

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R 2798 of 2016

**Balbina Tandon & Ors.
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. Sandipan Ganguly,
Senior Advocate,
: Mr. Biswajit Manna.

For the O.P No.2 : Mr. Avik Ghatak,
: Mr. Fahad Imam.

For the State : Mr. Prasun Kumar Dutta,
: Mr. Subrato Roy.

Hearing concluded on: 04/04/2023

Judgment on: 28/11/2023

Rai Chattopadhyay, J.

1. The petitioners are the wife and other matrimonial relations of the deceased respectively, who has filed the present revision under Section 482 of the Cr.P.C, 1973, to seek an order of this Court quashing the proceedings in connection with Asansol North Police Station Case No.247/2015 dated 01.12.2015, under Sections 306/34 IPC. The connected G.R. case no is G.R 2816 of 2015, now pending before the

Court of Additional Chief Judicial Magistrate, Asansol. The crux of the FIR dated 01.12.2015 lodged by one Harjindar Singh would be as follows:-

The informant declares himself to be the younger brother, deceased of *****. ***** himself committed suicide at a residential house of the family situated at Govindpur,

He has committed suicide on 29.11.2015 at about 11.00 a.m. The informant alleged in the FIR that due to severe mental torture perpetrated by the present petitioners and they having abetted the victim for suicide, the victim has met with the fateful end of his life. The informant in his FIR as well as the investigating authority during investigation have heavily relied on the 'suicide note' left by the victim, before his death.

2. Pursuant to the said FIR the police case as mentioned above was registered and investigated.
3. Charge sheet dated 30.04.2016 was submitted arraying all the present petitioners as accused persons, on the allegations that torture inflicted by them has prompted the victim to commit suicide and thus the present petitioners have abated his fateful death and an offence under Section 306 IPC has been committed by all the present petitioners in furtherance of their common intentions.
4. Petitioners in this case has contended *inter alia* that the FIR or any other material would not reveal the commission of the alleged offence as against them. Mr. Ganguly, Id. senior advocate, who is representing the petitioners, has very strenuously argued for his clients that the very essential ingredient of the petitioners directly instigating the victim for commission of suicide would not be available in this case. He would submit that the facts and circumstances prior to commission of suicide

by the victim would not be considered of that gravity or intensity to be found as the victim was left with no other alternative due to the same excepting committing suicide. He has further stated that there is no intentional aiding or any positive act on the part of the petitioners in order to sustain the allegations of the de facto complainant. It has been submitted that the petitioner no. 1 along with her minor child has been living separate from victim for a considerable period of time. He emphasizes that there has been no direct contact or day to day transaction, interaction or any communication between the parties to even give rise to a situation where the petitioners might have instigated the victim for commission of suicide. He says that by no stretch of imagination any involvement of his clients can be conceived regarding what has happened or else it would contradict the settled law of the land in this regard.

5. Mr. Ganguly has relied on the judgment of the Supreme Court, of *M. Mohan vs. State (represented by the Deputy Superintendent of Police)* reported in (2011) 3 SCC 626, to rely on the following portion thereof :

“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.”

From the same, he has also relied on the following portion:

“41. This Court in SCC para 20 of Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of “instigation”. Para 20 reads as under : (SCC p. 629)

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except

to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn.”

6. To elaborate as to what would be an abetment, in the eye of law, another judgment has been referred to the ***State of Kerala & Ors. vs. S. Unnikrishnan Nair & Ors.*** reported in ***(2016) 1 C Cr LR (SC) 616*** and the following has been relied on :

“10. The aforesaid provision was interpreted in Kishori Lal v. State of M.P. [(2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] by a two-Judge Bench and the discussion therein is to the following effect: (SCC p. 799, para 6)

“6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word ‘instigate’ literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. ‘Abetted’ in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.”

7. According to Mr. Ganguly, the same point has also been dealt with by the Apex Court, in the case of ***State of West Bengal vs. Indrajit Kundu & Ors.***, reported in ***(2019) 10 SCC 188***, in the following manner :

“12. In the judgment in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] this Court has considered the scope of Section 306 and the ingredients which are essential for

abetment as set out in Section 107 IPC. While interpreting the word “instigation”, it is held in para 20 as under : (SCC p. 629)

