

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 11931 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

BABULAL DURICHAND ANCHALIA & 1....Applicant(s)
 Versus
 STATE OF GUJARAT & 1....Respondent(s)

Appearance:

MR ANKIT B PANDYA, ADVOCATE for the Applicant(s) No. 1 - 2
 MR JIGAR G GADHAVI, ADVOCATE for the Respondent(s) No. 2
 APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 30/10/2015

CAV JUDGMENT

1 By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants – the husband and wife aged 74 and 70 respectively, seek to invoke the inherent powers of this Court, praying for quashing of the proceedings of the Criminal Case No.25819 of 2015 pending at the stage of committal in the Court of the 5th Additional Senior Civil Judge and Judicial Magistrate First Class, Surat, arising from the First Information Report bearing I-C.R. No.27 of 2015 registered with the Puna Police station, Surat for the offence punishable under Sections 306, 498A read with 114 of the Indian Penal Code.

2 The case of the prosecution in brief is as under:

2.1 The daughter of the respondent No.2, namely, Shilpa (deceased) had got married on 07.02.2010 with a boy named Vikash Vijaychand Chopda – original accused at village Gangashaher, Taluka and District, Bikaner (Rajasthan). According to the father of the deceased, after marriage, the deceased started residing with her husband, father-in-law and mother-in-law at Kolkata. In the wedlock, a son was born named 'Manas', who, as on today, is aged 4 years. Thereafter, a daughter was born, namely, 'Mansi', who, as on today, is aged 1 ½ years. It is alleged that after about one year from the date of the marriage, the husband started harassing the deceased on petty issues. However, with a view to see that the matrimonial life does not get disturbed, the family members

used to persuade the deceased to adjust herself in life. It is alleged that while the deceased was residing at Kolkata, her father-in-law and mother-in-law also used to cause harassment to her. It is further alleged that before about 10 months from the date of the incident, the deceased along with her husband and two minor children got settled at Surat. The husband was able to get a job at the Pandesara G.I.D.C. in one of the Dyeing units. It is further alleged in the First Information Report, that the husband and the in-laws used to demand for money and the first informant used to help monetarily according to his financial capacity. On 18.02.2015, the birthday of the son of the deceased, viz. 'Manas' was celebrated. However, the first informant and his family members were not informed about the party which was thrown for the birthday celebration. It is alleged that the deceased used to call up her father on mobile and convey about the harassment caused to her by the husband and the in-laws. On 27.02.2015, the deceased is said to have called up her father twice and conveyed that her father-in-law and the mother-in-law and the two applicants herein (i.e. the father-in-law's sister and the husband of the father-in-law's sister) had come to her house and had levelled allegations against her about the household work and further that the deceased had sold off her jewellery. The deceased is said to have further conveyed that Vikash i.e. her husband had beaten her up. The deceased requested her father to make arrangements to see that

someone would drop her at the house of her maternal uncle. According to the first informant, he did not take the words or what was conveyed by the deceased seriously. Thereafter, at about 11.49 hours in the night, the father received a message on mobile stating “Papa do not speak anything at present. Whatever I have conveyed to you do not pass it on to the others. You may talk in the morning and my mother-in-law has alleged that Shipla would run away with money”. According to the first informant, he did not call up his daughter in the morning on 23.02.2015. However, the father-in-law of the deceased called up in the morning at about 9.30 hours and conveyed that Shilpa i.e. the deceased had committed suicide by jumping from the 5th floor gallery. The deceased was shifted to the hospital where she was declared dead. It is alleged that the accused persons abetted the commission of the suicide punishable under Section 306 of the Indian Penal Code.

2.2 The statement of the mother of the deceased is almost on the same line as what has been alleged in the First Informant Report. So far as the other statements are concerned, I find a remote reference of the two applicants herein.

3 After the registration of the F.I.R., all the accused persons including the applicants herein were arrested. The applicants herein, who have as such nothing to do with the matrimonial life of the

deceased, have also been implicated, and are in the judicial custody as on today. The only allegation against the two applicants herein is that they had gone at the house of the deceased in the late evening on 22.02.2015 and are alleged to have spoken something about the household work and jewellery. It appears that the applicants herein are residents of Surat. Their house is at little distance from the house where the deceased was residing.

