was a time gap of about two months between the last visit of the deceased to her parents with regard to the illegal demand for money by the accused-appellant and the date of commission of suicide by the deceased. As such, this Court held that there was nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the accused-appellant. This Court observed as follows:

“36. It could further be seen from the evidence on record that the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In Sanju v. State of M.P. [Sanju v. State of M.P., (2002) 5 SCC 371 : 2002 SCC (Cri) 1141] this Court found that there was time gap of 48 hours between the accused telling the deceased “to go and die” and the deceased “committing suicide”. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased.”

26. Thus, this Court has consistently taken the view that instigation or incitement on the part of the accused person is the gravamen of the offence of abetment to suicide. However, it has been clarified on many occasions that in order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of instigation by the accused person.

27. This Court in the case of Mohit Singhal (supra) reiterated that the act of instigation must be of such intensity and in such close proximity that it intends to push the deceased to such a position under which the person has no choice but to commit suicide. This Court held that the incident

which had allegedly driven the deceased to commit suicide had occurred two weeks prior and even the suicide note had been written three days prior to the date on which the deceased committed suicide and further, there was no allegation that any act had been done by the accused-appellant therein in close proximity to the date of suicide. This Court observed as follows:

“11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

12. Therefore, in our considered view, the offence punishable under Section 306 IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law.”

(emphasis supplied)

26. The Apex Court in the case of ***Abhinav Mohan Delkar vs. State of Maharashtra and Others 2025 SCC OnLine SC 1725***, has authoritatively held that for the offence punishable under Section 306 read with Section 107 of the IPC to be attracted, the sine qua non is the existence of a proximate and live link between the alleged act of abetment and the commission of suicide; in other words, there must be a direct and immediate act or conduct of incitement which, in its natural and consequential chain, compels the victim to take the extreme step of suicide. It is quoted as under:-

“22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, ‘the straw that broke the

camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim.

23. The victim may have felt that there was no alternative or option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. Did the thought of goading the victim to suicide occur in the mind of the accused or whether it can be inferred from the facts and circumstances arising in the case, as the true test of mens rea would depend on the facts of each case. The social status, the community setting, the relationship between the parties and other myriad factors would distinguish one case from another. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

24. We have already seen that even a rebuke to "go, kill yourself"; often a rustic expression against distasteful conduct, cannot by itself be found to have the ingredients to charge an offence of abetment to suicide. There is no uniformity in how different individuals respond and react under pressure. Many stand up, some fight back, a few runaway and certain people crumble and at times take the extreme step of suicide. To put the blame on the pressure imposed and the person responsible for it, at all times, without something more to clearly discern an intention, would not be the proper application of the penal provisions under Section 306."

(emphasis supplied)

27. From the above law laid down by the Apex Court, it is evident that to sustain a charge under Section 306 IPC it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. It is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission

of suicide by the deceased. Further, such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide. In order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of instigation by the accused person.

28. It is further apparent that the victim may have felt that there was no alternative option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

29. From the evidence on record it is evident that the victim Km. Jyoti was studying in class XI at the relevant time, in the school in which the accused/applicant was a teacher of physics, who as per the prosecution case, continuously harassed, molested her, was trying to outrage her modesty, which was resisted by the victim. As per the statement of the witnesses the accused pressurised the victim to take private tuitions from him, to which she declined. The above acts and conduct of the accused were also brought to the notice of the Principal of the school, on which he reprimanded the accused and

assured the parents of the victim that her safety will be ensured. In the protest petition and statements of the above witnesses, the last act of such harassment was meted out to the victim on 2.4.2011 by the accused in the school. Thereafter, there was no contact between the victim and the accused, the victim remained in her house with her parents and relatives, where she allegedly committed suicide on 29.7.2011 by consuming poison.

30. It is apparent that prima-facie there is no evidence on record to prove that the accused had the mens rea or he ever intended or instigated the victim to commit suicide. It is further apparent that there is a time gap of almost 3 months between the last act of harassment allegedly committed by the accused on victim on 2.4.2011 and 29.7.2011, when the victim allegedly committed suicide by consuming poison. It is undisputed, that during the above duration, the victim remained in her house with her family members, and during this period there was no harassment, no contact with the accused. It is apparent that there was no proximity between the alleged acts of harassment, indecent behaviour, molestation, attempt to outrage modesty committed by the accused and the act of suicide. It is well settled that if there is no proximity or nexus between the alleged acts of harassment which drove the victim to commit suicide and the act of suicide, then no offence of abetment or instigation to suicide is made out under Section 306 IPC.