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

- 8.** The other two judgments, that is ***Sohan Raj Sharma vs. State of Haryana*** reported in ***(2008) 2 C Cr LR (SC) 174*** and ***Sonti Rama Krishna vs. Sonti Shanti Sree & Anr.***, reported in ***(2009) 1 C Cr LR (SC) 234*** have also been relied on to submit that the well settled proposition of law in cases of alleged abetment of suicide is that there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased wife with cruelty was not considered to be enough (in ***Sohan Raj*** supra). Also that the word uttered in a fit of anger or emotion without any intention cannot be termed as instigation (in ***Sonti Shanti Sree*** supra)
- 9.** In such circumstances, Mr. Ganguly says that to proceed with the trial against his clients in this case would only be an abuse of the process of Court, which is to be restrained.
- 10.** The state being represented by Mr. Dutta, has however stood strong against the contentions and prayers of the petitioners. State’s armor is mainly filled up with the four page long ‘suicidal note’ of the victim. By referring to the same Mr. Dutta has stated that disclosures made therein by the pain stuck victim before his death, even if is taken on its face value, takes within its purview involvement of each and every of the petitioners in an offence committed as above. It is elaborated that the

‘suicide note’ is enough eloquent to describe abundantly the way the petitioners and each of them has attributed their parts instigating or prompting the victim to commit suicide. At this stage, when the trial Court has taken cognizance of the offence and the trial is about to proceed, according to Mr. Dutta, there is no scope for this Court to interfere into the same as sufficient material ingredients are available against the petitioners, to go into the trial of the case, particularly in view of the ‘suicide note’ of the victim.

11. Mr. Dutta, has relied on the following judgments :-

- (i) ***Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)***, reported in **(2009) 16 SCC 605**, where the Apex Court, on consideration of the ‘suicide note’ and the statements recorded by police during investigation, has come to the finding that those tend to show the conduct of the accused person so intense to pressurize the victim to do something which he was perhaps not willing to do and thus was left with no other option except to end his life and hold that clause ‘Firstly’ of Section 107 IPC was attracted.
- (ii) ***C. Muniappan & Ors. vs. State of Tamil Nadu with D.K. Rajendran & Ors vs. State of Tamil Nadu***, reported in **(2010) 9 SCC 567**, wherein the Apex Court has held that even if there are any latches in investigation of the case, it is the duty of the Court to carefully scrutinize the materials and to find out if the evidence is reliable or not.
- (iii) ***Kalika Pratap Singh vs. State of U.P. & Anr.***, reported in **2023 SCC Online All 68**. Mr. Dutta has relied on this judgment of Allahabad High Court to pursued that upon availability of the *prima facie* materials through the FIR and those collected

during investigation, the trial should proceed to decide on the other questions of fact.

12. Section 306 IPC has provided for punishment for an offence of abetment of suicide. The same runs as follows:-

“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.*”

13. Chapter V of the IPC has elaborate of abetment and Section 107 of the same, may be looked into to understand as to what would be an abetment of a thing. Let that be extracted, as herein below :

“ 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.

14. Before dwelling on whether the ingredients of offence as above is available against the petitioners in this case, this Court thinks it proper to have an over view as to when and to what extent this Court is empowered to interfere with the due process in criminal justice system by quashing the proceedings in the trial Court or the FIR. For this necessary guidance may be sought for from the numerous judicial precedents of the constitutional Courts of the country, to mention few of those as follows:-

(i) The classic example would be the case of **State of Haryana v. Bhajan Lal** [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], the relevant of which be quoted as follows:-

“This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

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

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

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

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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

(ii) Thereafter the case of **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226**, this Court observed that the power under Section 482 of the Code of Criminal Procedure is wide and they require care and caution in its exercise. The interference must be on sound principle and the inherent power should not be exercised to stifle the legitimate prosecution. The Court further observed that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is up to the High Court to quash the same in exercise of its inherent power under Section 482 of the Code.

(iii) In the case of **Devendra vs. State of U.P.** reported in **(2009) 7 SCC 495**, this Court observed as under :

“24. There is no dispute with regard to the aforementioned propositions of law. However, it is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.”

(iv) Lastly, this Court likes to mention case **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque** reported in **(2005) 1 SCC 122**, the relevant portion is quoted below :-

“8. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

15. There are other catena of judgments including those mentioned as above to settled the law in this regard that the inherent jurisdiction of the High Court under Section 482 of the Cr.P.C, is though wide, to be exercised with due care and caution and on the basis of sound principle than on any superficial consideration of the facts. The Court is to assess if the FIR/materials collected envisages *prima facie* regarding commission of an offence as alleged. The Court of course not to go into conducting a mini trial while assessing the same. However, presence of the material ingredients of an offence as alleged would deter a Court to come to any conclusion that the criminal prosecution against the accused persons is only a perversity. On the contrary upon finding the FIR and the available materials to have disclosed an offence, the Court is duty bound to allow the trial to proceed to unearth the truth.