4 Mr. Narendra Jain, the learned advocate appearing for the applicants submitted that even if the entire case of the prosecution is accepted as true, none of the ingredients to constitute the offence punishable under Section 306 or Section 498A of the Indian Penal Code could be said to have been spelt out so far as the applicants are concerned. He submitted that the ingredients for abatement for suicide would be satisfied only if the suicide is committed by the deceased due to direct alarming encouragement or incitement by the accused leaving no option but to commit suicide. He submitted that even if the presence of the two applicants herein at the house of the deceased in the evening on 22.02.2015 is believed, nothing could be alleged against them which would constitute an offence under Sections 306 and 498A of the Indian Penal Code.

5 He submitted that for no fault on the part of the applicants, they

are languishing in jail as on today. He, therefore, prayed that the proceedings be quashed so far as the applicants herein are concerned.

6 On the other hand, this application has been vehemently opposed by Mr. Jigar Gadhvi, the learned advocate appearing for the respondent No.2 – first informant. He submitted that there is more than a prima facie case against the applicants to put them to trial for the offence punishable under Sections 306 and 498A of the Indian Penal Code. He submitted that as the action of committing suicide is on account of great disturbance to the psychological imbalance of the deceased such incitement can be divided into two broad categories, one normally where the deceased is having sentimental tie or physical relations with the accused, and second category would be where the deceased is having relations with the accused in official capacity. He submitted that the case in hand falls in the first category and consequently, creating the situation of depression, incessant harassment may give temptation to the person to commit suicide. He submitted that the former category leaves more expectation, whereas in the latter category, by and large, expectation and obligation are prescribed by law, rules and regulations. He submitted that in such circumstances, a legitimate prosecution may not be quashed at this stage. In support of his submissions, he placed reliance on the following decision:

(1) **A.K. Chaudhary and others v. State of Gujarat and others**
[2005(3) GLH 444]

(2) **State of A.P. v. Aravapally Venkanna and another** [2009(2)
GLH 572]

(3) **Chintresh Kumar Chopra v. State (Government of NCT of
Delhi)** [(2009(16) SCC 605]

(4) **A.M. Kapoor v. Rameshchander and another** [(2012) 9 SCC
460]

7 The learned APP appearing for the State also opposed this application and submitted that no case is made out for quashing of the proceedings at this stage.

8 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the criminal proceedings should be quashed so far as the applicants herein are concerned.

9 The following emerges from the papers of the chargesheet:

(1) In the entire First Information Report as well as the other statements forming part of the chargesheet, there are no allegations against the applicants herein that they were continuously harassing the deceased in any way or the other.

(2) There are no allegations in the First Information Report as well as the other statements that the applicants herein used to instigate the husband and the in-laws on account of which there was incessant harassment to the deceased.

(3) The allegations are against the husband. The husband used to beat and harass the deceased a lot. The husband was alcoholic. It appears from the statement of one Shri Prakash Tikamchand Nahta (Jain), the brother of the first informant, which is at page 25 of the paper book, that it was conveyed to him by his brother i.e. the first informant. On 23.02.2015, Shilpa had called up and conveyed to the first informant that she was being beaten up by her husband and in the morning, she jumped from the 5th floor gallery of the flat. The first informant had not spoken anything to his brother as regards the applicants herein.

(4) The allegations in the First Information Report lodged by the father of the deceased are that on 22.02.2015, the applicants herein had come to the house of the deceased along with the father-in-law and the mother-in-law and had reprimanded the deceased as regards the household work and further alleged that the deceased had sold off the jewellery. Except this, there is nothing against the applicants herein.

(5) The applicants could be said to be distant relatives. They are “Fuvaji-in-law” (the husband of the father-in-law’s sister) and “Fuiji-in-

law” (the father-in-law’s sister) of the deceased. They are residing independently.

(6) It appears that immediately after the marriage, matrimonial disputes cropped up. The deceased was residing at Kolkata with her family. According to the first informant, she was being harassed at Kolkata. The applicants herein are residents of Surat. Nowhere, it has been stated that at any point of time, the applicants had visited the deceased at Kolkatta.

(7) The husband had become alcoholic. He was also persuaded and to understand that the alcohol would ruin his life. At one point of time, there was a settlement also.

10 Having regard to the facts narrated above, could it be said that the applicants herein abetted the commission of suicide in any manner.

