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**(2018) 01 MP CK 0105**  
**In the Madhya Pradesh High Court**  
**Case No : 7084 of 2017**

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|------------------------------------------|------------|
| Jitendra s/o Lekhraj Patidar and another | APPELLANT  |
| Vs                                       |            |
| State of Madhya Pradesh and another      | RESPONDENT |

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**Date of Decision :** 02-01-2018

**Acts Referred:**

<a href=3863>Code of Criminal Procedure, 1973</a>, <a href=3863-482>Section 482</a>, <a href=3863-174>Section 174</a> - Saving of inherent powers of High Court - Police to enquire and report on suicide, etc  
<a href=1767>Indian Penal Code, 1860<

**Citation :** (2018) 01 MP CK 0105

**Hon'ble Judges :** Vivek Rusia

**Bench :** Single Bench

**Advocate :** Gaurav Shrivastava, Amit Singh, Pranay Joshi

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## Judgement

1. THE applicants have approached this Court by way of petition under Section 482 of the Code of Criminal Procedure [in brief ""the Code""]

seeking quashment of FIR registered against them at Crime No.144/2017 Police Station Shujalpur, District Shajapur for the offence punishable

under Section 306/34 of IPC.

2. As per the allegations made in the FIR that one Maheshchandra Patidar [in short referred as ""deceased"" ] has committed suicide by consuming

poisonous substance. A report was made to the Police Station and Merg No.8/17 was registered under Section 174 of the Code on 01.04.2017.

The dead body was sent for postmortem examination and as per the doctor's opinion he died due to consumption of poisonous substance. The

deceased has left suicide note in which he has made allegations against the present applicant No.1 that he had landed some money to him which he

has repaid with interest and despite that both the applicants are harassing him

for recovery of the amount and due to which he is committing suicide. The police has recorded the statement of wife of the deceased and other witnesses and completed the investigation. The applicants obtained bail from this Court and thereafter filed the present petition for quashment of the FIR.

3. According to the applicants the deceased and they are known to each other as belonging to the same community. The deceased was running his business in the name of ""Patidar Krishi Sewa Kendra"" and in order to meet his financial requirement he took the loan of Rs.3,00,000-00 from applicant No.1 - Jitendra Patidar and in order to repay the said amount, the deceased has issued a Cheque No.007016 dated 07.07.2015 of his account in Central Bank of India, Branch Kalapipal. When the applicant No.1 presented the cheque for encashment, the same has been returned unpaid due to ""insufficient fund"" in the account. Thereafter the applicant No.1 filed complaint under Section 138 of the Negotiable Instruments Act before the JMFC, Shujalpur and the said complaint was registered on 19.12.2016 and summons were issued to the deceased but he avoid the summons and bailable warrant and the case is still pending.

4. Shri Gaurav Shrivastava, learned counsel appearing on behalf of the applicants argued that the applicants have never put any undue pressure on the deceased and the applicant No.1 was pursuing legal remedy available under the law. The allegations against them are baseless and does not come in the category of abatement as defined under Section 107 of IPC. In the complaint case the bailable warrant was issued against the deceased. In support of his contention, he has placed reliance over the judgments of Apex Court reported in the case of Sanju @ Sanjay Singh Sengar v/s State of M.P. [(2002) 5 SCC 371]; Swami Prahlad v/s State of M.P. [1995 SCC (Cri) 943] and Praveen Pradhan v/s State of Uttaranchal [(2012) 9 SCC 734]. He has also placed reliance over the decisions of this Court in the case of Omprakash Agrawal v/s State of M.P. [M.Cr.C.No.13075 of 2016 - decided on 20.01.2017] and Hukamchand Soni v/s State of M.P. [M.Cr.C.No.2885 of 2017 - decided on 21.03.2017].

