

(2022) 09 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 1538, 1653, 1806, 1807, 1808, 1809, 1811, 1812, 1813 Of 2021

Sharad Darade And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 79, 107, 120B, 306, 309, 389, 506
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3 (1)(N), 3(1)(P), 3(2)(ii), 3(2)(Va)
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 174, 482
Evidence Act, 1872 — Section 113A

Citation : (2022) 09 BOM CK 0016

Hon'ble Judges : Prasanna B. Varale, J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : Shirish Gupte, Varsha Palav, Ajinkya Palav, Anuj Tiwari, Nilesh Kumbhari, Raja Thakare, Siddharth Jagushtre, Rajiv Chavan, Siddhant Rai, Priyanka Chavan, Sunny Punamiya, Amit Desai, Sunny Bhimra, Vikram Nankani, Dhruv Nyayadhish, Sunny Bhimra, Pranav Badheka, Harsh Dedia, Ashwin Thool, Sanjay Kamble, Rahul Walia, Rafiq Dada, A. S. Pai, Manoj Badgujar, Manoj Mohite, Ashok Mundargi, Kamlesh Ghumre, H.H. Ponda, Kamlesh Gumre, Sonali Jadhav, H.S. Venegaonkar, Anikesh Pawar

Final Decision : Disposed Of

Judgement

Prasanna B. Varale, J

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, the matter is taken up for hearing and final disposal, at admission stage itself.

2. Though these bunch of Petitions are filed at the instance of individual Petitioners, in all these Petitions by way of principal prayers of quashment of first information report bearing No. 36 of 2021 dated 09th March, 2021, registered with Marine Drive Police Station, Mumbai for the offences punishable under

Sections 306, 506, 389, 120-B of Indian Penal Code, 1860 (for short "IPC") read with Sections 3 (1)(N), 3(1)(P), 3(2)(ii), 3(2)(Va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") is sought for or/and by way of interim prayers, protection from coercive action is also sought for, as such, the Petitions are clubbed together and taken up for hearing with consent of learned Counsel appearing for respective parties.

3. C.R. No. 36 of 2021 is registered at the instance of Abhinav Mohanbhai Delkar, who is one of the Respondent in these Petitions and son of Mohanbhai Sanjibhai Delkar (hereinafter referred to as "deceased"). It is stated in the first information report (hereinafter referred to as "FIR") that deceased was a prominent tribal leader and was representing area / constituency, namely, Dadra and Nagar Haveli since 1989 as Member of Parliament. On 21st February, 2021, deceased along with driver Ashok Patel and private bodyguard Nandu Wankhede reached Mumbai for attending some Court matter. The deceased lodged in Sea Green South Hotel, Marine Drive. On 22nd February, 2021 deceased committed suicide by hanging in Room No. 512 and this information was intimated to Abhinav Delkar, son of deceased, through driver Ashok Patel. Immediately in the evening Respondent - Abhinav Delkar reached Mumbai and returned back to Silvassa with dead body of deceased. On 01st March, 2021, Abhinav Delkar again reached Mumbai and made inquiry with police authorities attached to Marine Drive Police Station about the suicide of his father and it was informed to him by investigating officer that deceased left a suicide note as well the minutes of Parliamentary Privilege Committee (hereinafter referred to as "said committee"). As Abhinav Delkar was to perform certain religious rituals and as he was not in fit mental condition, his statement was not recorded on 01st March, 2021. After completing the religious rituals Abhinav Delkar again reached Mumbai and his statement was then recorded on 09th March, 2021 and the same is treated as FIR.

4. We may refer to FIR again in detail at later part of this judgment, at this stage, we may state that in the said FIR it is stated that deceased was subjected to an ill-treatment, harassment and defamation at the instance of certain persons. It is also stated in the FIR that this ill-treatment and harassment was under the orders of Mr. Praful Khoda Patel, Administrator, Dadra and Nagar Haveli. As deceased was unable to bear this ill-treatment and harassment, he committed suicide. Thus, it was submitted in the FIR that all these Petitioners by hatching a conspiracy created such an atmosphere of pressure and depression which led deceased to end his life by committing suicide.

5. Now the persons against whom the grievance is raised are either Government Officials or private individuals. By following tabular chart, a ready reference is made to them and their respective Writ Petitions :

Sr.

No.

Writ Petition

Name of Petitioner

Designation

1

WP/1807/2021

Praful Khoda Patel

Administrator

2

WP/1538/2021

Sande p Kumar

Colector

Singh

3

WP/1808/2021

Apurva Sharma

Resident Deputy Col ector

4

WP/1806/2021

Sharad Darade

Superintendent of Police

5

WP/1813/2021

Manasvi Jain

Sub-Divisional Police Of icer

6

WP/181 /2021

Dilip Patel

Talathi

7

WP/1812/2021

Manoj Patel

Police Inspector

8

WP/1653/2021

Fateshsingh Mohansinhji Chauhan

Close associate of Patel / Private Individual

9

WP/1809/2021

Rohit Yadav

Law Secretary

6. It is stated in the FIR that first informant is residing at Delkar House, Silvassa, Dadra and Nagar Haveli since his birth along with his family members, namely, his mother Kalaben. First informant is also having sister, namely, Divita whose marriage was solemnized in the year 2017 and she is residing at her matrimonial home. It is further stated that his father i.e., deceased was representing Dadra and Nagar Haveli since 2019 as an independent Member of Parliament and he belongs to scheduled tribe community (Dhodia Patel). He was a prominent leader of tribal and devoted his entire life for up-liftment of social development in general and up-liftment of the tribal in particular.

Deceased became Member of Parliament first time in the year 1989 and since then he was continuously taking steps for the development of the area and in the year 2019 it was his 7th successful term as the representative of people of Dadra and Nagar Haveli constituency. It is further stated that since 1 year his father was under tremendous pressure. The administration of Dadra and Nagar Haveli was continuously harassing and ill-treating him. The motive behind this harassment and ill-treatment was to take control over the college being run by deceased and to prevent deceased from contesting next elections. The officials in the Administration were acting under the dictates of the Administrator, namely, Praful Khoda Patel. Under the orders of Administrator, Officers in the administration were targeting deceased. The following are the certain dates and events :

I. Deceased raised his voice against ill-acts of the Administrator in parliament as well as to various forums. This issue was largely publicized in media and because of these officers in the local administration as well the police officers were enraged against deceased and with a vindictive approach these officials in the administration either personally or through their henchmen ill-treating and harassing deceased. Baseless complaints were filed against deceased. As deceased was belonging to Scheduled Tribe category, was purposely ill-treated in the public functions. Then a reference is made in the FIR to particular instances

wherein deceased was subjected to ill-treatment / disrespect in public life.

II. 2nd August is celebrated as liberation day of Dadra and Nagar Haveli. A function was arranged on that day at Silvassa. The Administrator is the Chief Guest of the function whereas the Member of Parliament is the Guest of Honour. As per the long standing convention, which is followed nearly 66 years, the Administrator and the Member of Parliament was to deliver their respective speeches, but on 02nd August, 2020, the Collector was the Chief Guest of the function and he only delivered the speech. Name of deceased was removed (from the list of dignitaries). Deceased wanted to deliver a speech on the occasion, but, he was refrained from delivering the speech. Deceased made complaint about this incident to the said committee as well as to the Hon'ble Speaker, Lok Sabha. On 02nd September, 2020 the Resident Deputy Collector made a derogatory reference to deceased in his letter.

III. On a scheduled visit dated 17th and 18th September, 2020 of Shri. Nityanand Rai, Home Minister for State, Government of India and as per the protocol deceased was required to invite in the scheduled function, but, no such invitation was extended to deceased in spite of name of deceased appearing on the foundation stone laid on that day. Thus, purposely deceased was kept away from said function, on the contrary, a false news was spread that deceased purposely remained absent for the program and by spreading such false news an erroneous impression about the deceased was created.