11 Section 306 of the Indian Penal Code reads as under:

“306. Abetment of suicide-

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

12 It is a settled law that before a person is alleged to have abetted the commission of suicide, the prosecution must show some convincing and cogent evidence that the accused persons intended the

consequences of the act, namely, suicide and abetted the suicide within the meaning of Section 107 of the Indian Penal Code. It is equally well settled that mere harassment or cruelty, which drags the woman to commit suicide, is not sufficient to constitute the offence under Section 306 of the Indian Penal Code. Section 107 of the Indian Penal Code is with regard to the abetment. Section 107 of the Indian Penal Code reads as under:

“107. Abetment of a thing

A person abets the doing of a thing, who-

First.-*Instigates any person to do that thing; or*

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

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

Explanation 1.-*A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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

13 At this stage, it would be apposite to look into the provisions of Section 113-A of the Evidence Act, which reads as under:

“113A. Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code.”

14 The Supreme Court in the case of **Ramesh kumar v. State of Chhatisgarh [(2001) 9 SCC 618]** has explained the effect of Section 113-A of the Evidence Act in paras 12 and 13. Paras 12 and 13 read as under:

“12... To attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'...”

“13. The expression :-'The other circumstances of the case' used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may

destroy the presumption. The present case is not one which may fall under clauses secondly and thirdly of Section 107 of Indian Penal Code.”

15 I shall now look into Section 498A of the Indian Penal Code, which reads as under:

“498A. Husband or relative of husband of a woman subjecting her to cruelty-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-*For the purposes of this section, "cruelty" means-*

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”

16 Section 498A of the Indian Penal Code speaks about cruelty by the husband or the relatives of the husband. So far as Section 498A of the Indian Penal Code is concerned, the prosecution is obliged to point out the willful conduct which is of a nature as is likely to drive the woman to commit suicide. There has to be some material to *prima facie* indicate that the cruelty or harassment was unabated, incessant, persistent and being grave in nature unbearable with the intention to force the woman or drag her to commit suicide or to fulfill illegal demand of dowry. As held in catena of the decisions of the Supreme Court, Section 498A of

the Indian Penal Code would not come into play in all the cases of harassment and/or cruelty and reasonable nexus between cruelty and suicide must be shown. The usual wear and tear in a matrimonial life would not attract Section 498A of the Indian Penal Code.

17 In the present case, except one incident i.e. the alleged act of saying something to the deceased with regard to some household work and alleging that the deceased had sold off her jewellery, there is no other material to even *prima facie* indicate that the applicants herein were unnecessarily or intentionally interfering with the matrimonial life of the deceased. It appears that after the deceased rented a house at Surat, which was at some distance from the house of the applicants herein. It is possible that being relatives, they might have visited the house of the deceased in the evening on 23.02.2015. Let me believe as true what is alleged by the prosecution. I am of the view that by any stretch of imagination, it could not be said that the applicants herein caused any harassment within the meaning of Section 498A of the Indian Penal Code or abetted the commission of suicide. I may only say that the deceased was a disturbed lady. She was fed up with her husband who used to beat her and was alcoholic. It is possible even if it is believed to be true at this stage that the incident which occurred in the evening might have added more to the misery of the deceased, but it

cannot be said that the applicants herein abetted the commission of suicide. I may at this stage at the cost of repetition state that there is no reference at all of the two applicants herein in the statement of the brother of the father of the deceased. It appears that soon before the deceased committed suicide, she was beaten up by her husband and this might be during the night hours. The case of the prosecution is that she jumped from the 5th floor of the gallery at about 5.30 hours in the early morning.

18 I had an occasion to consider the law on the subject of abetment of suicide in the case of **Lalitbhai Vikramchand Parekh v. State of Gujarat** (Criminal Miscellaneous Application No.16032 of 2014). In this case, five members of one family committed suicide. I may quote the relevant observations as contained in paras 11 to 28 as under:

11. Abetment of suicide is made punishable by Section 306 which provides that "if any person commits suicide, whoever abets the commission of such suicide, shall be punished." (emphasis supplied) The section does not define the expression "abet", nor is the expression defined in Chapter II of the Code which deals with the general explanations". However, Chapter V of the Code incorporates an elaborate statement of "abetment". Section 107 in this Chapter defines "abetment of a thing", while Section 108 defines the expression "abettor". This is how these sections run : Section 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. 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."