5. Shri Amit Singh, learned Govt. Advocate appearing on behalf of the Respondent No.1/State submitted that in investigation the police has

collected enough material against the applicants. The deceased has left a suicidal note and also made various complaints to the police station

against the applicants which constitutes an offence under Section 306/34 of IPC against the applicants. Therefore, it is not a fit case in which High

Court should set-aside the FIR in exercising the powers under Section 482 of the Code. The allegations are serious in nature which requires regular trial to adjudicate.

6. Shri Pranay Joshi, learned counsel appearing on behalf of the Respondent No.2, who is wife of the deceased, has placed reliance over the

documents filed along with the list of documents. The deceased before consuming the poison has made a complaint to the S.P.; Deputy Collector;

JMFC; Chief Minister and Prime Minister that the applicants are harassing him. He further emphasized that the deceased took a loan of

Rs.15,00,000-00 from the applicant No.1 and he has paid almost Rs.34,00,000-00 including interest and despite that the applicants are

pressurising him and threatening him, therefore, he was not having any option but to commit suicide. The applicants have instigated him, therefore, it

is not a fit case where the High Court should quash the FIR. In support of his contention, he has placed reliance over the judgments of Apex Court

reported in the case of Praveen Pradhan v/s State of Uttaranchal [(2012) 9 SCC 734] and Didigam Bikshapathi v/s State of A.P. [(2008) 2 SCC

403].

7. As per the law laid down by the Apex Court in the aforesaid judgments in order to constitute abatement to commit suicide, there must be

material prima-facie indicating that the accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

In the present case, the deceased in various letters to the police has admitted that he took a loan from the applicant No.1 and he has repaid the

same and despite that the applicant No.1 was pressurising him to repay more. That in order to repay the loan, the deceased has issued a cheque

which has been returned by the Bank unpaid due to "insufficient fund". The applicant No.1 has filed a complaint under Section 138 of the

Negotiable Instruments Act before the competent Court. Therefore, with intention to recover the amount from the deceased, he filed a complaint

which is a legal and correct procedure available under the law. There cannot be

intention of applicant No.1 that the deceased may commit suicide because if he dies he will not be in a position to recover the amount from him.

8. The applicants have produced certified copies of the order-sheets of complaint under Section 138 of the Negotiable Instruments Act in which

on various occasions the summons were issued to the deceased but all were returned unserved despite that the deceased was very much available in the residence and in his place of business.

9. In similar facts and circumstances of the case, this Court in the case of Omprakash Agrawal (supra) has quashed the FIR registered under

Section 306 of IPC after considering the judgments of the Apex Court as referred above. The relevant paras are reproduced below :-

"Abetment to commit suicide" is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and

fine. Expression "Abetment" has been defined in Section 107 of IPC which runs 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 willful misrepresentation, or by willful 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

In the State of Punjab v/s Iqbal Singh, AIR 1991 SC 1532, the Apex Court explaining the meaning and expanse of word "abetment" as used in

Section 107 of IPC, has held as under :

Abetment"" as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for

the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor as a person

who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word

instigate"" in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word

aid"" is to give assistance, help etc.

In Rakesh Kumar v/s State of Chhatisgarh, [(2001) 9 SCC 618], a three Judge Bench of the apex Court explaining the meaning and connotation

of word ""instigation"" has held as under ( 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.

Taking note of the fact that each person's suicidability pattern is different from others and that each person has his own idea of self-esteem and

selfrespect, the apex Court in M. Mohan v/s State of Madras, 2011 CRI.L.J. 1900 (S.C.), referring to its earlier decision in Chitresh Kumar

Chopra v/s State (Govt. of NCT of Delhi), [(2009) 16 SCC 605], held that to constitute abetment, there should be intention to provoke, incite or

encourage the doing of an act by the accused.

Reference can also be made to the decision of the apex Court in Gangula Mohan Reddy v/s State of Andhra Pradesh, 2010 (Suppl.) Cr.L.R.