IV. Deceased was to attend a hearing in the proceeding which was before quasi judicial authority i.e., Deputy Collector. Deceased by giving an letter of authority to Mr. Indrajeet Parmar asked him to attend the hearing as his representative on the scheduled hearing dated 07th January, 2021 before Apurva Sharma (Resident Deputy Collector). In spite of knowing that Mr. Indrajeet Parmar was attending the hearing on behalf of deceased, Apurva Sharma with an intention to prevent Mr. Parmar to represent in the hearing, purposely prevented Mr. Parmar to participate in the proceeding and made a false and illegal complaint against Mr. Parmar to police station and further informed police authorities to initiate action against Mr. Parmar.

V. Under the orders of Sharad Darade - Superintendent of Police, Manoj Patel - Police Inspector started re-investigation of an old case i.e., Criminal Case No. 137 of 2003 and this as an attempt to trap deceased in a false case.

VI. One of the close associate of Mr. Patel, Fatehsinh Chauhan prepared false and defamatory videos of deceased and circulated these clips on social media platforms. This was again a purposeful act of defaming deceased as such, deceased issued legal notice through Adv. Akshay Shinde, Mumbai.

VII. Mr. Dilip Patel, Talathi made a false and baseless complaint against deceased in the office of Administrator on 18th February, 2021 and though majority of the objections raised in the complaint were false and baseless, but only to harass deceased, this false complaint was made. Then a statement made about

deceased who was an elected Member of Parliament and was also member of Standing Committee, Lok Sabha was purposely and with an ill-intention subjected to defamation and ill-treatment by committing breach of protocol and officials in the administration hatched conspiracy under the order of the Administrator.

7. Then it is further reiterated that this was done with designed motive with following objects:

i. The administration either not assisting or not hearing deceased.

ii. By preventing deceased in official functions and public platforms, so there would be decrease in the rapport between deceased and public at large and this would lead to his defeat in the elections.

iii. By these acts, deceased would be subjected to lowering down his image in public eye and either he may not contest the election or if he contest the elections he would be defeated.

iv. Then a reference is made to complaints made by deceased to various authorities. Then it is further stated in the FIR that deceased formed a trust and under the said trust, one college, namely, SSR College was being run. There is heavy demand for admissions in this college but the Administrator wanted to take college under his control but present price of the property i.e., land of the college is nearly Rs. 100 crore. The Administrator was making continuous attempts to take control of the said college and also was making attempts to reach this object with help of the officials in the administration. Administrator was also insisting upon for accommodating 8 trustees out of 11 trustees of his choice and threats were extended that if 8 trustees of the choice of trustees are not accommodated deceased would be implicated in false cases.

v. An arrest of Mr. Parmar, close associate of deceased, was effected by implicating him in false offence. When Abhinav Delkar informed deceased to take recourse against the Administrator by following legal remedies, deceased refused to make any complaint as per the suggestion of Abhinav Delkar on the ground that if such complaint is made or if legal remedies exhausted or if he goes to media, there may be further ill-treatment not only to deceased but also to his family members including physical injuries would be caused and as such, deceased lodged no report as per the suggestions of Abhinav Delkar.

vi. It is further stated in the FIR that deceased had clean image and except certain political agitations, there is no other criminal antecedents against deceased. It is further stated in the FIR that deceased appeared before the said committee and made it clear that if the harassment is not stopped then there is no other option left with him but to commit suicide. In spite of this, there was no change in the behaviour of officials in the administration. It is further stated that deceased faced many adverse situations in life boldly but because of the said ill-treatment he was under depression and was constantly stating to his mother to

take care and ultimately he committed suicide. It is further stated in the FIR that deceased was apprehensive about if he commits suicide at Silvasa there would not be a proper investigation as such, he purposely committed suicide at Mumbai. Then FIR concludes reiterating pressure of Administrator and other officials in the administration. Then a reference is again made about the demand of Rs. 25 crore and control over the college.

8. Now the Petitioners who have approached this Court by their respective Petitions seeking quashment of FIR, hereinafter, we may deal with the individual Petitioners qua their role / allegations on the backdrop of FIR.

9. Learned Counsel appearing for the respective Petitioners advanced their submissions and common grounds raised by them are as follows:

I. Taking the FIR as it stands would only reflect that deceased himself admitted that he was active in social and political life for a considerable long period. It is further admitted that deceased had faced many adversities in his life and was bold enough to face these adversities and proceed further in his active political career.

II. It was only the assumption and presumption of deceased that officers in the administration were acting under the orders of the Administrator and the private individuals were having the close association with the Administrator and under the dictates of the Administrator the private individuals were acting vindictively against the deceased.

III. It was also vehemently submitted by the learned Counsel appearing for the Petitioners that the copy of the suicide note is not made available to the Petitioners and it is only referred in the FIR and as this very material piece itself is undisclosed and withheld and the Petitioners are left only to guess work.

IV. In so far as the incidents quoted in the FIR is concerned, it is submitted that there is no close proximity of these incidents and the act of committing suicide by deceased. On one hand, it is specifically stated in the FIR that deceased was active in political and social life for considerable long period and was a bold person and on the other hand, by referring to such stray incidents that too in respect of certain individuals a conclusion cannot be drawn that all the Petitioners i.e., certain private individuals and officers in the Administration hatched conspiracy and by these stray incidents such a situation is created that deceased committed suicide. Thus, mere assumption and presumption are not sufficient enough to attract the provisions of Indian Penal Code.

V. It is also submitted by learned Counsel appearing for Petitioners that the Hon'ble Apex Court in the matter of State of Haryana and Others Vs. Bhajan Lal and Others 1992 Supp (1) SCC 335, had framed certain guidelines for exercising the powers of this Court under Section 482 of the Code of Criminal Procedure and case of Petitioners squarely falls in these guidelines.

VI. It is also submitted that FIR is silent on the aspect as to whether there was

any personal animus of the Petitioners with deceased and it is only stated in the FIR that the Petitioners were acting under the directions of the Administrator. Thus, if the FIR is silent on the aspect of the enmity or grudge being carried by the Petitioners against the deceased a mere general and baseless statement that the Petitioners joined together and hatched conspiracy under the directions of the Administrator and as such, have committed the offence under IPC or Atrocities Act is wholly unsustainable and untenable.

10. Now we may deal with the submissions of learned Counsel appearing for respective Petitioners.

11. Mr. Shirish Gupte, learned Senior Counsel appearing for Petitioner – Fatehsinh Mohansinhji Chauhan in Writ Petition No. 1653 of 2021, submitted that the Petitioner is active in social and political life since long. He was member of the Pradesh Council and was councilor to the then Administrator of Dadra and Nagar Haveli for the period 1989-1993. He was leader of opposition and member in Silvassa Municipal Council from 2016-2020. Petitioner is also the Chairman of charitable trust and this trust runs various education institutions imparting education from primary to graduation level. It is submitted by Mr. Gupte appearing for Petitioner that the Petitioner himself introduced deceased in the active politics and when the Petitioner was president of unit of political party, he appointed deceased as Secretary of the unit. Subsequently, due to ideological differences, Petitioner separated from deceased but this was only an ideological difference and Petitioner never carried a personal grudge against deceased. Mr. Gupte further submitted that on personal front Petitioner constantly maintained good relations with deceased and his family members. Mr. Gupte further submitted that when deceased was elected as Member of Parliament and had attended meeting of Silvassa Municipal Council on 17th December, 2019, the Petitioner was elected as Councilor at that time and on that occasion, Petitioner extended a warm welcome to deceased. Thus, Mr. Gupte vehemently submitted that mere difference in ideologies cannot be a reason to draw a conclusion that Petitioner was carrying a grudge and ill-motive against deceased.