12. Section 108 - Abettor- "A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor".

Explanation 1.- The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, of any guilty intention or knowledge.

Explanation 4.- The abetment of an offence being an offence, the abetment also an offence.

Explanation 5.- It is not necessary to the commission of the offence of abetment by conspiracy than the abettor should concern the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed."

13. As the expressions "abetment" and "abettor" have been legislatively defined, the ordinary dictionary meaning of the expressions would not be determinative of their import. It may, however, be useful to have a look at the dictionary meaning of the expression "abet". According to Webster, Webster's Third New International Dictionary Vol. I, the expression "abet", means to incite, encourage instigate, or countenance-now usually used disparagingly. According to Wharton, Whartone's Law Lexicon, 14th ed., "abet" means to stir up or excite, to maintain or patronize : to encourage or set on and the "abettor" is an instigator or setter on, one who promotes or procures a crime to be committed. Stroud, Stroud's Judicial Dictionary, 4th ed., has given various meanings of the expression "aid" or "abet", based on judicial pronouncements in England, in the context of different statutes.

Thus, according to Hawkins, 51 L.J.M.C. 78-R. v. Coney, J., "To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals. Encouragement does not, of necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwillingly encourage another in fact by his presence, by misinterpreted gestures, or by his silence or non-interference- or he may encourage intentionally by expressions, gestures, or actions, intended to signify approval. In the latter case, he aids and abets; in the former he does not." Stroud also cites the case of *Du Cros v. Lambourne*, 1907 (1) K. B. 40.. in which it was held that "the owner in, and in control of, a motor car which is being driven at an improper speed by a driver who is not his servant, "aids or abets" in the offence if he (the owner) does not interfere." It is further noticed on the basis of decision in the case of *Rubie v. Faulkner*, 1980 (1) K.B. 571 : "For a supervisor of a learner driver to see that an unlawful act is about to be done and to fail to prevent it is he can is for him to aid and abet." It is further noticed, on the authority of the decision in the case of *Callow v. Tillstone*, 83 L.T. 411, that "A man does not by negligence aid and abet a person to expose unsound meat for sale." It is further noticed, on the basis of the decision in the case of *Ackroyds Air Travel v. Director of Police Prosecutions*, 1950 (1) All. E.R. 933 and *Thomas v. Lindop*, 1950 (1) All. E.R. 966, that "If a person knows all the circumstances which constitute the offence he will be guilty of aiding and abetting whether he knew that they did in fact constitute the offence or not " Stroud also quotes Lord Goddard C J. in *Ferguson v. Weaving*, 1951 (1) K.B 814, that "it is well know that the words 'aid and abet are apt to describe the action of a person who is present at the time of the commission of an offence and takes some part therein."

14. It may be useful to refer to some of the early English decisions, dealing with different ways of taking part in a felony, it was recognised that a felony may be committed by the hand of an "innocent agent" who, having no blamable intentions in that he did, incurred no criminal liability by doing it. In such a case, the man who "instigates" this agent is the real offender; his was the last mens rea that preceded the crime, though it did not cause it "immediately but mediately". "Thus, if a physician provides a poisonous draught and tells a nurse that it is the medicine to be administered to her patient, and then by her administration of it the patient is killed, the murderous physician-and not the innocent nurse-is the principal in the first degree Kel. 52 (T.A.C.)." In English Law, as it stood before the later developments, "a principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed; for instance, a car-owner sitting beside the chauffeur who kills some one by over-fast driving, or a passenger on a clandestine joy-riding expedition which results in manslaughter 1930 (22) Cr, App. R. 70 : 144 L.T. 185, "or bigamist's second 'wife' if she knows he is committing bigamy, or even be spectators if they actively encourage such a contest even by mere applause. "But a spectator's presence at a prize-

fight docs not of itself constitute sufficient encouragement to amount to an aiding and abetting 1882 (8) Q.B.D. 534." It was also recognised that a man may effectively "aid and abet" a crime and at the very moment of its perpetration, without being present at the place where it is perpetrated. "To be guilty of aiding and abetting, a person must either render effective aid to the principal offender or else must be present and acquiesce in what he is doing. Before a person can be convicted of aiding and abetting the commission of an offence, he must at least know the essential matters which constitute the offence 1951 (1) All. E.R. 412(414)." "But acquiescence sufficient to constitute the offence may be established by evidence of the accused persons motive and of his subsequent conduct 1951 (1) All. E.R. 464."