(SC) 261, wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he

committed suicide by consuming poisonous substance. The apex Court referring to its earlier decisions in Mahendra Singh & Anr. v/s State of

M.P., (1995) Supp. 3 SCC 731 and Ramesh Kumar v/s State of Chhatisgarh, (2001) 9 SCC 618, holding that offence of abetment to commit

suicide under Section 306 of IPC is not made out, observed as under :

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of

the accused to instigate or aid in committing suicide, conviction cannot be sustained".

In *Deepak v/s State of M.P.*, 1994 Cri. LJ 767 (M.P.), the deceased girl was threatened with defamation, if she refused to have sexual intercourse

with two accused; within an hour she committed suicide leaving a suicidal note. Accepting the plea that the act of the accused might have been a

reason for committing suicide but the same did not constitute abatement within the meaning of Section 306 read with Section 107 of the IPC, it

was held that - "neither there was any intention nor any positive act on the part of the accused to instigate her or aid her in committing suicide. The

two accused persons, therefore, cannot be held guilty of the offence under Section 306 of the I.P.C. and their conviction on that count by the trial

Court, is liable to be set aside.

In the case of *Sanju @ Sanjay Singh Sengar v/s State of Madhya Pradesh*, AIR 2002 S.C. 1998, the accused was charged under Section 306 of

IPC for abetting his brother-in-law to commit suicide; the accused allegedly said to him to "go and die"; the deceased left behind a suicide note

stating that accused is responsible for his death. It was held that words "go and die" do not constitute instigation for mens rea of offence under

Section 307 of IPC.

In *Mahendra Singh and Anr. V/s State of M.P.*, 1996 Cri.L.J. 894=1995 Supp (3) SCC 731, a case prior to the insertion of Section 113-A in the

Evidence Act, the charge under Section 306 IPC proceeded on the basis of dying declaration of the deceased to the effect that - "My mother-in-

law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to

marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.

Considering legal sustainability of the same the apex Court held as under :

Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a 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. Neither of the ingredients of abetment are attracted on the statement of the deceased.

From the aforesaid pronouncements of the apex Court, it flows that to constitute abetment to commit suicide, there must be material, prima-facie,

indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

In the instant case, the allegation made in the suicide note is that the petitioner had harassed the deceased because the money borrowed by one

Rajendra Singh was not being repaid to the petitioner. The allegations that have been in the suicide-note or statement of Bane Singh - father of the

deceased, even if taken true at their face value does not a prima-facie indicate that the petitioner by positive act on his part instigated, incited, aided

or provoked the deceased to commit suicide. A bare act of harassment in absence of anything else cannot amount to abetment to commit suicide,

therefore, in the considered opinion of this Court, on the basis of material collected by the police during investigation and filed with the charge-

sheet, prima-facie a case under Section 306 of IPC is not made out against the petitioner.

In *Devendra and others v/s State of Uttar Pradesh and another*, (2009) 7 SCC 495, it has been held as under :

when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence,

the superior courts would not encourage harassment of a person in a criminal court for nothing.

In the aforesaid premises, continuation of proceedings against the petitioner for an offence under Section 306 of IPC will be nothing but an

exercise in futility. Apart that, it will also result in wastage of valuable time of the trial Court, therefore, in light of the decision of apex Court in *State*

*of Haryana & Ors. V/s Bhajanlal & Ors.*, 1992 Supp(1) SCC 335, it is a fit case for quashing of the proceedings.

10. In the present case also applicant No.1 has gave some money to the deceased and in order to repay he issued a cheque which has been

bounced and thereafter applicant No.1 filed complaint under Section 138 of the Negotiable Instruments Act before the JMFC. The complaint is

pending since one year before the Court. The applicant No.1 wants to recover his loanee amounts and after death it would be very difficult to

recover the said amount from the family of the deceased. Hence, there cannot be any abetment to suicide. The Respondent No.2 has not filed any

documents to show that the deceased has repaid all the amount to the applicant No.1 and despite that he was harassing him.

11. Resultantly, the petition is hereby allowed and the FIR lodged with the Police Station Shujalpur, District Shajapur at Crime No.144/2017 is

hereby quashed.