12. Mr. Gupte further submitted that Petitioner himself was subjected to certain actions initiated by administration and these actions were in the nature of complaint and certain revenue proceedings. Petitioner immediately availed the legal remedies against these actions. It may not be necessary to refer in detail about the legal remedies exhausted by the Petitioner, suffice it to say, that the Petitioner had approached this Court also and was protected by the orders of this Court. A detailed reference is made in the Petition about the other actions initiated by the Revenue Authorities and the remedies availed by the Petitioner. Mr. Gupte submitted that these incidents are of the year 2016 to 2018. Thus, the submission is, when the Petitioner himself was subjected to certain actions initiated by the officials in the administration and the Petitioner challenging these actions by availing legal remedies, there was no reason for the Petitioner to join officials in the administration leave aside hatching any conspiracy against

deceased.

13. Mr. Gupte submitted that in so far as certain incidents referred to in the FIR and more particularly circulating certain news items and videos are concerned, deceased himself had issued legal notice of defamation as such, when the deceased was boldly availing the appropriate legal remedies against alleged acts of the officials in the administration, it cannot be said that the deceased was under pressure of the officials. Mr. Gupte further submitted that attracting certain provisions against the Petitioner under IPC as well as under the Atrocities Act, is wholly unsustainable on the face of the contents of the FIR.

Mr. Gupte further submitted that for attracting Section 306 of IPC there are three pre-requisites, namely, intention, abetment and a positive act (of abetment). On the backdrop of his detailed submissions, which are quoted above, Mr. Gupte, further submitted that none of these pre-requisites is complied with against the Petitioner.

14. Mr. Gupte further submitted that contents stated in the FIR falls too short to attract the provisions under Sections 506, 389 read with Section 120(B) of IPC. Mr. Gupte further submitted that mechanically attracting the provisions of Atrocities Act against the Petitioner, is a very serious flaw and without their being any requisite material the Respondent Authority ought not to have attracted these provisions against the Petitioner. On this count also the case of Petitioner squarely covered under the guidelines in the matter of Bhajan Lal (supra). Mr. Gupte further submitted that for attracting the provisions of Atrocities Act a reference is made to incidents wherein deceased was not invited to public function. Mr. Gupte further submitted that all the acts related to the said public function such as extending invitation to the dignitaries, maintenance of protocol, permission for delivering the speeches in the said function were to be performed by the administration. The Petitioner had absolutely no role to play in any of these acts. It is not even remotely stated in the FIR that the Petitioner was to perform any of the act or had any role in these acts to play in such a situation the attraction of provisions under Atrocities Act, namely, Section 3(1)(n), 3(1)(p), 3(2)(ii), 3(2)(va), is wholly unsustainable. Mr. Gupte further submitted that firstly the Petitioner had no role to play in the official functions and secondly, the Petitioner had no control over the speeches of the individual persons in that particular function as such, the attractions of the provisions under Atrocities Act again is a serious flaw and subjecting the Petitioner to a criminal prosecution pursuant to the FIR is nothing but an abuse of process of law and this is a fit case where this Court can exercise its powers under Section 482 of Code of Criminal Procedure, 1973 (for short "CrPC") to protect the Petitioner from such an abuse of process of law.

15. In support of his submissions, Mr. Gupte, learned Senior Counsel appearing for Petitioner placed heavy reliance on following judgments: Madan Mohan Singh Vs. State of Gujarat and Another (2010) 8 SCC 628, Gangula Mohan Reddy Vs. State of Andhra Pradesh (2010) 1 SCC 750, Mahendra Singh and Another Vs.

State of M.P 1995 Supp (3) SCC 731, Geo Varghese Vs. The State of Rajasthan and Anr Criminal Appeal No. 1164 of 2021 (arising out of SLP (Crl) No. 4512 of 2019, & State Vs. Nalini and Others (1999) 5 SCC 253. Thus, learned Counsel prayed for allowing the Petition.

16. Mr. Rajiv Chavan, learned Senior Counsel appearing for Petitioner – Manasvi Jain, Sub-Divisional Police Officer in Writ Petition No. 1813 of 2021, by referring to the FIR submitted that the allegations against the Petitioner is only by way of a reference in the concluding part of the FIR and it is stated that the Petitioner along with other officials hatched a conspiracy against deceased and caused harassment and there is a allegation of demand of the amount and lodgment of false cases. Mr. Chavan further submitted that in the affidavit-in-reply filed on behalf of Respondent No. 2 in the Petition i.e., Abhinav Delkar, the first informant, an incorrect statement is made. It is also stated that the Petitioner was involved in the alleged eviction of SSR College. Mr. Chavan further submitted that the Petitioner neither has passed any eviction order as she was Sub-Divisional Police Officer at the relevant time nor was a participant in any squad for eviction drive.

17. Mr. Chavan further submitted that in the affidavit-in-reply, Respondent No. 2 made an incorrect statement. It is stated that Petitioner being a Sub-Divisional Police Officer was present in the official function of Liberation Day, by whose name deceased was threatened by Mr. Apurva Sharma – Resident Deputy Collector in said function. Mr. Chavan further submitted that this statement only refers to the presence of Petitioner in the official function in the capacity of Sub-Divisional Police Officer. Mr. Chavan then submitted that the other part of the statement related to Mr. Apurva Sharma and the threats extended by him. Mr. Chavan further submitted that a reference is made to the eviction proceedings were of year 2020 as such, there was no proximity of time nor essential ingredients of Section 306 of IPC are established nor there is any material against the Petitioner to attract the provisions of Atrocities Act.

18. Mr. Chavan further submitted that being an officer occupying the position as Sub-Divisional Police Officer, the Petitioner attended the official function and this act cannot call for any criminal action against the Petitioner firstly; if certain threats are given by some other person how Petitioner can be held responsible for an act of third party or a third person. Thus, Mr. Chavan submitted that any prosecution pursuant to FIR against the Petitioner is nothing but an abuse of process of law and this Court can exercise its powers under Section 482 of CrPC to protect the Petitioner from such an abuse of process of law. In support of his submissions, Mr. Chavan, learned Senior Counsel relied on following judgments: Netai Dutta Vs. State of W.B . (2005) 2 SCC 659 Ude Singh and Others Vs. State of Haryana (2019) 17 SCC 301, & Gurucharan Singh Vs. State of Punjab (2020) 10 SCC 200. Thus, learned Counsel appearing for Petitioner prayed for allowing the Petition.

19. Writ Petition No. 1806 of 2021 is filed at the instance of Sharad Darade. As

the contents of the FIR are already referred by us in detail, we may only state here that in so far as the Petitioner – Sharad Darade is concerned, in the FIR a reference is made in a later part wherein certain instances are quoted under Caption “ekÖ;k ofMykapk viekfur dsY;kps lkoZtfud thoukrhy izlax [kkyhyizek.ks vkgsr” (loosely translated as the incidences wherein my father was humiliated in public life). Then it is further stated in the FIR that under the orders of Superintendent of Police – Sharad Darade Police Inspector Manoj Patel started re-investigation of an old case no. 137/2003 registered at Silvassa Police Station and an attempt was made to falsely implicate deceased in said case).

20. Mr. Thakare, learned Senior Counsel appearing for Petitioner submitted that Petitioner – Sharad Darade was officiating his duty as Superintendent of Police in Dadra and Nagar Haveli from 08th July, 2017 till 11th January, 2021. Deceased committed suicide on 21st February, 2021. In the entire service period of Petitioner at Dadra and Nagar Haveli from 08th July, 2017 to 21st January, 2021 neither any single FIR nor criminal case or notice in any criminal matter was issued to deceased. By referring to the additional documents placed on record, Mr. Thakare submitted that in so far as cases which were registered against deceased are concerned, the charge-sheets were already filed therein. Mr. Thakare further submitted that though in the FIR a reference is made to criminal case no. 137 of 2003, as per the record it was the C.R. No. 147 of 2014 wherein certain specific role was attributed to deceased and as there was also some material against the deceased prayer for further re-investigation was made to the Court. Prayer for re-investigation was opposed by original complaint. Mr. Thakare further submitted that Petition arising out of the said matter namely, LD/VC/OCR/46 of 2020 was before this Court and learned Single Judge vide order dated 19th May, 2020, passed following order:

Heard Mr. Marwadi learned Counsel for the petitioner and Mr. Venegavkar, advocate for Union Territory. Mr. Venegavkar seeks time to file reply. Time granted.