In the category of "accessory before the fact" comes a person who "procures or advises" one or more of the principals to commit the felony. This "requires from him an instigation so active that a person who is merely shown to have acted as the stakeholder for a prize-fight which ended fatally, would not be punishable as an accessory 1875 (2) C.C.R. 147." "The fact that a crime has been committed in a manner different from the mode which the accessory had advised will not excuse him from liability for it. But a man who has counselled a crime does not become liable as accessory if, instead of any form of the crime suggested, an entirely 'different offence is committed 1936 (2) All. E.R. 813." Kenny, Kenny's Outlines of Criminal Law, New ed. by J.W.C. Turner, p. 88, points out that it is not always easy to decide whether or not the crime actually committed comes within the terms of the "incitement." so as to make the inciter legally responsible for it. He further observed that the courts in some of the older cases tended to "take a strict view of the facts" and refers by illustration to the case of R. v. Saunders, Kel. 52 (T.A.C) and Archer in 1578. referred to in Plowden.

15. For obvious, reasons an act of suicide is not penal, even though an unsuccessful attempt at it is punishable. Suicide takes the victim or the perpetrator outside the purview of penal consequences, even though the common law in England at one time endeavoured to deter men from this crime by the threat of degradations to be inflicted upon the "suicide's corpse", which by a natural, if unreasoning association of ideas, were often a "potent deterrent", and also by threatening the forfeiture of his goods, a "vicarious punishment" which though falling wholly upon his surviving family, was likely often to appeal strongly to his sense of affection. Thus the man who feloniously took his own life was at one time "buried in the highway", with a stake through his body; and his goods were "forfeited". The burial of suicides lost its gruesome aspect in 1824 when the original mode was replaced by the practice of burial "between the hours of nine and twelve at night", without any service. In 1870, the confiscation of the goods of suicides was put to an end in the general abolition of forfeitures for felony. And in 1882, the statute removed every

penalty, except the purely ecclesiastical one that the interment must not be solemnised by a burial service in the full ordinary Anglican form, Kenny's *Outlines of Criminal Law*, New ed. by J.W.C., Turner, p. 138.

16. Halsbury, in *Halsbury's Law of England*, 4th -ed. paras 42 to 44 notices some of the English decisions in the matter of classification of offence and complicity in the crime. Thus, a person who "assists the perpetrator at the time of its commission, or if he assists or encourages the perpetrator before its commission, was held liable 1970 (2) Q.B. 54." According to *R.V. Gregory (1867) L.R.I. C.C.R. 77* "any person who aids, counsel or procures the commission of an offence, whether an offence at common law or by statute, and whether indictable or summary, is liable to be tried and punished as a principal offender." Mere presence at the commission of the crime is not enough to create criminal liability, nor is it enough that a person is present with a secret intention to assist the principal should assistance be required. Some encouragement or assistance must have been given to the principal either before or at the time of the commission of the crime with the intention of furthering its commission. Presence without more may, however, afford some evidence of aid and encouragement. It is an indictable offence at common law for a person to incite or solicit another to commit an offence. For an incitement to be complete, there must be some form of actual communication with a person whom it is intended to incite, where, however, a communication is sent with a view to incite, but does not reach the intended recipient the sender may be guilty of an attempt to incite. Incitement is complete though the mind of the person incited is unaffected and notwithstanding that person incited intends to inform on the inciter ; but there can be no incitement unless one person seeks to persuade or encourage another Halsbury's *Laws of England*, Paras 42 to 44.

