

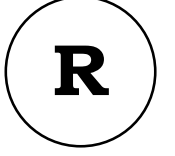
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4725 OF 2023



BETWEEN:

1 . MRS.GAURAMMA

2 . MR.DATHA KARUMBIAH

3 . MR.CHETHAN BOPANNA

(BY SRI P.P.HEGDE, SR.ADVOCATE A/W
SRI VENKATESH SOMAREDDI, ADVOCATE)

... PETITIONERS

AND:

- 1 . STATE OF KARNATAKA
BY PONNAMPET POLICE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

- 2 . MR.THANACHIARA BIDAPPA

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R-1;
SRI C.PRASHANTH CHINNAPPA, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 16.05.2023 PASSED IN PCR NO.414/2022 BY THE COURT OF CIVIL JUDGE AND J.M.F.C PONNAMPET KODAGU WHEREBY THE TRIAL COURT HAS REJECTED THE B REPORT AND ORDER OF COGNIZANCE IS TAKEN FOR THE OFFENCE P/U/Ss.305, 499 R/W 34 OF IPC AGAINST THE PETITIONERS HEREIN.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question order dated 16-05-2023 passed by the Civil Judge and JMFC, Ponnampet, Kodagu in P.C.R.No.414 of 2022 by which the learned Magistrate rejects the 'B' report filed by the Police and takes cognizance of the offence punishable under Sections 305, 499 r/w 34 of the IPC.

2. Facts adumbrated are as follows:-

Petitioners 1 to 3 are accused 1 to 3 respectively. The 2nd petitioner is the Director of Karumbaiah Academy for Learning and Sports School (hereinafter referred to as 'the School' for short). The 1st petitioner is its Principal and the 3rd petitioner is the Hostel warden of the School. The 2nd respondent is the complainant, father of a ward by name Nihal Bidappa, boy aged 15 years. Nihal Bidappa was a student of the school in 9th grade at the relevant

point in time. It is the averment in the petition that Nihal Bidappa was a mischievous child and, therefore, had to be counseled. Three dates of counseling are averred in the petition viz., 09-12-2021, 09-02-2022 and 09-08-2022 and on the last date the child was counseled along with his mother. No documents to that effect are produced. It appears that on 25-08-2022 a random check was done by the class teacher during which it was discovered that the boy was carrying alcohol in his bag in a bottle of mineral water. After which, the further averment is, the boy gives a written apology for the said act. The school did not stop at that but sends the child away directing him not to attend the school for 21 days as a measure of punishment. Since exams were ensuing, the parents of the boy appeared to have gone to the school and pleaded to take the son back to the school or else it would jeopardize his career. The school appears to have been adamant. But, the narration is that the school acceded to the request of the boy to write the exam from the house through a link that would be sent to the boy. The boy sits in front of the computer from 10-10 a.m. to 12.30 p.m. waiting for the link, but the link does not appear as it was not sent. The time of the exam was over; the time of answer paper collection

was also over. The boy gets into frustration up to 12.10 p.m. and committed suicide between 12.30 p.m. and 1.00 p.m.

3. After the said incident, a complaint comes to be registered before the jurisdictional Police on which the Police endorse that it was an unnatural death and rendered a UDR report. After which, several communications galore between the school and the parents of the boy who had committed suicide and finding no solution, the parents filed a private complaint on 28-12-2022 alleging that the petitioners herein were responsible for the death of the boy as they had instigated commission suicide of the boy. The learned Magistrate, in terms of his order dated 29-12-2022, refers the matter for investigation under Section 156(3) of the CrPC. The reference then becomes a crime in Crime No.125 of 2022 for offences punishable under Sections 305, 499 & 34 of the IPC and also for offence punishable under Section 17 of the Right of Children to Free and Compulsory Education Act, 2009 ('RTE Act' for short).

4. The Police conduct investigation and file a 'B' report before the concerned Court. After filing of the 'B' report, the complainant

files his protest petition. The concerned Court, by its order dated 16-05-2023, rejects the 'B' report and takes cognizance of the offences punishable under Sections 305, 499 r/w 34 of the IPC and directs the matter to be posted for recording of sworn statement. Taking of cognizance and directing recording of sworn statement of the complainant leads the petitioners to this Court in the subject petition.

5. Heard Sri P.P.Hegde, learned senior counsel appearing for the petitioners, Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent No.1 and Sri C. Prashanth Chinnappa, learned counsel appearing for respondent No.2.

CONTENTIONS OF THE PETITIONERS:

6. The learned senior counsel would contend the following:

The boy who was mischievous had to be counseled not once or twice, but thrice. It was subversive of discipline of the school for the boy to have carried alcohol in a mineral water bottle into the school and the report of the counselor would clearly depict that the

boy had some problem; it is in the normal course of inculcating discipline into the students that measures like suspending the student, for a particular period or debarring him from writing the exam are imposed; no fault can be found with the petitioners, as the petitioners have neither instigated nor goaded for the act of the boy and there is no proximity of any incident with the death of the boy. There being no proximate act on the part of the petitioners, further proceedings against the petitioners should not be permitted to be continued. If it is the other way, it would amount to recognizing indiscipline in the school. He would seek to place reliance upon the judgments rendered by the Apex Court and that of this Court in (i) **GEO VARGHESE v. STATE OF RAJASTHAN**¹, **V.P. SINGH ETC. v. STATE OF PUNJAB AND OTHERS**², **KANCHAN SHARMA v. STATE OF UTTAR PRADESH AND ANOTHER**³, **KASHIBAI AND OTHERS v. STATE OF KARNATAKA**⁴ and **SRI KUMAR AND ANOTHER v. STATE OF KARNATAKA AND ANOTHER**⁵. But, he would seek to lay

¹ 2021 SCC OnLine SC 873

² 2022 LiveLaw (SC) 994

³ (2021) 13 SCC 806

⁴ 2023 SCC OnLine SC 575

⁵ CrI.P.No.10123 of 2021 decided on 24-08-2022

emphasis upon the judgment of the Apex Court in the case of **GEO VERGHESE** (*supra*). According to the learned senior counsel, the issue in the case at hand is akin to what the Apex Court has considered in the case of **GEO VERGHESE**.

CONTENTIONS OF THE COMPLAINANT:

7. The learned counsel for the complainant Sri C.Prashanth Chinnappa would vehemently refute every one of the submissions made by the learned senior counsel. He would take this Court through the documents produced by the petitioners as also certain documents that he has produced during the hearing of the petition, to demonstrate that the petitioners have in fact instigated the boy of tender age of 15 years to commit suicide, as it is not a particular day's act on the said date i.e., 24-10-2022. The boy has been tortured for close to two months. He would narrate in minute details about the incidents that had happened on the strength of documents that are already available on record.