Stand over to 17th June, 2020.

Mr. Thakare further submitted that the said crime was investigated by a different investigating officer and not by the Petitioner nor Petitioner was supervising the investigation and under the orders of this Court, the investigation in the said crime was permitted to continue. Thus, Mr. Thakare submitted that the allegation against the Petitioner in the FIR, on face of it, are untrue and wholly contrary to the record. Mr. Thakare further submitted that certain additional allegations against the Petitioner comes on record only by way of affidavit-in-reply filed on behalf of original informant. Mr. Thakare further submitted that by way of affidavit-in-reply the informant is trying to built entirely a new case and an additional material is tried to be sub-planted which is admittedly not part of FIR. Mr. Thakare further submitted that firstly, in so far as the allegation in the FIR against the Petitioner is concerned, the allegation is vague; secondly, no role was played by the Petitioner in reference to crime no. 147/2014 wherein re-

investigation was sought for; thirdly, re-investigation was continued under the orders of this Court; fourthly, the allegation against the Petitioner subsequently is sub-planted by way of affidavit-in-reply and even these allegations are untrue and not in consonance with the record.

21. Mr. Thakare, thus, submitted that initiation of prosecution or continuity of prosecution against the Petitioner is nothing but an abuse of process of law and this Court by exercising inherent powers under Section 482 of CrPC shall protect the Petitioner by preventing the abuse of process of law. Mr. Thakare further submitted that in the affidavit-in-reply an allegation is made against the Petitioner that the Petitioner may influence the investigation in the present crime and as the Petitioner is now transferred from Dadra and Nagar Haveli, even this allegation and apprehension is ill-founded. Mr. Thakare submitted that even considering the contents of the FIR, on face of it, falls too short to attract Section 306 of IPC against the Petitioner.

22. In support of his submissions, Mr. Thakare, learned Senior Counsel appearing for the Petitioner placed heavy reliance on following judgment: Pawan Kumar Vs. State of H.P Criminal Appeal No. 775 of 2017. & Asharfi Vs. State of Uttar Pradesh (2018) 1 SCC 742. Thus, learned Counsel appearing for Petitioner prayed for allowing the Petition.

For ready reference, we may quote paragraph 34 of the judgment in the matter of Pawan Kumar (supra), as under:

34. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by means or language, direct or indirect, whether it takes the form of express solicitation or the hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct.

23. Mr. Badheka, learned Counsel appearing for Petitioner – Manoj Patel, Police Inspector submitted that Petitioner himself belongs to the category of scheduled tribe, as such, the allegation and attempt to attract provisions of Atrocities Act is ill-founded. Mr. Badheka submitted that though reference in the FIR made to C.R. No. 137/2003, in affidavit-in-reply filed by the informant it is stated that in C.R. No. 147/2014 he stated that it was criminal case of year 2014. Mr. Badheka for the Petitioner vehemently submitted that Petitioner was officiating as Station House Officer only for a period of two months i.e., 21st March, 2020 till 28th May, 2020. Mr. Badheka further submitted that the said criminal case of year 2014 was never entrusted to the Petitioner for investigation. Investigation was carried out by certain other officer and the charge-sheet was filed in the competent Court. Mr. Badheka for the Petitioner submitted that the informant is trying to advance his case by some additional material referred to in the affidavit-in-reply which is not the part of the FIR and such an attempt is impermissible. Mr. Badheka further submitted that as per the guidelines of the Hon'ble the Apex

Court in the matter of Bhajan Lal (supra), this Court while exercising its power under Section 482 of CrPC can satisfy itself for exercising powers on bear contents of the FIR.

24. Mr. Badheka appearing for the Petitioner vehemently submitted that in the contents of FIR there is absolutely no material about provisions of Atrocities Act and an attempt is made to fill up this lacuna by making allegations in the affidavit-in-reply. Mr. Badheka further submitted that there is substantial change in the stand of informant i.e., Respondent No. 2. Mr. Badheka further submitted that in the contents of the FIR an allegation is made that the Petitioner was acting under the dictates or influence of his superior officer i.e., Sharad Darade – Superintendent of Police and then in the reply filed in this Court the informant submitted that the Petitioner was acting under the dictates of the Administrator. Mr. Badheka then reiterated that the statements made in the reply that the Petitioner was investigating the crime is wholly untrue. Mr. Badheka further submitted that without admitting even assuming that certain act was done by the Petitioner it was an official act while discharging duty as a police officer under the directions of his superior officer and either discharging official duty and following and complying the directions of the superior officer cannot be as an offence leave aside any of the offence of IPC or Atrocities Act as alleged in the FIR. Mr. Badheka, in support of his submissions, placed heavy reliance on following judgment: Dilip Ramrao Shirsao (supra). Thus, learned Counsel prayed that Petition may be allowed.

25. Mr. Rahul Walia appearing for the Petitioner – Rohit Yadav submitted that Petitioner was working as Law Secretary, Union Territory. Reference is made to the Petitioner only at the concluding part of the FIR that too in a general statement that the Petitioner along with other officials in the Administration hatched conspiracy under the directions of the Administrator harass and ill-treated the deceased knowing well that deceased belongs to scheduled tribe and then demanded an amount of Rs. 25 crore from him and lodged a false cases and exerted threats to prevent deceased from contesting elections and harassed deceased so as to control his education institutions / college and by such mental harassment led deceased to commit suicide. It is vehemently submitted that the Petitioner being a meritorious candidate was selected as Judicial Magistrate First Class. With his hard work and merit, Petitioner stood third in the merit and subsequently, he was granted jumping promotion. Learned Counsel further submitted that presently Petitioner is discharging his duties at Amravati as Senior Civil Judge. Thus, the entire service career of Petitioner is clear and unblemished. Learned Counsel further submitted that Respondent No. 2 – first informant in his affidavit-in-reply had added an additional material against Petitioner in the form of one alleged meeting. Learned Counsel further submitted that except a general statement that there was a meeting attended by the Petitioner no other details are provided in the affidavit-in-reply such as, when the meeting was conducted, where the meeting was conducted, who were the participants in the meeting, whether the meeting was arranged by the officer in the administration, whether

it was arranged by some superior police official, no such details are provided.

26. Learned Counsel further submitted that even for the sake of argument it is assumed that some official meeting was conducted by the Administration, then in that case Petitioner who was a Law Secretary at the relevant time was duty bound to attend the meeting if it was relating to certain legal issues. Merely attending the meeting being a Law Secretary by itself cannot be an offence. Learned Counsel invited our attention to the documents placed on record under caption "duties of law officer" submitted that as per the clause (I) (a), the Law Secretary who is judicial officer officiating in the Dadra and Nagar Haveli on deputation is duty bound to attend such meeting. It is then submitted that a reference is made in the affidavit-in-reply which is filed in July, 2021 i.e., after four months of lodgment of FIR as well as after filing the Petition by the Petitioner to a matter where aspect of re-investigation is submitted. Learned Counsel also submitted that in so far as that aspect of the matter is concerned there was no role to be played by the Petitioner in the course of investigation and re-investigation was continued by the investigating officer under the orders of this Court. As such, in that view of the matter also, the Petitioner had no role to play.

27. Learned Counsel appearing for the Petitioner submitted that the caste certificate issued in favour of the Petitioner is placed on record and considering the sterling quality of this document this Court can accept the caste certificate for consideration without insisting for any further scrutiny. Learned Counsel placed reliance on the judgment of State of Orissa Vs. Devendra Nath Padhi (2005) 1 SCC 568.