16. The facts of the present case, as revealed from the records is that the petitioner no. 1 and the victim were married couple, having a daughter from out of their wedlock. They were married on February, 2014. However, the petitioner no.1 had to stay separate at her parental home from July, 2015 to pursue her studies. According to the version of the

petitioner their relationship was absolutely normal and nothing unusual happened excepting the victim being depressed due to some uncertainties in avocation. The petitioners have then said that the allegations made in the FIR is baseless and only untrue.

17. Over and above and this factual aspect, regarding the ‘suicide note’ of the victim, it is the contention of the petitioners that there has never been any extreme conduct on their part so as to instigate or drive the victim to commit suicide. It is stated that as the parties were living at two different places, there would not have been even any possibility of incitement or active involvement of them resulting into instigation of suicide to have been inflicted.

18. The counter arguments of the State is principally based on the ‘suicide note’ collected during investigation. In the suicide note the victim, immediately before his death has narrated as to what has prompted him to take such extreme step and how. There he has revealed involvement of the present petitioners in causing him mental stress, agony, pressure and breakdown to such extent that he found it better to end his life by himself.

19. Before further proceeding with the factual aspects of the case, this Court, in addition to the provisions of the statute as mentioned above, also pays attention to “Explanation 2”, appended to Section 107 of the IPC, which is as follows :

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

20. This Court is to assess whether the FIR and other materials on record, has prima facie constituted an offence, as alleged or the allegations made, even if taken at their face value and accepted entirely, fall short in

making out any case against the accused, whether any cognizable case has been disclosed against the accused persons are not or if the allegations made are absurd or improbable so inherently, or tainted with gross malafide or malice, that there cannot be a prudent understanding of those, to be sufficient to proceed against the petitioners.

21. The statute has provided that instigation to any person for a particular thing would be construed as abetment in the eye of law. A person would be said to have aided doing of a particular act, if prior to or at the time of commission of the said act he does anything in order to facilitate the commission of that act and thereby actually facilitates such commission of the said act.

22. Let us understand about the victim, on the basis of the available materials. He was a young man, married with the petitioner No.1 in 2014 and became father of a girl child. For some reason, he had to live separately from the petitioner no.1 and the child, since after about one and half years of their marriage. He even did not reside with his relatives but spent days alone in a property of his family, till the time he committed suicide there on 29.11.2015. This was after about five (5) months he started living separate with his wife and child from the month of July, 2015. According to the petitioners nothing beyond ordinary happened amongst them and that there is no scope of any incitement or active participation of the petitioners in instigating the victim to commit suicide. They say that if for any reason, the victim was unable to bear the stress of the life, they would have no manner of involvement in the same and also that they have not contributed to any situation where for that reason the victim may be considered to be left with no other alternative that to commit suicide.

23. The 'suicide note', the last testament of the departing soul, must speak amply, about the preceding days and incidents, which no doubt, is

required to be considered for the reason to see if it is a document containing prima facie materials showing petitioner's involvement in any form whatsoever, either by instigating the victim or facilitating his suicide through certain acts.

- 24.** The note starts with a declaration made by the deceased, that he would commit suicide, according to his own volition. The same is followed by the other statement that for him, his wife and daughter are like dead persons. He says that let them not attend his funeral. Thereafter, it is his request to other member of family, to duly take care of his parents. He has written down his last wish that his last rites should be performed by the son of his elder sister. He says further that he himself only is responsible for his death. He thereafter mentions about some money to be repaid to the mason and wished happiness for everybody.

On behalf of the petitioners, sufficient reliance has been placed to the portions of the said 'note' where the deceased has written that he commits suicide according to his own wishes and also that he himself is responsible for the same.

- 25.** However, the 'suicide note' recovered in this case cannot be seen to be a simple declaration of self condemnation of the said person. It also primarily reveals some other shades of emotions of the person, which cannot be undermined in any way.

He writes that his wife and daughter are like dead persons, to him and they should not be allowed to attend his funeral. At the feg end of the said 'note' the deceased writes that none of his matrimonial relations including his wife or child, should be allowed to see the dead body. He emphatically adds stress to his such wish by also adding promise in colloquial terms [apne bhai di kasam]. Lastly he writes, that he does not commit suicide according to his own volition, but due to the pressure inflicted by his matrimonial family and that his wife, mother-in-law,

father-in-law and other family members are responsible for the same [Mein apna Marji se nehi balki apni sasural keh pressure sey mar raha huin iska jimewar meri bahu meri sash mera Sasur aaur uske gharwale hein].