8. Learned senior counsel would contend that one Kishan senior to the boy has asked him to get alcohol to the school and Kishan and the boy both tendered apology on same day, for the said act. However, Kishan was left off but the boy was punished. No order of punishment was passed. He was orally refused entry into the school. He was assured that he would be permitted to participate in the examination. The parents have beseeched before the authorities to permit the boy to get into the school so that his career is not jeopardized. They also appear to have undertaken that they would change the ward from the school and put him into some other school and for the said purpose, they needed examination results.

9. Having assured that they would send the link on 24-10-2022, the boy was waiting for the link to write the exam. The boy was completely anxious and when the link was not received, unable to bear the agony, he commits suicide at 12.45 p.m. Till the commission of suicide, the mother of the boy was in communication with the staff, one of the petitioners herein. Therefore, he would submit that it is not a case where there is no instigation or

proximity to the commission of suicide. He would submit that 'B' report is filed as the school being rich and influential have prevailed upon the jurisdictional Police to record statements according to what the school wanted and, therefore, the learned Magistrate has rejected the 'B' report and appropriately taken cognizance of the offence. He would seek dismissal of the petition.

10. The learned senior counsel, in reply, would seek to clarify that the counselor of the school had submitted a report. A perusal at the report would indicate problem with the boy. That being the case, there can be no instigation for it to become an offence under Section 305 of the IPC. He would again reiterate that the proceedings should be quashed.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, what necessitates consideration is, *whether the order of the learned Magistrate rejecting the 'B' report and taking cognizance of the offence under Sections 305, 499 r/w 34 of the IPC warrants any interference?*

12. The afore-narrated facts are not in dispute, as they are all a matter of record, they require consideration in a little detail. The boy being a student in the 9th grade in the school is not in dispute. The dates of three counseling that are narrated in the petition do not have any support with any documents. Therefore, I do not consider those three dates of counseling. The first incident that triggers the issue happens on 25-08-2022. On 25-08-2022 it appears that the boy, student of 9th grade during routine check of the bags in the school was caught with holding two mineral water bottles out of which one was empty and the other was filled up to 25% and they had traces of alcohol. The teacher then communicates to the Principal. The communication reads as follows:

"To

The Principal,

As the co-class teacher of Grade-9C, during the routine random check of bags of the class, in the morning on 25-08-2022 I found two water bottles in Nihal's bag containing alcohol.

Upon checking of the two bottles one was empty but had traces of alcohol and the other had a quarter amount of alcohol in the bottle.

When I asked him about it, he refused to answer but started to profusely sweat in the class.

This incident was brought to the notice of the senior level coordinator.

Thanking you,

*Yours faithfully,
Sd/- 25/8/22."*

(Emphasis added)

Before communication could even be made to the Principal, an apology letter was sought from the hands of the boy. The boy not knowing the contents and consequences of apology appears to have written whatever has been directed to be written as one sentence reads that *"I really apologize I am biggest defaulter in this school."* A boy of 9th grade would not know the real effect of *"biggest defaulter in the school"*. He is also said to have written that *"I have done this many times but I can't promise you but I'll try my best to change"*. The apology letter does not inspire confidence as the way it is written would clearly indicate that it is written on the dictation of someone else and written by the student. It is later the parents are summoned to the school and are said to have been counseled. After the aforesaid incident it is an admitted fact that the boy was not taken back to the school, as a measure of punishment. To a

repeated query of the Court to place on record any document of passing an order suspending the boy from entering the school or any measure of punishment being put on record the learned senior counsel was candid, *albeit* on instructions to accept that no such order is passed by the school. It was all oral, but admits the fact that the boy was not permitted to come to the school. The boy of such tender age gets anxious and traumatized.

13. The communications between the school and the parents of the boy continue which would indicate that the parents have almost beseeched before the authorities/ petitioners to take the boy to the school only to be told that the boy should change the school and they are not permitting him to enter the school. The parents then enquired at the school at Puttur for change of school. The school authorities there appear to have told that they would need examination results. Then the parents go back to the school seeking that the student be permitted to write the examination. The school does not budge but permits that exams can be written by the student in the house pursuant to the link that would be provided by the school and the date of examination was 24-10-

2022. All the aforesaid narration is captured in the whatsapp text sent and replied by the mother of the boy and the authorities in the school.

14. On 24-10-2022 it is again admitted that the boy was informed that the school would send the link of the question paper for the boy to answer it. Time begins to tick. The link is not sent to the mail as was assured. The boy gets anxious. Mother of the boy sends repeated messages that the link has not come. One of the petitioners would reply that she was busy and she would send the link then. Even then, the link does not come. Agony of the boy goes to the brim. Even then the link does not come. 15 minutes thereafter the boy commits suicide by hanging. If the facts narrated hereinabove and, the link in the chain of events are noticed, the instigation, abetment and goading all have happened from time to time from 25-08-2022 till 24-10-2022.

15. The learned senior counsel submits that a psychologist report who had counseled the boy, is his sheet anchor, to be precise is his first sheet anchor. The report is appended to the

26-10-2022 for abetment to suicide. The complaint reads as follows:

*"Sub:-Complaint for abetment to suicide causing the death of my minor son Master Nihal Biddappa.
Respected sir,*

I, Thanachira Biddappa, S/o late Cariappa TB, aged 50 years, resident of Nitoor Village, Balale Post, hereby humbly state that I reside with my wife Sushma Biddappa at the above address with our family consisting of two children.

That our son Nihal Biddappa and daughter Disha Biddappa are studying at the Karumbaiah Academy for Learning and Sports (KALS) located in Gonikoppa for four yers. Nihal Biddappa, aged 15 years was pursuing his 19th std. at the said institution.

That at the end of August 2022 our son was suspended from attending school for a period of 21 days and he same was told to our son by the Hostel warden Mr. Bopanna without any enquiry or communication to me or my wife. We visited the institution on the same day to meet the Hostel warden, Mr. Bopanna and the Principal, Mrs. Gouramma to seek clarification on the same. However, both of them refused to meet me even after we waited for the entire day. Thereafter our son was restrained to attend his classes. After the suspension period of 21 day, we sent him to the school to attend his classes. However, he was not allowed to enter the classroom but was made to sit in the administrative block. Upon knowing the same, myself and my wife visited the institution to talk to the management. However, neither Mrs. Gouramma nor any faculty members were supportive of us and refused to talk to us. Finally, we helplessly visited the Director of the institution, Mr. Maneyapanda Dutta Karumbaiah with our son. Upon reaching there, Mr. Dutta Karumbaiah had rudely rejected to talk to us about my son's suspension. He was very offensively and threatening manner in a loud tone and tenor and spoke to my son stating that he is

unfit and undeserving to study in his institution. We requested and begged him to kindly consider the academic year to complete, but our efforts were not fruitful. His cruel temperament in front of our son made a severe impact on my child by disturbing him mentally and ever since he was anxious, depressed and disheartened showing anxiety of various natures. However, no body from the institution bothered to communicate with us about the same thereafter. On continuous perusal of my son not being able to give the mid-term examination, the management told my wife that they would send the question paper online to take up the examination from home on 24-10-2022. My son was preparing for the examination and had prepared with all excitement.