Learned Counsel then submitted that he is adopting legal submissions of learned Counsel appearing for other Petitioners. Thus, learned Counsel prayed for allowing the Petition.

28. Mr. Amit Desai, learned Senior Counsel appearing for the Petitioner – Sandeep K. Singh in Writ Petition No. 1538 of 2021 submitted that at the relevant time Petitioner was working as Collector. As per the contents of the FIR, apart from a general statement that officer of the administration were ill-treating and harassing deceased under the orders of Administrator, no specific statement is in the form of reference to an particular incident. The incident is of 2nd August, 2020. It is stated that 2nd August is celebrated as a liberation day in the area of Dadra & Nagar Haveli, Union Territory and the liberation day celebration function is scheduled at Silvassa. As per the long standing convention for nearly 66 years, the Administrator is the Chief Guest of the function and the Member of Parliament is the Guest of Honour. As per the tradition, both these dignitaries address gathering i.e., they deliver their speeches. It is stated in the FIR that on 2nd August, 2020, Collector himself became the Chief Guest of function and delivered the speech. It is further stated in the FIR that name of deceased was removed from the list of guests and in spite of deceased was willing to address the gathering such opportunity was not given. Then deceased made complaint

about this incident to the Parliament Privilege Committee. Then it is stated in the FIR that due to said act of officers of administration and the police officers created an impression in the minds of general public firstly that the administration is neither paying any heed nor helping to deceased; secondly, with such act whereby the attendance of deceased is avoided, it would result in decreasing his contact with public at large and this would lead to his defeat in election; thirdly, deceased who had a very humble beginning and was belonging to scheduled tribe category and with his hard work he got elected for 7 times, by such acts image of deceased would be lowered down in the public at large and either he may not contest the election or he contest the election he would be defeated.

29. Mr. Desai further submitted that the contents in the FIR in so far as the Petitioner is concerned, are only in the nature of assumption and presumption on an impression carried by deceased. Mr. Desai vehemently submitted that in so far as reference made to the particular incident is concerned, said incident is of 2nd August, 2020. Mr. Desai then submitted that in the year 2020 entire world was facing a disastrous pandemic i.e., Covid 19 and India was not exception to it. Mr. Desai further submitted that various guidelines were issued by the Central Government and the State Government to deal with Covid 19 pandemic. Mr. Desai also submitted that in all the guidelines and standard operation procedures the focus was on avoiding the gathering and the crowd in public places so as to control Covid 19 pandemic. Mr. Desai then invited our attention to an order issued by the Central Government dated 29th July, 2020. Copy of the same is placed on record at Page 155 of the Petition. Along with this order, the Ministry of Home Affairs issued the guidelines under caption "Guidelines for phased re-opening (Unlock 3)".

Pursuant to the guidelines issued by the Central Government, the State Authorities as well as Administration of Union Territories issued various orders and guidelines. Accordingly, the Union Territory Administration of Dadra & Nagar Haveli and Daman Diu, State Disaster Management Authority also issued an order dated 31st July, 2020. Copy of the same is also placed on record at page 163.

30. Our attention was also invited to a communication under caption "New Guidelines of Containment of Covid 19 in the Union Territory of Dadra Nagar Haveli and Daman and Diu w.e.f. 1st August, 2020. Copy of the same is placed on record at Page 165 of the Petition. Mr. Desai appearing for Petitioner by inviting our attention to the order dated 31st July, 2020 and particularly to later part in the order submitted that pursuant to this limited attendance in public functions was one of such steps. Relevant part of the order reads thus:

Now therefore, in continuation of this Administration's earlier orders, quoted above in the preamble and in pursuance of guidelines issued by the MHA, GoI vide Order dated 29th July, 2020, the U.T. Administration of Dadra & Nagar Haveli and Daman & Diu by virtue of the powers conferred under The Epidemic

Diseases Act, 1897 and the Disaster Management Act 2005, hereby extends the lockdown in the containment zones, so declared by the District Administration upto 31st August, 2020 and to re-open more activities in a calibrated manner in areas outside the Containment Zones in the entire Territorial jurisdiction of the U.T. During the above period, the annexed GUIDELINES and DIRECTIVES along with the SOPs which were issued earlier for all permitted activities shall continue to be implemented strictly.

31. Mr. Desai further submitted that at the same time, the Administration also took care to extend the invitation of the liberation day to various dignitaries and such invitation was extended to deceased also. Copy of the said invitation is also placed on record. Mr. Desai further submitted that the statement made in the FIR that on account of the liberation day only the Collector delivered a speech is also not true. Mr. Desai further submitted that liberation day function was attended by the elected Member of Parliament for Daman and Diu namely, Lalu Patel, Director General of Police – Vikramjeet Singh and other dignitaries i.e., representative of people and freedom fighters. Mr. Desai then invited our attention to the copy of news items published in the news papers placed on record at page 176 and 177. Thus, Mr. Desai submitted that the statement made in the FIR are not in consonance with the record and it is only an impression carried by the deceased. Mr. Desai further submitted that in FIR reference is made to another incident i.e., visit of Minister – Nityanand Rai to Dadra & Nagar Haveli on 17th and 18th December. It is stated in the FIR that name of deceased was purposely removed from the list of invitees. It is also stated in the FIR that deceased was not invited timely and protocol was not followed and it was falsely spread in general public that deceased purposely remained absent in the function with this false statement attempt was made to lower down the image of deceased in the public.

32. Mr. Desai by inviting our attention to the photographs placed on record in the rejoinder affidavit submitted that it can be seen that all the dignitaries were attending the function on the liberation day including deceased. Mr. Desai also submitted that apart from these photographs, there is an entire CCTV footage of the function available with the office of Collector and the CCTV footage clearly show that the function was celebrated as per protocol and all the courtesies were extended to deceased. Mr. Desai also stated in the rejoinder affidavit that this issue was raised by the deceased before said committee and explanation was called from Administration and the entire material was submitted for perusal of the Privilege Committee. Mr. Desai stated in the rejoinder affidavit that the said committee after going through the footage and Administration have not further investigated in the matter.

33. Mr. Desai for Petitioner submitted that the Respondent No. 2 in his affidavit-in-reply submitted that invitation for the function of Minister was belatedly extended to the deceased and there was breach of protocol and certain material is added in the reply which is not part of the FIR. For ready reference, we may quote particular contentions in the affidavit-in- reply as under :

11. I say that despite the fact that the Minister was scheduled to arrive at Silvassa on 17-12-2020 at 7.45pm, an e-mail invitation regarding the official visit of Minister was deliberately sent to Shri. Mohan Delkar on 17-12-2020 at 07.53 PM, with clear intention to prevent Shri. Mohan Delkar from attending official function. I say and submit that sending an e-mail invitation to Shri. Mohan Delkar after the scheduled arrival of Minister clearly sows the malafide intention of the U.T. Administration Officials including the Petitioner herein due to which the rights of Shri. Mohan Delkar have been affected being MMP. I say that as per the protocol, "Point (V) Members of Parliament of the area should invariably be invited to public functions organised by Government Office. Then invitation cards and media events, if organised for the function held in the constituency, may include the names of the Members of that constituency who have confirmed participation in these function. Point (VI) where any meeting convened by Government is to be attended by Member of Parliament, special care should be taken to see that notice is given to them in good time regarding the date, time venue etc. of the meeting. It should also be ensure that there is no slip in any matter of detail, however minor it may be. It should especially be ensure that: a) intimations regarding public meeting/functions are sent through speedier communication devices to the M.Ps, so that they reach them well in time, and b) that receipt of intimation by the M.P. is confirmed by the officer/official concerned. Moreover, the Office Memorandum categorically states that, "any violation of relevant Conduct Rules in this regard, which violation is established after due enquiry will render the Government servant concerned liable for appropriate punishment as per rule". I say that the Petitioner and other Accused played an active role in tarnishing the self-esteem and self-respect of the victim and destroyed his confidence so that he would not contest the next elections.