17. It may be useful to notice some of the Indian decisions on the question of abetment. Among the early cases of abetment of suicide arose out of unfortunate incidents of Sati, which was common in India, at one time. A person who induced the woman to return to the pyre after she had once retired from it, and immolated herself, was held to have abetted suicide 1863 (1) R.L.P.J. 174. Where a women prepared to commit suicide in the presence of certain persons who followed her to the pyre, stood by her and one of them told the women to say 'Ram Ram' and "She would become sati", the facts were held sufficient to prove the active connivance of these persons and to justify the inference that they had engaged with her in a conspiracy to commit suicide 1871 (3) N.W.P. 316; (1933) A.L.J.R. 7. Where the accused prepared the funeral pyre, placed the victim's husband's body over it, and did not use any force to prevent her from sitting on the pyre and supplied her with ghee which she poured over the pyre were found guilty of abetment of suicide. Where a Hindu women was burnt in the act of becoming sati, those who assisted her in taking off her ornaments, supervised the cutting of her nails and the dying of her feet,

prepared the pyre on which she sat herself and put the corpse upon the pyre, were all held guilty of abetment of suicide. The defence that the abettors were in fact "expecting a miracle and did not anticipate that the pyre would be ignited by human agency was rejected, 1928 (8) Pat. 74. Similarly, where the accused, who were members of a crowd, who had joined the funeral procession from the house of the victim to the cremation ground, and were shouting "Sati Mata Ki Jai" it was held that all those persons, who joined the procession were aiding the widow in becoming sati and were guilty of an offence under Section 306 of the Penal Code, 1958 Cr. L.J. 967, 1958 Raj. 143.

18. Some later decisions arising out of other instances of instigation throw further light on the question. In the case of *Parimal Chatterjee and others* A.I.R 1932 Cal. 760, a Division Bench of the Calcutta High Court observed that the word "instigate" literally means to goad or urge forward or to provoke, incite, urge or encourage to do an act. A person may however not only instigate another, but he may co-operate with him and his Co-operation - may consist of a conjoint action and that would amount to abetment. In the case of *State of Bihar v. Ranen Nath and other* A.I.R. 1958 Patna 259, a Division Bench of the Patna High Court was construing Section 27 of the Industrial Disputes Act which uses the expressions 'Instigation and incitement' and observed that the words "should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement" and it was held that the words seem to convey the meaning "to goad or urge forward or to provoke or encourage the doing of an act." It was further observed that what acts should amount to instigation or incitement within the meaning of that section will depend upon the "particular facts of each case", and that in some circumstances a "throw of a finger" or "a mere turning of the eye" may give rise to an inference of either "incitement or instigation", and yet in others even "strong words, expressly used, may not mean that the person using them was stimulating or suggesting to anyone to do a particular act." The court expressed the view that there must be something "tangible" in evidence to show that the persons responsible for such action were "deliberately trying to stir up other persons to bring about a certain object". According to a division bench of the Calcutta High Court, a person abets the doing of a thing when he or she, inter alia, "instigates any person to do that thing." The other modes of abetment, besides instigation, are "conspiracy and intentional aid". The word "instigation" literally means "to goad or urge forward to do an act." "It is something more than co-operation." In the case of *Shri Ram and another*, 1975 (2) S.C.R. 622, the Supreme Court observed that in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. "Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107". A person may, for example, "invite another

casually or for a friendly purpose and that may facilitate the murder of the invitee". But unless the invitation was extended "with intent to facilitate the commission of the murder", the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor "happens to facilitate the commission of the crime". "Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107".

19. *In case of suicide how the evidence is required to be appreciated has been stated by the Hon'ble Supreme Court in number of judgments. In State of West Bengal v. Orilal Jaiswal, (1994) 1 SCC 73, the Hon'ble Supreme Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. Further the Hon'ble Supreme Court in case of Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.*

20. *The Hon'ble Supreme Court in case of Amalendu Pal @ Jhantu vs. State of West Bengal, 2010 AIR(SC) 512, after considering various earlier judgments in para 15 observed that,*

"15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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 their 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."

"16. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

21. *The Hon'ble Supreme Court in the case of Randhir Singh v. State of Punjab, (2004) 13 SCC 129 has reiterated the legal position as regards Section 306 IPC which is long settled in para 12 and 13. Para 12 and 13 reads thus :*

"12. Abetment involves a mental process of instigation a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

13. In State of W. B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive or ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belongs and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

22. *In Gngula Mohan Reddy v. State of A.P., (2010) 1 SCC 750 the Supreme Court while interpreting Section 306 IPC held that:*

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a

positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC there has to be a clear mens rea to commit the offence."

23. *In Ramesh Kumar v. State of Chhattisgarh., (2001) 9 SCC 618. the Supreme Court held that*

"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."