However, on 24-10-2022, no question paper was sent by the management. He told us that he did not get the question paper for his examination. He felt rejected and humiliated. He panicked and cried. He kept saying that although he apologized for his mistake many times, the school had destroyed his life, his future and his friendships. He felt shameful and disgraceful. He was inconsolable, disheartened and depressed, by the same. And between 12.00 and 1.00 p.m. our minor son, had committed suicide by hanging which caused death at our residence in Nittoor Village. It has caused darkness, great pain in our lives and unmeasurable grief to our family.

Mrs. Gauramma, Mr. Bopanna, School management of KALS and especially Mr. Dutta Karumbaiah are directly responsible for our child's death and they are silent and absent still, to cover us their acts. On 25-10-2022, we held the cremation and performed the last rites to the body of our son. Hence, I was unable to submit the complaint before this Police Station. I have come on this day to lodge a complaint.

Wherefore, I humbly request your good self to kindly enquire, investigate and charge the above persons in accordance with law and bring justice to me and my family."

(Emphasis added)

Nothing happens. Then they communicate to the school on 3.11.2022. The communication reads as follows:

"Sub: Abetment of suicide caused the death of my minor son, Master Nihal Biddappa.

Respected Sir/Madam,

I, Thanachira Biddappa, S/o late Cariappa, resident of Nitoor Village, Balale Post, South Kodagu state as follows:

It has been nine days since the death of my son, Master Nihal Bidappa. In this painful moment, my family and I hereby request you kindly read this letter, slowly, fairly and diligently, setting aside the ego one may have institutionally or personally. That way, you will not only comprehend the content of this letter in its spirit but also justify and honour my son's departed soul without any arrogance and high-handedness.

I have attached with this letter a draft complaint under Section 305 of the Indian Penal Code which I signed to lodge a police complaint on 26-10-2022, a day after the cremation of the body of my child. The contents of the draft complaint shall be read coherently, for the factual matrix of the subject matter to correspond with the averments made in this letter.

The draft complaint is not lodged before the Police for the following considered reasons:-

- a) That you are operating an educational institution serving hundreds of children. The hope and aspirations of those children and their parents associated with your institution were considered.*
- b) Many teachers and faculty members who are not part of or associated with the administration of the institution but are serving a larger interest in providing education to the students are considered.*

- c) *The instigators who got my son into doing certain acts are also students of the same institution. Their future, identity and dignity have to be protected. Hence, it is considered.*
- d) *The painful moments in the period of grief for me and my family to recover from this unbearable suffering and the need for private time is also considered.*

For me and my son, Karumbaiah Academy for Learning and Sports has failed to establish integrity, righteousness, virtue, empathy, compassion and honesty. The silence before and after my son's death is clearly disturbing and discomfoting. Mistakes and mischief's are an integral part of childhood and teenagers. It is therefore, called a mistake or mischief and not an act of crime. Crime needs investigation and mistakes need enquiry against the instigators and perpetrators with supportive witnesses. You have treated the instigators as an institution asset and concealed their identities, however, treated my son as a liability, and humiliated him.

The purpose of an educational institution is to replace an empty mind with an open one. Not to create a disturbed mind and closed life. My son was only 15 years old. He had a life ahead of him. His acts were pardonable and could have been excused. All your acts and negligence are deplorable and your silence, ignorance and attitude are against the interest of spirit of an educationist. Instead of upholding the spirit of inquiry, moral leadership and becoming a role model, your silence suggests concealment, non-transparency, unfairness and inequity.

A pen is mightier than the sword, correction is mightier than the punishment. Immaturity, inadequate decision making, and unfairness of the institution have cost my son's life. Therefore, in order to find peace with the departed soul and to have clarity and closure for the family, I humbly request you to answer the following with my folded hands:-

- a) ***Communicate the actual sequence of events that transpired according to the school investigation report. Share the minutes of meetings, with dates,***

CCTV footage of the events that occurred for the reason for the suspension, and the individuals involved that led to the decision of suspension, as well as other details, if any.

- b) *Whether the action is taken, and investigated by the disciplinary committee before suspension and had the communication made as per the rules of the institution and as per the Law set by the secondary education department?*
- c) *What decision was taken to induct my son after the suspension period of 21 days? Why was the above not communicated to the parents if any decision was made?*
- d) *While the decision was made and was orally communicated by the management to provide the online question paper for the mid-term examination on 24-10-2022, the day of the death, why was it not provided?*
- e) *Why was my son not inducted back into the class after him serving the punishment period of 21 days?*
- f) *Why there is silence, concealment and avoidance of the truth after the death of my son? Why has the management not contacted us on the funeral and cremation with no representation from the institution thereafter?*

Kindly, I pray for the sake of the departed soul, make an effort to call for a meeting to assemble myself and my family and guide us on the above questions which have remained unanswered in the interest of equity within a week (7 days) of this letter. Failing which it will be assumed that there is malpractice and misguidance from your side to conceal the matter further."

(Emphasis added)

The parents indicate that the draft complaint is not lodged before the Police for the reasons indicated therein though they were in

grief. Again they submitted to the school that the only thing that they pray is an effort to call for a meeting to assemble the family and guide the family with regard to the questions that have been left unanswered. Protests erupt in the town. It is then a communication is made by the school to the parents on 09-11-2022. The communication reads as follows:

"Dear Sushma and Biddappa,

Our deepest condolence to your family on the unfortunate and extremely devastating incident of Nihal. The loss of the family is immeasurable. As an institution the loss of our student too is devastating. We sincerely keep you in heart and mind and pray that God gives you all the strength each passing day.

Our letters dated 27th and 28th October in this matter have already been submitted to DDPI/BEO as well as SP, Kogadu which is attached for your kind reference.

We understand the grief and emotions that come with such a passing. We are deeply concerned of Disha and her well being and would like to support you all in every way and ensure Disha is able and ready for her upcoming board examination.

Our sincere condolence prayers for all of you.

Warmest regards."

(Emphasis added)

The complaint did not yield any result, as the Police admittedly filed an unnatural death report, as is borne from the records. The

parents of the boy waited for close to two months to get justice. The Police dodged the issue. Several efforts made by the Coorg District Child Welfare Committee also did not result in anything being done to the parents to redeem their grievance by registering the crime. It is then the petitioners file a private complaint on 28.12.2022 before the learned Magistrate. The private complaint reads as follows:

"Complaint filed under Section 200 r/w Section 156(3) of the Criminal Procedure Code, for the offence under Section 305 of the IPC read with Section 34 and Section 499 of the Indian Penal Code with Section 17 of the Right to Education Act.