34. Mr. Desai further submitted that the function of inauguration program of Nand Ghar and handing over of three electric buses was scheduled on 18th December, 2020 at 10.15 am and the Minister was to reach Dadra Nagar Haveli and Daman on 17th December, 2020. Accordingly, an email was forwarded to deceased on his Gmail account address on December 17, 2020 at 07.53 pm. Thus, Mr. Desai submitted that an advance intimation was duly forwarded to deceased by following protocol scrupulously. Mr. Desai further submitted that it is stated in reply on behalf of Respondent No. 2 that the communication was forwarded on an email address of an account which was not operational, and there was another email account which was operated by the deceased. Mr. Desai further submitted that the official email account known to the office of the Petitioner, the email was forwarded and operating another email account and if the same is not made officially known for correspondence, putting blames on the Petitioner is not only unsustainable, is stretching the allegations too far.

35. In so far as the visit of Minister is concerned, the copy of the tour program is annexed to the rejoinder affidavit of the Petitioner. It was submitted that even as per the scheduled program, Minister was to reach Silvassa for only night stay at about 07.45 pm and was to attend the function at 18th December, 2020 at 09.45

hours. Thus, email forwarded to the deceased Member of Parliament on his official account on 17th December, 2020 at 07.56 pm was a communication well in advance and it cannot be said that the communication was forwarded to the deceased belatedly so as to avoid his presence for the official function.

36. Mr. Desai appearing for the Petitioner invited our attention to the documents placed on record in rejoinder affidavit to submit that the Petitioner and the Administration was extending all the protocol formalities such as, invitation to the deceased, arrangements of vehicles when the deceased was an elected Member of Parliament and attending certain meeting. Our attention was also invited to the orders issued to the subordinate officers for making proper arrangements and for following the protocol in respect of deceased.

37. Mr. Desai further submitted that in the FIR an allegation is made against the Administrator that an associate of deceased, namely, Indrajeet Parmar was falsely implicated in the offence and by this explanation the Administration wanted to give a signal to deceased. It is stated in the FIR that he had disclosed this fact to his family members and when the first informant suggested his father to take legal recourse against the Administration, deceased stated that in case either he takes legal recourse or goes to media, the Administrator may go to any extent that too he may commit a threatening act to the deceased or his family members.

38. Mr. Desai further submitted that on receiving proposal Petitioner being District Magistrate and Detention Authority under PASA Act initiated proceedings against Indrajeet Parmar and one Rahul Sahani. Mr. Desai then submitted that the action of the Petitioner was subjected to Advisory Board. The Advisory Board comprising of Hon'ble Retired Chief Justice and two eminent lawyers, approved the order of detention and ultimately the State Government passed a detention order.

39. Mr. Desai further submitted that in so far as the educational institution of the Petitioner is concerned, certain proceedings were initiated and the deceased taking recourse to legal remedies and there was also a proceedings in subordinate Courts, an arbitration proceeding and also in this Court. Thus, Mr. Desai submitted that action whatsoever initiated by the Petitioner was pursuant to jurisdiction of his official duty, actions were subjected to judicial scrutiny, in the judicial scrutiny nothing adverse against the Petitioner is observed. Mr. Desai further submitted that the statements in the FIR are only in the form of mere assumptions and impression being carried by the deceased and the official record is not at all supporting these allegations and these allegations are baseless. Mr. Desai also submitted that on face of such material a criminal prosecution against the Petitioner who is responsible officer and had discharged his duty by adhering to the provisions of law and by maintaining due protocol is nothing but an abuses of process of law and Petitioner needs to be protected and this is a fit case to exercise inherent powers of this Court. It was also submitted that even on the point of proximity between the suicide committed by the deceased and the

incident alleged in the FIR either the offence under IPC or the offence under Atrocities Act cannot be attracted against the Petitioner.

Mr. Desai further submitted that even assuming certain acts were committed by the Petitioner, these were acts done in its official capacity and protection is available under Section 79 of IPC.

40. Mr. Desai, in support of his submissions, relied on following judgments: Geo Varghese Vs. The State of Rajasthan and Anr (supra), Dilip S/o Ramrao Shirsao and Others Vs. State of Maharashtra and Anr 2016 SCC OnLine Bom 5240, Gulab Vs. State of Maharashtra and Others 2019 SCC OnLine Bom 147 Madan Mohan Singh Vs. State of Gujarat and Others (2010) 8 SCC 628, Arnab Manoranjan Goswami Vs. state of Maharashtra and Others AIR 2021 SC 1. Thus, learned Counsel appearing for the Petitioner prayed for allowing the Petition.

41. Mr. Thool, learned Counsel appearing for the Petitioner – Dilip Patel in Writ Petition No. 1811 of 2021, who is at the relevant time serving as Talathi in Daman, submitted that as per the contents of the FIR apart from a general statement that the entire administration was ill-treating and harassing deceased at the instance of Administrator, a particular statement against Petitioner is under caption that the incidence whereby deceased was subjected to harassment and ill-treatment. It is stated in the FIR that on 18th February, 2021 Petitioner submitted a false and baseless complaint in the office of Administrator. It is further stated in FIR that this complaint was false. Mr. Thool vehemently submitted that firstly, the complaint in so far as the Petitioner is concerned, is clearly a vague; secondly, even assuming and admitting there was some complaint submitted in the office of Administrator the said complaint in respect of a proceeding before the Revenue Authority to which the wife of the Petitioner was a party and wherein notice was served on the wife of Petitioner through Tahsildar of Silvassa, Circle 1. Thus, the submission is, the contents of the FIR, on face of it, contrary to the record and with such a vague and unsustainable material no offence can be made out against the Petitioner & asking the Petitioner to undergo criminal proceeding is clearly an abuse of process of law. Mr. Thool vehemently submitted that the case of Petitioner squarely covers in the guidelines of judgment in the matter of Bhajan Lal (supra).

42. Mr. Thool, learned Counsel appearing for the Petitioner submitted that in the affidavit-in-reply filed on behalf of Respondent No. 2 only general statement that the officers in the Administration are acting under the directions of the Administrator and ill-treating and harassing deceased is appearing. Mr. Thool further submitted that a reference is made in the reply to a criminal case pending before the learned JMFC, Silvassa against the Petitioner. Mr. Thool further submitted that as the said criminal case is nothing to do with the present matter, the allegation in the affidavit-in-reply that the Petitioner had suppressed material from this Court, cannot be accepted. Further the allegation that as the Petitioner is occupying the office of Talathi and he would be in a position to influence witnesses or tamper with evidence, also cannot be accepted without

their being any material against the Petitioner.

43. Mr. Thool further submitted that in the affidavit-in-reply filed on behalf of Respondent No. 2 only general statement is made that there is a voluminous material collected during the course of investigation which would indicate prima facie that a conspiracy was hatched. Mr. Thool further submitted that though it is stated in the affidavit-in-reply that voluminous material is collected during the course of investigation, there is no slightest reference of any positive act being committed by the Petitioner or any part being played by the Petitioner in the course of alleged conspiracy being hatched. Mr. Thool vehemently submitted that the Petitioner himself belongs to Dedhia community which is a scheduled tribe community, thus, in such a situation offence under Atrocities Act are not attracted against the Petitioner.

44. Mr. Thool appearing for Petitioner, in support of his submissions, placed reliance on following judgments: Hitesh Verma Vs. State of Uttarakhand and Another (2020) 10 SCC 710, Manik Taneja Vs. State of Karnataka and Another (2015) 7 SCC 423, Khuman Singh Vs. State of Madhya Pradesh (2020) 8 SCC 763 Gorige Pentaiah Vs. State of Andhra Pradesh (2008) 12 SCC 531, Suhas and Others Vs. State of Maharashtra and Others 2017 (2) Bom CR (Cri) 487, Atul Kumar Vs. State of NCT of Delhi 2021 SCC OnLine Del 4107 & State of Orissa Vs. Debendra Nath Padhi (supra).