The penultimate statement of the deceased has implicated the petitioners and should be considered as sufficient-material, at this stage, to prima facie make out a case against the petitioners. Deceased writes differently, in the same note. Evidentiary value of the same shall be considered in trial. At this stage, as the law mandates, this Court sees as to whether a case has been made out against the petitioners or not on the allegations are absurd and inherently improbable.

A person, immediately before his death would only let his genuine perceptions to reveal to the world after his death and so he writes. In this case, though primarily the person mentioned about no other person being responsible for his death, but at the same time in the very next sentence he mentions that his wife or child should not be allowed to see his dead body. The penultimate portion of the suicide note ultimately reveals the reason for his writing in the said manner before.

All these are triggering to the only fact that, a cognizable case having been prima facie made out against the petitioners in this case, by dint of the available materials on record, this case is fit to go into trial and that not enough ground is available for quashing the criminal case, as prayed for by the petitioners.

26. The judgments relied on behalf of the petitioners are distinguishable in the following manner :-

The case of **Sohan Raj Sharma** (supra) is distinguishable for the reason that the same was delivered while the Court was in seisin, with regard to an appeal challenging conviction of the appellant. The

standard with which the materials/evidence have to be weighed after conviction, i.e, the final verdict of the Court, after conclusion of trial, is different altogether in terms of its conclusiveness, than at a stage when the accused might have come for quashing of the criminal case against him, only after lodging of the FIR or even during or after investigation. The former would require proof beyond all reasonable doubt, where as to proceed with the trial, prima facie materials would suffice the purpose.

Sonti Rama Krishna's case (supra) is distinguishable on facts. The fundamental allegation there is of humiliation and instigation through abusive languages diminishing moral of the victim. There was no suicide note, to play a part in the investigation or trial, like the present case. The petitioner has tried to put up similarity of the instant case, with this, in the form of stress and agony suffered by the victim due to his living separate with the petitioner, which according to the petitioners/accused, cannot be termed as any inducement or instigation by the petitioner but which might have been ultimately the triggering factor for the unfortunate end of the victim. However, unlike the same, in the present case, at this stage, the 'suicide note' of the victim, is a vital piece of material which shows that a prima facie case has been made out against the petitioners.

In the case of **M. Mohan** (supra), the Supreme Court declares judgment in an appeal, challenging the order of High Court, in a case under Section 482 Cr.P.C, where in the High Court directed for quashing of FIR under Section 498A and 304B IPC and to investigate for an offence under Section 306 IPC. As regards the facts, it is seen that cause of the fateful incident is undermining and humiliating the victim with abuse and discriminatory behavior, in stark contrast with the other members of the joint family. Prosecution's case has never been based on a suicide note.

In **S. Unnikrishnan Nair's** case (supra), prosecution was started on the basis of a suicide note of the victim. This case is also distinguishable on facts, in so far as the back drop has been the professional field of the victim, alleged professional rivalry, peer pressure, competition and politics in the professional world. While assessing if ingredients of offence are present or not, the factual background of an occurrence within the family set up, is juxtapose to that of a professional set up. The whole mind game and external disposition changes, with the change of such factual milieu.

Indrajit Kundu's case (supra) is distinguishable for the reason that the case is not based on any suicide note of victim. Allegation is of abuse and humiliation to be the reason for the victim committing suicide.

- 27.** It is necessary to revert back to 'Explanation - 2' to Section 107 of the IPC once again. A facilitator of act, having played role at any previous point of time, to facilitate commission of that act, would be considered to have aided in doing of that act. The penultimate portion of the suicide note would *prima facie* bear the relevance to the said provision, necessitating a thorough trial, upon evidence being laid down and considered.
- 28.** As upon finding *prima facie* material it is bounden duty of the Court to allow the trial to proceed to unearth the truth and as discussed above in this case there are strong *prima facie* materials available against the present petitioners particularly in the form of the 'suicide note' of the victim. This Court of the opinion that there is no sufficient and cogent ground for the petitioners to secure an order of quashing of the proceeding, as prayed for. Therefore the present case should fail.
- 29.** CRR 2798 of 2016 is dismissed along with pending application, if any, without any costs.

- 30.** Since it is found that investigation in this case has already been completed and charge sheet has been filed, let the trial Court immediately proceed for commitment of the case, if not done as yet and the trial be commenced, within a period of four weeks from the date of receipt of copy of this order. The trial Court is requested to complete the trial as expeditiously as possible without granting any unnecessary adjournment to any of the parties. Needless to mention that the trial Court shall proceed independently and without being influenced by any of the findings of this Court, in this judgment, while proceeding with the trial of the case.
- 31.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay,J.)