Facts of the case:-

1. The complainant above named, Mr. Thanachira Biddappa, S/o late Cariappa TB, Aged 50 years, resident of Nitoor Village, Balale Post, hereby humbly states that he resides with his wife Sushama Bidappa at the above address with the family consisting of two children late Master Nihal Bidappa and Miss Disha Bidappa.

2. That the complainant's son Nihal Bidappa and daughter Disha Bidappa (12th standard student) were studying at the Karumbaiah Academy for Learning and Sports (KALS) located in Gonikoppal for four years. The Complainant's son Master Nihal Bidappa, aged 15 years was pursuing his 9th standard at the said institution. It is submitted by the complainant as a farmer by occupation from a remote village of South Kodagu, and his son's academic competency was lower than the average and was a mischievous child, however, he was excellent in other fields. With hope and aspiration to give him a quality education admitted to the Institution of the accused.

Moreover, accused No.2 and the complainant knew each other and had worked together in the past in Sagar Automobiles.

3. The complainant humbly submits that in the last week of August 2022, complainant's son was found in an act of mischief, was ragged/bullied/forced/demanded to carry alcohol to the school by his senior; one Master Kishen Sheshal Gowda, a Class XII student who was resident of the Boarding at the aforesaid School. To abide by what his seniors have asked him to do, Nihal Bidappa carried alcohol to school in his water bottle. However, later confessed to his friend and classmate that he had bought alcohol to school and confessed the same to his teacher; both senior student Kishen and Nihal was made to write an apology letter thereafter by their respective class teachers Mrs. Muthamma and Mrs. Bhavya.

4. The complainant humbly submits that Nihal was subsequently suspended from attending school for certain acts stated above for a period of 21 days and he same was told to the complainant and his wife in the presence of Hotel warden Mr. Bopanna, the accused No.3, Class teacher Mrs. Bhavya Rakesh, Mr. Swaroop and Mrs. Beena Viniel without any enquiry or communication to complainant's family for the reason unknown and the same was not communicated to the said institution. Mr. Bopanna, accused No.3 humiliated the complainant's family and Nihal in everyone's presence, which severely impacted Nihal and made him anxious. The complainant and his wife visited the institution on the same day and the next day to meet the Principal, Mrs. Gauramma, the accused No.1 to seek clarification on the same. However, accused No.1 refused to meet the complainant even after they waited for the entire day outside her office. Thereafter the complainant's son was restrained to attend his classes for the period of 21 days.

5. Accused No.1 and 2 who took the decision, intentionally directed the faculty members to protect the senior student Kishen Gowda and suspended Nihal for a period of 21 days.

6. That the complainant submits that Nihal was not given an opportunity to explain nor was his parents informed of the management's decision to suspend.

7. That after multiple failed attempts by Nihal's parents to meet accused No.1 personally and telephonically (with her staff, Mrs. Sweatha and Mrs. Liela under the direction of accused No.1 (Annexed audio file, attached herewith_). Although present on the campus, Accused No.1 intentionally avoided meeting or talking to the parents under the direction of the Chairperson/Director of the School, Accused No.2. Nihal was forced to undergo a suspension of 21 days.

8. Subsequently, on 21-09-2022, complainant's son Nihal, on confirmation with Mrs Liela telephonically (attached herewith as the list of document No.18) was sent back to school (i.e., on the 22nd day) after promptly serving the punishment period of 21 days but to the complainant's surprise, he was not permitted to attend his class and write his exam with an instruction to the parents by the class teacher Mrs. Bhavya telephonically, not to send the child back to the school as she was directed by the management not to induct him back (Attached herewith as the list of Document No.18).

9. The complainant hereby humbly states that complainant's wife Sushma Bidappa resumed her attempt to meet the management of the school, however was refused. Thereafter complainant's wife sent a text message to the accused NO.1 on 21-09-2022, however with no response by Accused No.1 (Attached herewith as the list of document No.8).

10. However, as the mid-term examination had already started Nihal was concerned about missing the mid-term examination and the complainant and his wife reached out and were forcefully asked to write other examinations in an isolated room. To that effect, complainant travelled to the school between 22.09.2022 to 30-09-2022 to make Nihal write his examination and he was not allowed to meet his classmates or enter the class room.

11. That during 1.10.2022 to 16-10-2022, the school was closed for the mid-term/October holidays.

12. On 17-10-2022 the complainant and his wife approached the accused No.2 at the school, to obtain permission and to request to admit Nihal back to the school. Although complainant's wife Sushma begged and pleaded to accused No.2 to take him back for the academic year. However, accused NO.2 very rudely rejected it, told Nihal that he is unfit to be in his school and ordered him not to meet him again. His behavior has a serious impact on the child, stressing, humiliating and making him and crying.

13. Subsequently, the complainant had to approach a temporary tutor Pragathi Study Center, Puttur, South Canara and informed the class teacher of the same on that the complainant will be visiting Puttur on Saturday, 22.10.2022 to find an alternative to complete his academic year.

14. On continuous perusal of his class teacher Bhavya by Sushma Bidappa, it was promised that his examination paper will be emailed to him at 10 a.m. on 24.10.2022 (the day of the death) but he was to write his exam from home as he was not allowed to enter the school.

15. On 24-10-2022, Monday, Nihal eagerly waited for the online question paper till 11 a.m. and when there was no sign of the question paper, he told his mother that he did not get the question paper for his examination. He felt rejected, and humiliated. He panicked and cried. He kept saying that although he apologized for his mistake many times, the school had destroyed his life, his future and his friendships. He felt shameful and disgraceful. He was inconsolable. Disheartened and depressed by the same, Nihal's mother Sushma notified the class teacher to send the question paper at 10.10 a.m. on 24-10-2022 by text message on what's app. But the attempt failed until 12.30 noon and between 12.45 – 1.00 p.m. had committed suicide by hanging which caused death at the complainant's residence in Nitoor village. It has caused darkness, great pain in Complainant's family and immeasurable grief to their family (Attached herewith is the list of document No.9).

The astonishing facts and arrogance and absolutely disgusting behavior of the institution abetting the suicide of the student are minor in nature compared to the facts that

transpired after the death of Master Nihal Bidappa. It is hereby stated as follows:-

16. That the complainant and family members held the cremation of the body of their minor son Nihal on 25.10.2022. On the same day, one Mr. Mallanda Prakash telephonically spoke to accused no.2 to seek clarity. (Attached herewith as the list of document No.18) Accused No.2 admitted to having punished Nihal, also admitting 3 students related to the same. Further stating that he will lend a pass certificate illegally and reject to take the student back to the school.

17. Subsequent to the death and cremation of Nihal Bidappa, when there was no official communication from the school even after a week, the parents and well-wishers had written a letter dated 3-11-2022 humbly seeking an explanation from the school (Attached herewith as the list of document No.1).