Thus, Mr. Thool appearing for the Petitioner prayed for quashing FIR qua the Petitioner by allowing Petition.

45. Mr. Nankani, learned Senior Counsel appearing for Petitioner – Apurva Sharma in Writ Petition No. 1808 of 2021 submitted that at the relevant time Petitioner was working as Resident Deputy Collector and as per the hierarchy of the Administration, he was a junior officer to the District Collector. Mr. Nankani then submitted that apart from general allegations against the Petitioner certain incidences are quoted to submit that deceased was subjected to an harassment and ill-treatment at the hands of Petitioner. A reference is made to the liberation day celebration. Mr. Nankani further submitted that though it is alleged that there was an long standing convention that while celebrating the liberation day the Member of Parliament was to address gathering and deliver speech, but, due to peculiar circumstance, namely, Covid 19 pandemic there was certain restrictions. Mr. Nankani then referred to certain guidelines and these guidelines are already referred by us while dealing with the submissions of learned Senior Counsel Mr. Amit Deasi appearing for Petitioner – Sandeep K. Singh in Writ Petition No. 1538 of 2021. It may not be necessary for us to repeat these guidelines.

46. Mr. Nankani then submitted that in the affidavit-in-reply certain additional ground is raised and admittedly the same is not reflecting in FIR. Mr. Nankani further submitted that even additional ground is raised to suggest that deceased was subjected to an ill-treatment by this act, itself is not sustainable. Mr.

Nankani further submitted that copy of notice dated 02/09/2020 for hearing is placed on record annexed to the affidavit-in-reply at page 120. In the notice addressee is shown as Shri. Mohan S. Delkar, Member of Parliament, Dadra and Nagar Haveli. It is submitted that while making reference to deceased the word Honorable is not used and this was done to lower down the image of deceased. Mr. Nankani appearing for Petitioner vehemently submitted that this notice was part of a general public notice seeking suggestions and objections. It is further submitted that this being a general notice, proforma are prepared and forwarded. Learned Counsel further submitted that staff attached to the office of Petitioner completed the other formalities, such as, adding name of the addressee in the proforma notice. Mr. Nankani further submitted that Petitioner was not personally writing down the name of addressee in proforma notice. It is also submitted by learned Counsel for Petitioner that the addressee is shown as Mohan S. Delkar, Member of Parliament as such, it cannot be said that there was no intention either from the administration in general or Petitioner in particular to lower down the image of deceased and the allegation added in the reply is only assumption and presumption of the first informant without their being any legal basis to it.

47. Then a reference is made to visit of the Hon'ble Home Minister for the State. This aspect is also referred to by us while referring to the submissions of learned Senior Counsel Mr. Desai. At the cost of repetition, we may only say that the submission of learned Counsel is the official program of the Hon'ble Minister was scheduled on 18th December. An invitation via email was forwarded to the deceased on official email on 17th December. Then there is another reference to a grievance that an opportunity of hearing was not granted to deceased. It is submitted that this was hearing before one National Council. The notice of the meeting was sent to representative of deceased as well as to deceased also. On the first date of hearing, the representative of deceased one Mr. Parmar attended hearing. Petitioner under bona fide belief refused hearing to the representative. Mr. Nankani further submitted that it was a bona fide mistake of the Petitioner and Petitioner then rectified the error by permitting hearing to the representative of deceased i.e., Mr. Parmar. Mr. Nankani further submitted that when in the next hearing the representative of Petitioner was granted hearing, the allegation that no opportunity of hearing was granted to the representative of the Petitioner holds no water, as such, the contents of the FIR to that effect is unsustainable.

48. In so far as the allegations that officers in the administration and the Petitioner in particular failed to extend necessary protocol to deceased is also contrary to record. The Counsel for Petitioner invited our attention to the material placed on record to submit that all the necessary courtesies under the protocol were extended to deceased. It is also submitted that there is no denial to these submissions.

49. Mr. Nankani further submitted that the acts committed by the Petitioner were in discharge of his official duty and as such, neither any offence under IPC nor

the offence under Atrocities Act are attracted against the Petitioner. It is further submitted by learned Counsel appearing for Petitioner that though certain additional material in the form of minutes of proceedings before said committee are placed on record in the affidavit-in-reply, this is an additional material which is not part of the FIR. It is further submitted that even taking into consideration this material it reveals that deceased had approached said committee and detailed hearing took place. It is further submitted that neither the contents of the FIR nor the additional material indicates that deceased was depressed, on the contrary, it is stated in the FIR that deceased was active in social and political life for years together. He was a bold person. He had faced many difficulties and adversities in his life. He had contested elections for more than 7 times. Thus, submission of learned Counsel is, all these material falls too short to draw a conclusion that the deceased was under distress or depression. Learned Counsel then submitted that he is adopting the arguments advanced by learned Senior Counsel Mr. Desai in so far as point of proximity is concerned.

50. Mr. Nankani further submitted that none of the element for attracting Section 306 of IPC appears either in the FIR or even in the additional material placed before this Court along with affidavit-in-reply. Thus, learned Counsel submitted that this is a fit case for exercising inherent powers of this Court under Section 482 of CrPC so as to prevent abuse of process of law. Mr. Nankani, in support of his submissions, placed heavy reliance on following judgments: Pramod Shriram Telgote Vs. State of Maharashtra & M. Arjunan Vs. State (2019) 3 SCC 315. Thus, learned Counsel prayed for allowing the Petition.

51. Mr. Mahesh Jethmalani, learned Senior Counsel appearing for Petitioner – Praful Khoda Patel, Administrator vehemently submitted that except general statement that too at the concluding part of the FIR, there is absolutely no material either in the FIR or in the reply to connect the Petitioner even remotely for the act of committing suicide by the deceased. Mr. Jethmalani further submitted that firstly it is stated in the FIR that the Petitioner wanted to take control over the education institution of the deceased and secondly, wanted to prevent deceased from contesting elections. Learned Counsel submitted that even assuming these two alleged acts of the Petitioner these acts are not leading to the commission of suicide by the deceased. Therefore, it cannot be said that there was either any intention or any motive of the Petitioner so as to attract Section 306 of IPC against the Petitioner. Mr. Jethmalani further submitted that in so far as certain incidents quoted in the FIR are concerned, in none of these incidents the Petitioner had to play any role personally or officially. These incidents referred to in the FIR and the allegations are against the other Petitioners as such, the Petitioner cannot be held responsible for certain personal acts committed by other officials and there is absolutely no supporting material even remotely referred to in the FIR, the allegation against the Petitioner that under the directions of the present Petitioner other officials were acting and harassing the deceased, is only a vague and baseless allegations.

52. Mr. Jethmalani invited our attention to the FIR and submitted that the first informant itself stated in the FIR that deceased submitted letter to the petitioner on 13th January, 2021 and 14th January, 2021 against other officials in the administration. Copies of these letters were forwarded to the said committee. Learned Counsel then submitted that in none of these letters not a single allegation is raised against the Petitioner. Mr. Jethmalani submitted that the first informant himself stated that when the deceased had a talk with his family members about the alleged ill-treatment the family members and particularly the first respondent suggested the deceased either to go to media or to take appropriate legal steps but in spite of these suggestions deceased neither made any disclosure in media nor submitted any complaint at the relevant time (R;kauh vkeP;k lY;kizek.ks rdzkj dsyh ukgh).