31. In the protest petition and the evidence of witnesses, it is disclosed that the complainant and her husband met S.S.P. Ghaziabad and brought to his notice the above criminal acts of the accused by giving application on 19.4.2011, on which he directed the Police Station Modi Nagar to register FIR, but no such FIR in reality was registered against the accused. Even after the alleged suicidal death of

the victim on 29.7.2011 no FIR was got registered by the complainant promptly. Eventually on 15.11.2011, an application under Section 156(3) CrPC was moved by the complainant before the competent criminal court, which was allowed on 19.11.2011, and thereafter, FIR being Case crime No. 781 of 2011 under Section 306, 354, 506 IPC was registered on 26.11.2011 against the accused at Police Station Modi Nagar, District Ghaziabad. It is apparent that there is a fatal delay on the part of the complainant in registering the FIR, which makes the whole prosecution case doubtful.

32. It is further apparent that the victim at the time of alleged suicide was residing in her house, who was not taken to any doctor/hospital for treatment, no intimation regarding this was given to the police. It is very surprising that if the victim had consumed poison then at least she should have been taken to the hospital for treatment but no such effort was made by the complainant or her relatives. Further, if the victim had died and had this information been given to the police, then the autopsy would have been performed for ascertaining the cause of death, but since no information was given to the police, neither *panchayatnama* was prepared nor autopsy was performed. It is further apparent that the body of the victim was surreptitiously cremated by the complainant and her relatives. In view of the above facts, there is no prima-facie evidence on record to prove that the victim committed suicide by consuming poison.

33. It is apparent that prima-facie the complainant has failed to prove that there was any mens rea or instigation on the part of the accused to force the victim to commit suicide. Further, the cause of death of the victim is also not proven. There is no evidence on record to presume that she committed suicide by consuming poison. It is further apparent that about 4 months after the death of the victim on

29.7.2011, an application was moved by the complainant under Section 156(3) CrPC on 15.11.2011 for getting registered the FIR against the accused before the competent Court, which was allowed on 19.11.2011, and then a FIR was registered on 26.11.2011 against the accused. There is no explanation by the complainant why she waited from 29.7.2011 till 15.11.2011 for approaching the Court in order to get the FIR registered in this matter. The complainant has not furnished any plausible explanation for the above delay, which is fatal.

34. It is further apparent that the victim has died, who could have proved the alleged offence under Section 354 IPC. Further, all the alleged incidents of harassment, indecent behaviour, molestation and attempt to outrage the modesty of victim occurred in the TRM School, Modi Nagar, District Ghaziabad but the complainant has not examined any student of the school or friend of the victim in order to prove the above allegations. The Principal of the School, who was an important witness, has also not been examined by the complainant. No injury report, statement under Section 164 or 161 CrPC of the victim is available to substantiate or corroborate the above allegations of misbehaviour by the accused. Further, the complainant and the witnesses examined by her under Section 202 CrPC are not eyewitnesses of the alleged illegal acts committed by the accused in the school, upon the victim. This is not a case where the incident occurred in a desolate place, where no witness was present. As per the prosecution case, the alleged incidents occurred in a school, where there was no dearth of witnesses, but still, no witness who was present in the school at the relevant time, has been examined by the complainant, in support of her case.

35. Therefore, in the considered opinion of this Court, for the reasons mentioned aforesaid, the offence punishable under Section 306, 354 and 506 IPC is prima-facie not made out against the accused/applicant Rahul Kushwaha. Therefore, the continuation of his prosecution will be nothing but an abuse of the process of law. Accordingly, the application deserves to be allowed.

36. **The instant application under Section 482 CrPC is allowed.** Consequently, the proceedings of complaint Case No. 49 of 2012, new No. 2608 of 2019, Geeta Bainsla versus Rahul Kushwaha under Section 306, 354 and 506 IPC, P.S. Modi Nagar, District Ghaziabad pending before the ACJM Court No. 5, Ghaziabad and all incidental proceedings thereto are hereby quashed.

Order Date:- 12.05.2026

Jitendra/Himanshu/Mayank

(Sandeep Jain, J.)