18. However, to the surprise of the complainant the school continued to be absolutely silent.

19. That on 14-11-2022, on the children's day, a few children from youth organizations protested in front of the school demanding an answer from the school, however, the management stayed hiding and continued to remain silent (Attached herewith as the list of documents Nos. 3 and 4).

20. On 17-11-2022, an unauthorized, unsigned letter dated 9.11.2022 (Attached herewith as the list of document No. 5 was received by the parents annexing the un-notified report filed by the institution dated 28-10-2022 before the DDPI & BEO (Attached herewith as the list of document No. 6). Subsequent to our letter dated 3.11.2022, they have maliciously reported it to the Superintendent of Police, Kodagu District dated 5-11-2022 (Attached herewith as the list of document No. 7).

21. In the aforesaid report, accused No.1 & 2 not only denied the suspension to cover up their act but also made serious false and shocking allegations against deceased Nihal Bidappa and his family. Such mala fide intent to defame the complainant's son after his death affected their son's dignity. Such cruel acts of the school are scandalous

and dangerous in nature. The school management tried to cover the issue of management and lack of awareness of process and procedure and made false and baseless allegations that the late student is of unsound mind and had recommended treatment in Sigma Hospital, which was nowhere to be found on record or was not brought up before Nihal's demise.

22. Subsequently, the complainant sent a letter dated 24-11-2022 (Attached herewith as the list of document No. 10) to the Class teacher, seeking clarity and truth of the same. Mrs.Bhavya is arrayed as a witness in the list of witnesses.

23. Subsequent to the letter of the class teacher, the institution's management head, accused No.2 and his wife Mrs. Ashwini Nachappa sent a condolence message through their letter dated 25.11.2022 (Attached herewith as the list of document No. 11). This Court may take judicial notice, that the said condolences were sent 32 days after the death of their student. It is evident that they are guilty of their acts and are making efforts to avoid the consequences of their actions.

24. That to the effect of the allegation made had issued a letter dated 3.12.2022 to the Manager of the Medical Record Room, Sigma Hospital, Mysore (Attached herewith as the list of document No. 12). The Hospital has responded with their letter dated 7-12-2022 stating that no patient with the name Nihal Bidappa was under treatment as an inpatient or out-patient (Attached herewith as the list of document No. 13).

25. That this Hon'ble Court may be pleased to note that a letter dated 23-12-2022 is sent to the Truth Labs Forensic Science Laboratory at Bangalore to avail the certificate of electronic evidence under section 65B of the Evidence Act (Attached herewith as the list of document No. 16).

26. That the complainant has issued a letter dated 24-12-2022 to the President of India, Chief Justice of India and Chief Justice of Karnataka. As this complaint calls for reformative action

as it is a threat to Articles 21 and 21A of the Indian Constitution. (Attached herewith as the list of document No. 17).

27. Mrs. Gauramma, Mr. Bopanna, the School Management of KALS and especially Mr. Dutta Karumbaiah are directly responsible for Nihal Bidappa's death and they are silent and absent still, to cover up their negligent and careless acts. They have suspended Nihal by torturing him mentally and without due investigation. Subsequently defamed the family of the complainant calling Nihal Bidappa an unsoundminded child, complainant is a rouge father and Sushma Bidappa, is a careless mother. This has hurt the complainant and his family beyond imagination. No pain is greater than the pain given to the complainant's family by the accused persons. The general public, parents of the students studying in the institution and the judiciary need to know the truth.

28. It is submitted that the incidence constituting the offence under Section 305 read with Section 34 of the Indian Penal Code and Section 17 of the Right to Education Act, 2009. It is submitted the Police have not taken any action against the accused persons. To date, no investigation is done for the crimes committed by the accused persons. The office of the Dy.S.P. had issued an endorsement dated 8-12-2022 stating that a proceeding under Section 174 of CrPC has been filed by Ponnampet Police Station dated 24-10-2022 in UDR No.30/22. Further, it is humbly submitted that the proceeding under 174 CrPC has limited scope in nature (Attached herewith as the list of document No. 15). The complainant hereby states that having left with no other option but to approach this Hon'ble Court through this private complaint so that the SHO Ponnampet, be directed to register to lodge an FIR against the accused persons under appropriate provisions of law and investigate the matter so that justice is served to the complainant.

29. With monetary and political influence and power, accused persons will try to tamper with the investigation and suppress the material evidence and witnesses.

Jurisdiction:

All incidents transpired under the territorial limits of Ponnampet and Gonikoppal which is under the jurisdiction of this

Hon'ble Court. Hence, this Hon'ble Court has got jurisdiction to entertain and adjudicate the matter herein.

Prayer:

Wherefore, it is prayed before this Hon'ble Court that this Hon'ble Court may be pleased to direct the SHO, Ponnampet Police Station to register an FIR and direct the Superintendent of Police (SP), Kodagu District to conduct a thorough investigation into this matter as the local police station lack appropriate competency to investigate and take necessary action. Hence, pass any other orders just under the law that this Hon'ble Court deems fit and proper in the circumstances of the case."

(Emphasis added)

The private complaint reveals several aspects, *inter alia*. The school had indicated that the boy had been treated in Sigma Hospital in Mysore for his ailment which has led to commission of suicide. The parents write to Sigma Hospital and the hospital replies that a patient by name Nihal Biddappa had never entered the hospital either as an in-patient or an out-patient. Therefore, even the said ruse projected by the school tumbles down. Based upon the aforesaid minute narration of events in the private complaint, the learned Magistrate refers the matter for investigation.

16. The aftermath of the investigation is again quite shocking. The Police file a 'B' report in the teeth of the aforesaid facts. Therefore, this Court summoned complete documents that led to filing of 'B' report. Perusal of the file contains statements of several students taken, who were nowhere in the picture, when all the incidents had happened. All the witnesses/students in unison, paint the boy black. One Kishan who was the reason behind the entire episode also gives his statement painting the boy black. Based upon this, Police file a 'B' report. On filing of 'B' report when the parents are notified, they register a protest. On registering the protest, the learned Magistrate in terms of the impugned order, rejects the 'B' report and takes cognizance and posts the matter for recording of sworn statement. The reason rendered by the learned Magistrate to reject the 'B' report and taking cognizance reads as follows:

"REASONS

Point No.1:-

10. I have carefully perused the charge sheet filed in this case and complaint. It is the specific case of complainant that accused persons have instigated, humiliated and insulted the student namely Nihal Bidappa who is son of complainant on the ground that he had brought alcohol to the school. Due to said insult said Nihal committed suicide. It is the contention of IO

that there are no materials to show that accused persons committed the alleged offences as contended in the complaint.