24. *In Sanju alias Sanjay v. State of M.P., (2002) 5 SCC 371. the deceased committed suicide on 27.7.1998. whereas, the alleged quarrel had taken place on 25.7.1998 when it was alleged that the appellant had used abusive language and also told the deceased to go and die. The Supreme Court in the said circumstances held that the fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it was not the direct result of the quarrel taken place on 25.7.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die.*

25. *Taking note of various earlier judgments, in M. Mohan u. State Represented the Deputy Superintendent of Police, (2011) 3 SCC 626. the Supreme Court held that "Abetment involves mental process of instigating or intentionally aiding a person in doing of a thing. There should be clear mens rea to commit offence under Section 306. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide."*

26. *On a close reading of the above provisions of the IPC, and the principles laid down by the Supreme Court in various decisions, it is apparent that in a case under Section 306 IPC, there should be clear mens-rea to commit the offence under this Section and there should be direct or active act by the accused, which led the deceased to commit suicide, that is to say that there must be some evidence of "instigation", "cooperation" or "initial assistance" by the accused to commit suicide by the*

victim/deceased.

27. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrajirao Angre*, (1988) 1 SCC 692 the Supreme Court observed vide Para 7 that:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

It was a proposition relating to criminal prosecution.

28. In *Madan Mohan Singh v. State of Gujarat*, (2010) 8 SCC 628. the Supreme Court quashed the proceedings under Section 306 IPC on the ground that the allegations were irrelevant and baseless and observed that the High Court was in error in not quashing the proceedings."

19 I am conscious of the fact that a young woman committed suicide leaving behind two minor children and one of those just 1 ½ years of age. Life must have been miserable for her, and probably, unable to bear the pain and misery, she might not have thought even for a minute about her minor children. However, when I need to decide the matter keeping in mind the law as well as the materials on record, I should not go by emotions. In my view, the applicants herein should not be put to trial for the offence punishable under Sections 306 as well as 498A of the Indian Penal Code.

20 Let me look into the decisions relied upon by Mr. Gadhvi, the learned counsel appearing for the first informant.

21 In the case of **A.K. Chaudhary(supra)**, the learned Single Judge of this Court drew a fine distinction between two categories of incitement observing as under:

“17. In view of the above, it appears that the ingredients for abetment for suicide would be satisfied only if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide. Further, as the action of committing suicide is also on account of great disturbance to the psychological imbalance of the deceased such incitement can be divided into two broad categories, one normally where the deceased is having sentimental tie or physical relations with the accused and second category would be where the deceased is having relations with the accused in official capacity. In case of former category some times a normal quarrel or the utterance of hot exchange of words may result into psychological immediate imbalance. Consequently creating situation of depression, loss of charm in the life and if the person is unable to control sentiments of expectations, it may give temptations to the person to commit suicide, e.g., when there is relation of husband and wife, mother and son, brother and sister, sister and sister and other relations of such type, where sentimental tie is by blood or due to physical relations. In case of second category the tie is on account of official relations, where the expectations would to discharge the obligation as provided for such duty in law and to receive the considerations as provided in law. In normal circumstances, relationships by sentimental tie cannot be equated with the official relationship and the reason being the different conduct of the parties for maintenance of the relations. The former category leaves more expectations, whereas in the latter category, by and large, expectations and obligations are prescribed by law, rules and regulations. Of course, for meeting with the requirement for ingredients of abetment to suicide, the provisions of the IPC are the same, but for the purpose of examination on the aspects of abetment to commit suicide or incitement/encouragement to suicide, it may have some relevance. Since, in the present case this Court is not concerned with the matter of matter of abetment to suicide where the deceased or the accused had the relations covered in the first category, no further discussion may be required in this regard to that extent. However, in case where the allegations for abetment of suicide committed by the deceased falling in second category are concerned, the strict interpretation is called for,

otherwise it may result into damaging the discipline of any institution or organization or department, which may consequently result into creating a situation against national interest for which the expectation would be the strict discipline and the rule of law only and nothing else.”

21.1 There need not be any debate on the proposition of law laid down by the learned Single Judge of this Court. However, as observed above, there is no cogent material to *prima facie* suggest incitement/instigation to suicide at the hands of the applicants. The aforementioned decision otherwise is not helpful to the first informant in any manner.