11. In this case the complainant has taken contention that IO has not enquired the witnesses and IO has not collected relevant documents and not verified the documents and evidence placed by the complainant. Though there are electronic evidence and other materials in support of complainant case, IO has filed false report. In the objections to the 'B' report the complainant has stated that he had materials and there are witnesses. Admittedly in the statements recorded by the IO it is noticed that all the statements are one and the same except change of name. In the statement of Bhavya P.P. it is stated that she sent question paper to the Nihal through online and parents of Nihal also replied that they received the question paper. It is also stated that Nihal attended for examination. One Kaveramma, Swetha, Bhavya were stated that Nihal attended all the exams from 23-09-2022 to 30-09-2022. He attended exam on 21-09-2022 also. On 22-09-2022 only he had not attended exam. On 22-09-2022 there was a exam for history subject due to his absence only school management sent the question paper of history to the Nihal on 22-10-2022 through online. In the complaint it is stated that school management have not sent the question papers to Nihal. It is also stated that though complainant and his son waited for question paper, school management has not sent the question paper on 24-10-2022 an on the same day Nihal committed suicide. In support of his contention complainant has produced phone conversation between mother of Nihal and school teacher. Inthat it is noticed that teacher did not sent the question paper as promised by the school management. There is a phone conversation between the mother of Nihal and class teacher to show that in spite of repeated demand also school management has not provided an opportunity to the mother of Nihal to meet the school management. The IO has not enquired about the said phone conversation though it is available in the record and though said electronic evidence produced before him also.

12. Apology letter given by Nihal shows that school management has suspended Nihal on the ground that he had brought alcohol to the school campus. In the subsequent documents school management has denied

the suspension of Nihal from attending the school. Though there is a clear recital in the apology letter IO has not enquired about that suspension order. IO has not chosen to enquire about the said Kishan Gowda. In the complaint it is clearly stated that Nihal brought alcohol as per instruction of Kishan Gowda. In such circumstances IO would have enquired that student but IO has not enquired about him and no explanation offered for non-enquiry of said Kishan Gowda. The complainant denied the statement of his wife alleged to recorded by the IO. It is further contended by the complainant that IO has not verified any of the documents placed by the complainant. In the 'B' report IO has stated that Nihal had some psychological issues but complainant has placed documents to show that Nihal had no such illness. Sigma hospital has given letter and stated that Nihal had not taken any treatment in the said hospital. School management has COPS also letter stating that on request of parents of Nihal only they gave transfer certificate. It shows that accused persons have made false allegation against Nihal stating that due to his mischievous nature only COPS school has issued TC. It shows that IO has not chosen to enquire with the doctor and COPS school management also. Without enquiring doctor IO has come to the conclusion that Nihal had some mental illness.

13. In the final report IO has stated that he has verified the documents but there are no supportive documents or materials to the case of complainant. But, the complainant has contended that he intentionally not enquired the matter. On perusal of the complaint it is noticed that in that it is clearly stated that there are materials to prove the case but IO has not enquired and collected documents from the complainant. When there is a denial by the complainant regarding enquiry of himself, it is the duty of Court to give an opportunity to the complainant to prove his case.

14. Final report filed by the IO itself shows that he did not collect relevant documents and not enquired the complainant and not verified the documents and evidence available in the record. In such circumstances 'B' report filed by the IO cannot be accepted. Complaint, objection and documents produced by

the complainant shows that there are prima facie materials and it is required to grant an opportunity to the complainant to prove his case. Hence, final report that is 'B' report filed by the IO is rejected. Hence, cognizance is taken for the offences shown below. Accordingly, I proceed to answer Point No.1 in the affirmative.

Point No.2:

15. In view of my answer to the above point, proceed to pass the following:

ORDER

'B' report filed by the IO is rejected.

Cognizance taken for the offence P/U/Section 305, 499 r/w 34 of IPC.

Matter is posted for recording sworn statement of complainant

By 26-06-2023."

(Emphasis added)

The learned Magistrate rejects the 'B' report taking note of several *lacunae* in the investigation by the Investigating Officer. The reasons, *inter alia*, rendered by the learned Magistrate are that the boy was chosen for punishment but the other student Kishan who was the reason behind is not chosen for any punishment. It is then the boy gets anxious and sought that he has been chosen for

punishment. The Court also records that blatant falsehood is uttered by the school with regard to psychological issues of the boy which are all clarified by the complainant on the strength of documents that there was no psychological issue earlier to the imposition of punishment. I therefore do not find any warrant of interference with the order passed by the learned Magistrate taking cognizance of the offence by rejecting the 'B' report. Every submission made by the learned senior counsel on the strength of documents appended to the criminal petition are all generated after the death of the boy or all are farther from truth. The falsity noted is not in thin air, but on the strength of documents. Therefore, this is not a case where there is neither instigation nor provocation. It is a case which has both, *albeit, prima facie*.

17. There are scores and scores of cases where offence under Section 306 of the IPC is loosely laid and those have all been quashed by the Apex Court or even this Court. All the judgments relied on by the learned senior counsel for the petitioners either of the Apex Court or this Court are all rendered on the facts obtaining in those cases. Much emphasis is laid by the learned senior counsel

with regard to the judgment in the case of **GEO VERGHESE** (*supra*) who was also a student of 9th class. The Apex Court holds that it would not amount to abetment to suicide on the facts of the said case. Therefore, the finding rendered in **GEO VERGHESE** would not become applicable to the facts narrated hereinabove. In the said case before the Apex Court there was no proximity to instigation that was immediately before the death of the boy, in the case at hand, as observed hereinabove, it does have the ingredients. Therefore, the second sheet anchor of the learned senior counsel for the petitioners is inapplicable to the facts of the case, as the facts in the case at hand are clearly distinguishable with the facts obtaining in **GEO VARGHESE**.

18. It is to be noticed that the boy was in communication with the school even up to 15 minutes before his death. Thus, there is proximity with the commission of suicide. Therefore, *prima facie*, the ingredients of Section 107 of the IPC are met, which would become an offence under Section 305 of the IPC. Whether it is instigation, goading or otherwise are all a matter of trial. The Court has now taken cognizance of the offence. It is too premature in the

teeth of the aforesaid facts to even consider the submissions of the learned senior counsel for the petitioners. There is no circumstance that would warrant interference by granting a pardon to the acts of the school. I am of the *prima facie* view that if the proceedings before the concerned Court are interfered and quashed at this stage it would be putting a premium on all the acts of the school without permitting them to face trial.

19. In the aforesaid circumstances, what becomes apposite to notice is the judgment of the Apex Court in the case of **MAHENDRA K.C. v. STATE OF KARNATAKA**⁶. The Apex Court in the said case has held as follows:

"18. In this backdrop, it is impossible on a judicious purview of the contents of the complaint and the suicide note for a judicial mind to arrive at a conclusion that a case for quashing the FIR had been established. In arriving at that conclusion, the Single Judge has transgressed the well-settled limitations on the exercise of the powers under Section 482 CrPC and has encroached into a territory which is reserved for a criminal trial.

19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In State of Orissa v. Saroj Kumar Sahoo [State of

⁶ (2022) 2 SCC 129

Orissa v. Saroj Kumar Sahoo, (2005) 13 SCC 540: (2006) 2 SCC (Cri) 272] , a two-Judge Bench of this Court, observed that: (SCC pp. 547-48, para 8)

"8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. 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 the 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 report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted *in toto*."

20. These principles emanate from the decisions of this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426*] and *State of M.P. v. Surendra Kori* [*State of M.P. v. Surendra Kori, (2012) 10 SCC 155: (2012) 4 SCC (Civ) 921 : (2013) 1 SCC (Cri) 247: (2012) 2 SCC (L&S) 940*]. In *Surendra Kori* [*State of M.P. v. Surendra Kori, (2012) 10 SCC 155: (2012) 4 SCC (Civ) 921: (2013) 1 SCC (Cri) 247: (2012) 2 SCC (L&S) 940*], this Court observed: (*Surendra Kori case* [*State of M.P. v. Surendra Kori, (2012) 10 SCC 155: (2012) 4 SCC (Civ) 921 : (2013) 1 SCC (Cri) 247: (2012) 2 SCC (L&S) 940*], SCC p. 163, para 14)

"14. The High Court in exercise of its powers under Section 482 CrPC does not function as a court of appeal

or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of wide magnitude and cannot be seen in their true perspective without sufficient material."

21. *In Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 CrPC to quash an FIR. Ratnavel Pandian, J. laid down the limits on the exercise of the power under Section 482 CrPC for quashing the FIR and observed : (SCC pp. 378-79, para 102)*

"102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 CrPC which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though 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 of myriad kinds of cases wherein such power should be exercised.

(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) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.*

(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) CrPC.*

(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 concerned Act, 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."*

The judgment in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] has been recently relied on by this Court in State of Telangana v. Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] .

22. Based on the above precedent, the High Court while exercising its power under Section 482 CrPC to quash the FIR instituted against the second respondent-accused should have applied the following two tests : (i) whether the allegations made in the complaint, prima facie constitute an offence; and (ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint. Before proceeding further, it is imperative to briefly discuss the law on the abetment of suicide to determine if a prima facie case under Section 306 IPC has been made out against the respondent-accused.

23. Section 306 IPC provides for punishment of the abetment of suicide:

"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."

Section 107 IPC defines the expression "abetment":

"107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose,

voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

24. The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , a three-Judge Bench of this Court, speaking through R.C. Lahoti, J. (as the learned Chief Justice then was), observed : (SCC p. 629, para 20)

"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."

25. A two-Judge Bench of this Court in Chitresh Kumar Chopra v. State (NCT of Delhi) [Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] , speaking through D.K. Jain, J., observed : (SCC pp. 611-12, paras 19-20)

"19. As observed in Ramesh Kumar [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other

words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidality pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

(emphasis in original)

26. This has been reiterated in the decision in *Amalendu Pal v. State of W.B.* [*Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707: (2010) 1 SCC (Cri) 896] , where it has been 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.”

(See also in this context the judgments in Praveen Pradhan v. State of Uttaranchal [Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734; (2013) 1 SCC (Cri) 146], Vajjnath Kondiba Khandke v. State of Maharashtra [Vajjnath Kondiba Khandke v. State of Maharashtra, (2018) 7 SCC 781; (2018) 3 SCC (Cri) 362], M. Arjunan v. State [M. Arjunan v. State, (2019) 3 SCC 315; (2019) 2 SCC (Cri) 219], Ude Singh v. State of Haryana [Ude Singh v. State of Haryana, (2019) 17 SCC 301; (2020) 3 SCC (Cri) 306], Rajesh v. State of Haryana [Rajesh v. State of Haryana, (2020) 15 SCC 359; (2020) 4 SCC (Cri) 75] and Gurcharan Singh v. State of Punjab [Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200; (2021) 1 SCC (Cri) 417]. These decisions have been recently referred to in the judgment of this Court in Arnab Manoranjan Goswami v. State of Maharashtra [Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427; (2021) 1 SCC (Cri) 834].

27. *While adjudicating on an application under Section 482 CrPC, the High Court in the present case travelled far away from the parameters for the exercise of the jurisdiction. Essentially, the task before the High Court was to determine whether 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 did or did not prima facie constitute an offence or make out a case against the accused.*

28. *Instead of applying this settled principle, the High Court has proceeded to analyse from its own perspective the veracity of the allegations. It must be emphasised that this is not a case where the High Court has arrived at a conclusion that the allegations in the FIR or the complaint are so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Nor is this a case where the criminal proceeding is manifestly mala fide or has been instituted with an ulterior motive of taking vengeance on the accused. On the contrary, the specific allegations in the FIR and in the complaint find due reflection in the suicide note and*

establish a prima facie case for abetment of suicide within the meaning of Sections 306 and 107 IPC. The entire judgment [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] of the High Court consists of a litany of surmises and conjectures and such an exercise is beyond the domain of proceeding under Section 482 CrPC. The High Court has proceeded to scrutinise what has been disclosed during the investigation, ignoring that the investigation had been stayed by an interim order of the High Court, during the pendency of the proceedings under Section 482.

29. *The High Court observed that a prima facie case for the commission of offence under Section 306 IPC is not made out since : (i) the suicide note does not describe the specific threats; (ii) details of the alleged demand of Rs 8 lakhs from the deceased by the respondent-accused are not set out in the suicide note; and (iii) no material to corroborate the allegations detailed in the suicide note has been unearthed by the investigating agency. The High Court observed that since the deceased took considerable time to write a twelve page suicide note, "it would have been but natural for the author to set out the details". The High Court has evidently travelled far beyond the limits of its inherent power under Section 482 CrPC since instead of determining whether on a perusal of the complaint, a prima facie case is made out, it has analysed the sufficiency of the evidence with reference to the suicide note and has commented upon and made strong observations on the suicide note itself.*

30. *Paras 32, 33, 34 and 39 of the order [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] of the High Court are extracted below : (L. Bheema Naik case [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] , SCC OnLine Kar)*

"32. In Para 21 [of the suicide/death note] [Ed. : As per para 31 of the impugned judgment of the High Court in L. Bheema Naik case, it is recorded as follows:"... The deceased has written a detailed death note consisting of 21 numbered and one unnumbered paragraphs. Out of 22 paragraphs, 20 paragraphs pertain to alleged dealings and the only probable portion of the death note, which could be relied upon to establish the culpability of the

petitioner are Para 21....”] , a bald statement is made stating that because he is aware of all the above transaction, he was given a death threat. In the next sentence, he states that he has been psychologically/emotionally in trouble and hence, he is consuming poison and that the petitioner and his driver alone are responsible. For a person, who has detailed 20 transactions, it can be prudently expected of such a person to give details of the threat.