22 In the case of **State of A.P. (supra)**, the Supreme Court explained that the powers possessed by the High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly and should not be exercised to stifle a legitimate prosecution. The Supreme Court observed in para 8 as under:

“8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State 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 magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be

proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence of offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

23 The case in hand so far as the applicants herein is concerned is one in which the powers under Section 482 of the Code deserves to be exercised having regard to the nature of the accusations and the materials on record.

24 In **Chitresh kumar (supra)**, the Supreme Court has explained the offence of “abetment of suicide” punishable under Section 306 of the Indian Penal Code in reference to Section 107 of the Indian Penal Code. The Supreme Court also explained the meaning of the words “instigation” and “goad”. In this case, the deceased was a partner with the accused persons and they were all engaged in the real estate business. The deceased committed suicide on account of the problems

created by those three persons. The deceased left behind a suicide note which mentioned that there was some money transaction between them and thus, three persons had abetted the deceased to commit suicide. The Supreme Court observed in paras 20, 21, 22, 23, 24 and 25 as under:

“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 suicidability 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.

21. In the present case, the charge against the appellant is that he along with other two accused "in furtherance of common intention", mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea . The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life.

22. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and, therefore, clause firstly of Section 107 of the IPC was attracted.

23. Briefly dealing with the material available on record, in the order directing framing of charge against the appellant, the learned trial court has observed as under :

"In the present case the evidence shows threatening given to the deceased. One witness called Kartar Singh says that CK Chopra was heard saying to the deceased that the deceased had become dishonest because he was refusing to sign a paper in which the share in some joint property was shown to be 10%. On another

occasion Chopra was heard by this witness to say that Chopra would ruin the deceased if he did not give up his claim for 25% and did not agree to accept 10%. Witness Padam Bahadur has stated inter alia that he overheard Jahoor and Mahavir telling the deceased that Chopra had asked them to say that this was the last opportunity to sign the document and that if he wanted to live in the society he should sign the agreement or should die by taking poison. Soon thereafter the deceased committed suicide.

Thus the evidence is not of a mere quarrel in which one person told the other go and die without actually suggesting that the opponent should commit suicide. In the present case the evidence collected by the investigation suggest that the deceased had been actually pushed to the wall and the escape by committing suicide was suggested by the accused persons."

24. *In the light of the material on record, in our judgment, it cannot be said that the trial court was in error in drawing an inference that the appellant had "instigated" the deceased to commit suicide and, therefore, there was ground for presuming that the appellant has committed an offence punishable under Section 306 read with Section 34, IPC.*

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

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24.1 Having regard to the materials on record including the suicide note naming the accused persons, the Supreme Court took the view that there was sufficient material to presume that the accused had committed the offence and if that be so, the charge can be framed. In the aforementioned case, the discharge application was rejected by the trial Court

holding that a case for framing the charge against the accused persons had been made out. The Supreme Court concurred with the findings recorded by the trial Court. This decision also, in no manner, helpful to the prosecution.

25 In the case of **A.M. Kapoor (supra)**, the Supreme Court took the view that framing of a charge is an exercise of jurisdiction by the trial Court in terms of Section 228 of the Cr.P.C., unless the accused is discharged under Section 227 of the Cr.P.C. The Supreme Court held that at the initial stage of framing of a charge, the Court is concerned not with the proof, but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the Court is to see that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. The case in hand is one where the ingredient of sections concerned do not exist considering the facts of the case of the accusation.

26 In the case of the **Government of National Capital Territory, Delhi (supra)**, the Supreme Court while upsetting the acquittal of the accused observed having regard to the facts of the case the trial Court ought to have drawn the presumption under Section 113-A of the

Evidence Act. In this case, there was a suicide note left behind by the deceased showing beating of the deceased by her husband as a motive for suicide. This decision is also not helpful to the first informant.

27 For the foregoing reasons, this application succeeds and is hereby allowed. The further proceedings of the Criminal Case No.25819 of 2015 pending at the stage of committal in the Court of the 5th Additional Senior Civil Judge and Judicial Magistrate First Class, Surat, arising from the First Information Report bearing I-C.R. No.27 of 2015 registered with the Puna Police station, Surat for the offence punishable under Sections 306, 498A read with 114 of the Indian Penal Code is hereby ordered to be quashed. Direct service is permitted.

28 The case shall proceed further expeditiously so far as the other co-accused are concerned in accordance with law.

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(J.B.PARDIWALA, J.)

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