33. In the next unnumbered paragraph, a totally different story/note is set out as a reason for the petitioner threatening the deceased. In the unnumbered paragraph, he states that there was shortage in the cash to the tune of Rs 8 lakhs and that the petitioner suspected him as being responsible for the same and hence, threatened him that if the deceased did not repay said Rs 8 lakhs, he would have the deceased killed at the hands of rowdies. Thereafter, in the next sentence he states that in view of the same, he has decided to consume poison and that the petitioner and his driver are responsible for the same.

34. In Para 20 [of the suicide/death note], the deceased holds the petitioner responsible for withholding the salary for the last three months. The other paragraphs including Para 20 [of the suicide/death note] detail the properties said to have been amassed by the petitioner and other illegal transactions. After having perused and scrutinised the death note, a query was put to the learned High Court Government Pleader and the counsel appearing on behalf of 2nd respondent as to whether the investigation has thrown up any material that corroborates any of the allegations set out in the death note. The learned High Court Government Pleader would fairly submit that they have not been able unearth any material to corroborate any of the allegations.

39. As discussed above, the death note contains no incriminating statement or material except for a bald and vague statement but that the accused had threatened him. Even the complaint does not disclose any details of

the alleged threat nor does the complaint state that the deceased had on multiple occasions complained of having received threats from accused. Even the allegation of the demand for repayment of Rs 8 lakhs rings hollow as neither the prosecution nor the de facto complainant have been able to place an iota of material that the deceased was or had in fact been in possession of huge sum of money."

Further, the observation of the High Court that there is no material to corroborate the allegations made in the suicide note is erroneous since it is not a consideration for the High Court while exercising its power under Section 482 CrPC, particularly in view of the fact that the trial has not begun and the Single Judge had stayed the investigation in the criminal complaint.

31. *The Single Judge, other than deciding on the merits of the case while exercising the power under Section 482 CrPC, has also made observations diminishing the importance of mental health. The mental health of a person cannot be compressed into a one-size-fits-all approach. In para 37 of the impugned judgment [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395], the Single Judge observed: (L. Bheema Naik case [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395], SCC OnLine Kar)*

"37. It is not the case of the deceased that the accused had deprived him of his wealth or have committed acts that have shattered his hopes in life or separated him from his family and friends."

The Single Judge then makes the following observation in paras 41 and 43: (L. Bheema Naik case [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395], SCC OnLine Kar)

"41. ... It is not the case of the prosecution that the deceased was running away from or escaping the petitioner or his henchmen, but as is his habit, to visit his parents and to spend time with his friends. If the deceased had really felt threatened, he would have definitely approached the police. It is not that he was naive or not worldly-wise. If his employment with the petitioner was true, then the Police Commissionerate was

only a stone's throw away. It is not that the deceased was a weakling. The deceased by profession, is a driver. A profession where, accidents causing loss of life and limb are a daily occurrence and every driver is aware that he could be involved in an accident at any time.

43. His act of attending a relatives marriage in a different town and his interacting with friends and relatives are all actions of a normal person and not of a person under severe duress. The contention that this criminal case would jeopardise his career progression also cannot be brushed aside. It is also not forthcoming as to how he sourced the poison."

32. *The Single Judge has termed a person who decided to commit suicide a "weakling" and has also made observations on how the behaviour of the deceased before he committed suicide was not that of a person who is depressed and suffering from mental health issues. Behavioural scientists have initiated the discourse on the heterogeneity of every individual and have challenged the traditional notion of "all humans behave alike". Individual personality differences manifest as a variation in the behaviour of people. Therefore, how an individual copes up with a threat—both physical and emotional, expressing (or refraining to express) love, loss, sorrow and happiness, varies greatly in view of the multi-faceted nature of the human mind and emotions. Thus, the observations describing the manner in which a depressed person ought to have behaved deeply diminishes the gravity of mental health issues.*

33. *The High Court by its order [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] has prevented the completion of the investigation in the complaint registered as Crime No. 565 of 2016 pending on the file of the IInd Additional Civil Judge (Junior Division) and JMFC Court, Maddur, Mandya District. The alleged suicide is of a person who was working as a driver of a Special Land Acquisition Officer, who is a public servant and against whom serious and grave allegations of amassing wealth disproportionate to the known sources of income were made by the deceased. The suicide note contains a detailed account of the role of the accused in the events which led to the deceased committing suicide. These are matters of investigation and possibly trial. The High Court stalled the*

investigation by granting an interim order of stay. If the investigation had been allowed to proceed, there would have been a revelation of material facts which would aid in the trial, for the alleged offence against the second respondent.”
(Emphasis supplied)

The Apex Court comes down heavily on this Court for having quashed the proceedings against the accused therein by entering into merits of the matter without permitting further trial. The Apex Court considers ingredients of Section 107 and the purport of Section 306 of the IPC. In the light of the judgment in the case of **MAHENDRA** (*supra*) and finding that ingredients of Section 107 of the IPC are clearly met in the case at hand for it to become an offence under Section 305 of the IPC *albeit, prima facie*, there is no warrant of interference. The same goes with all the other offences as well.

20. A parting observation in the case at hand would not be inapt. An unfortunate incident has taken the precious life of a young boy. The incident is a subject of discipline in the school. Discipline is always of two kinds – positive or negative. Positive discipline would be in the form of motivating the student and the negative is other way round. It is in public domain that harsh

discipline is closely linked to internalizing mental problems of a child and lowering the child's cognitive functioning and school performance. A child may be a trouble maker, mischievous or otherwise. Punitive disciplinary actions like suspensions and expulsions would sometimes in no way help the child get over the aforesaid traits, it would only result in fading away all learning habits of the child and great hardship to those families. Therefore, the schools which are inculcating harsh discipline should think of a paradigm shift, so that the lives of young souls, who do not have the capacity to think of the consequences of any action sometimes may lead to devastating steps like the one found in the case at hand. Such cases would form illustrations of negative self evaluation and the children feeling bad about themselves. The Educational Institutions therefore, have to recognize this malady of over/harsh discipline, remedy the wrong in a different manner, so that the lives of young souls would be saved. It is not the case of *just one student*, but, *even one student*. The institutions should also recognize that the age old principles have now changed, I mean "***spare the rod and spoil the child***" has metamorphosed into "***spare the rod and teach the child***".

21. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition stands rejected.
- (ii) It is made clear that the observations made herein are only for the purpose of consideration of the case of the petitioners under Section 482 of the Cr.P.C. and should not influence or bind further proceedings before the learned Magistrate in PCR 414 of 2022.

Consequently, I.A.No.1 of 2023 also stands disposed.

**Sd/-
JUDGE**

bkp
CT:MJ