53. Mr. Jethmalani submitted that firstly the material placed in the affidavit-in-reply in the form of proceedings of said committee is an additional material; secondly, even after going through this material it cannot be said that Petitioner had committed any such act leading to the commission of suicide and in the said committee allegations are reiterated on two counts namely, control over the education institute and preventing deceased from contesting election. Thus, Mr. Jethmalani submitted that FIR, on the face of it, falls too short to attract the provisions of FIR or Atrocities Act. The continuity of proceedings against the Petitioner who himself is active in social life and discharging his duties unblemishly, an initiation and continuity of proceeding against the Petitioner is an abuses of process of law and this is a fit case wherein this Court can exercise his inherent powers under Section 482 of CrPC.

54. In support of his submissions, Mr. Jethmalani placed heavy reliance on following judgments: Madan Mohan Singh Vs. State of Gujarat and Another (supra), State of Kerala and Others Vs. S. Unnikrishnan Nair and Others, Gulab Vs. State of Maharashtra and Others (supra), Masumsha Hasanasha Musalman Vs. State of Maharashtra (2000) 3 SCC 557, & Dinesh alias Buddha Vs. State of Rajasthan (2006) 3 SCC 771. Thus, learned Counsel prayed that Petition may be allowed.

55. Mr. Rafiq Dada, learned Senior Counsel appearing as Special Public Prosecutor for Respondent – State vehemently submitted that by lodging the FIR son of deceased has set the investigating agency in motion. It is specifically stated in the FIR that though there are various persons in the administration and the and the Administrator being the head of the Administration, these persons / officers were working under the Administrator. It is also stated in the FIR that a conspiracy was hatched under the directions of the Administrator and pursuant to the conspiracy, the Petitioners before this Court constantly harassed and ill-treated deceased. Mr. Dada further submitted that by giving details about the various incidents as referred to in the FIR and though these are different incidents, a common thread in all these incidents leading to an act of humiliation and harassment of deceased.

56. Mr. Dada further submitted that it is observed in various judgments of this Court and Hon'ble the Apex Court that the FIR is not an encyclopedia as such, the investigating agency on lodgment of FIR conducted the investigation and then further material is collected in the investigation or unearth in the investigation. Learned Counsel further submitted that when deceased found that under the directions of the Administrator the Petitioners are harassing him and it would be of no use either approaching the media or by availing other remedies. Deceased had approached the said committee. The statements in the FIR get support from the minutes and the proceedings before the said committee on 11th February, 2021 and deceased Committed suicide on 22nd February, 2021, as such, there is a close proximity in the acts of ill-treatment which was disclosed before the said committee and the act of commission of suicide by deceased.

57. Mr. Dada made available material collected during the course of investigation in the form of statement of witnesses recorded by the investigating agency. It is submitted that in these statements the witnesses supports the case of deceased. Mr. Dada further submitted that as the investigation was initiated as there were certain interim orders passed by this Court, the investigation could not get further pace. Learned Counsel further submitted that deceased was a prominent leader in the region of Union Territory of Dadra and Nagar Haveli. He was a member of a scheduled tribe community. He had been elected for more than 7 times and this shows that he was a respectable leader of the area. It is further submitted that the acts and the incidents stated in the FIR are clearly indicative of an ill-treatment and harassment caused to deceased at the hands of Petitioner and in such a situation the investigating agency shall have an opportunity of carrying out the investigation further and to bring the truth before the competent Court.

58. Mr. Dada further submitted that there is no dispute on the principle that this Court by exercising its powers under Section 482 CrPC can prevent the abuse of process of law and quash the FIR but the question is whether the case of the Petitioners falls in the settled guidelines ?. Mr. Dada further submitted that as certain specific incidents are referred to in the FIR, there is also reference about the role played by each of the Petitioners in the FIR and as the investigation is in progress this is not a fit case wherein this Court can exercise its powers under Section 482 CrPC, as such, the Petitions be dismissed.

59. Mr. Dada then referred to certain contents of the affidavit-in-reply filed on behalf of Respondent No. 2. Mr. Dada submitted that when deceased approached before the said committee sought the response from the Officers i.e., some of the Petitioners before this Court. Mr. Dada also invited our attention to a letters addressed by deceased to various responsible authorities such as, Hon'ble Speaker, Lok Sabha and Hon'ble Home Minister. Mr. Dada then submitted that before the said committee deceased reiterated that he is very much disturbed and only two options are left with him i.e., either to tender resignation or to commit suicide. Mr. Dada also by inviting our attention to the proceeding of the

said committee that the Chairperson of the said committee informed deceased not to take any extreme steps.

60. Mr. Dada, in support of his submissions placed heavy reliance on following judgments: P. Chidambaram Vs. Directorate of Enforcement (2019) 9 SCC 24, Satvinder Kaur Vs. State (Govt. of NCT of Delhi) & Another (1999) 8 SCC 728, S. M. Datta Vs. State of Gujarat and Another (2001) 7 SCC 659, State of Punjab and Others Vs. Inder Mohan Chopra and Others (2009) 3 SCC 497, Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and Others 2021 SCC OnLine SC 315, Munshiram Vs. State of Rajasthan and Another (2018) 5 SCC 678, Narayan Malhari Thorad Vs. Vinayak Deorao Bhagat and Another (2019) 13 SCC 598, Rajeev Kourav Vs. Baisahab and Others (2020) 3 SCC 317, Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi) (2009) 16 SCC 605, Mahendra K.C. Vs. State of Karnataka and Another 2021 SCC OnLine SC 1021, Sanju alias Sanjay Singh Sengar Vs. State of M.P. (2002) 5 SCC 371, & Ashrafi Vs. State of Uttar Pradesh (2018) 1 SCC 742.

61. Mr. Dada also submitted before this Court that though the Counsel for Petitioner placed reliance on the judgment in the matter of Madan Mohan (supra), is not applicable to the present matter. Mr. Dada also submitted that though reliance was placed on the judgment in the matter of Gurucharan Singh (supra), the decision of the Court was after conducting the full trial. The order of conviction was challenged in High Court and then the order of High Court was subjected to an appeal before the Hon'ble the Apex Court. Thus, Mr. Dada prayed that Petitions may be dismissed.

62. Mr. Manoj Mohite, learned Senior Counsel appearing for Respondent – State submitted before this Court that though commission of suicide is a final act, the process of abetment to suicide is a complex process. Mr. Mohite further submitted that there are certain causes for commission of suicide and consideration of these causes can be set as a dynamics of suicide. Mr. Mohite further submitted that it can be stated that broadly there are two reasons for commission of suicide i.e., first internal or personal reason and second, external factors. Mr. Mohite further submitted that effect of these two factors depends upon the sensitivity of a person. Mr. Mohite then submitted that considering these facts different parameters are required to be applied in the case of suicide. Mr. Mohite further submitted that in the present case the external factors, namely, ill-treatment and harassment of the Petitioners and series of such incidents along with the internal factor, namely, the deceased was so depressed that no other option left to him as such he committed suicide. Mr. Mohite, thus, submitted that considering these aspect of the matter as well as considering the fact that the investigation is still in progress this is not a fit case for exercising powers under Section 482 of CrPC by this Court.

63. Mr. Mohite by placing heavy reliance on the judgment of Praveen Pradhan Vs. State of Uttaranchal and Another (2012) 9 SCC 734, submitted that considering the phraseology of section 107 of IPC the requisite, namely, abetment and

conspiracy are reflected in the FIR. Mr. Mohite submitted that the first informant refers to various incidents to show how the conspiracy was hatched by the Petitioner. Mr. Mohite then submitted that in the present matter there is application of Section 120 (B) of IPC and the deceased before the said committee reiterated the details. Mr. Mohite also submitted that the investigation is in progress and same needs to be carried out. Mr. Mohite further submitted that at this stage, this Court can only see the prima facie material and Court may not undertake the exercise of assessing or ascertaining the veracity of the allegations. If the FIR discloses the cognizable offence in depth scrutiny is not expected by this Court.

64. Mr. Mohite, in support of his submissions, relied on following judgments: Pawan Kumar Vs. State of Himachal Pradesh (supra), State of Kerala and Others Vs. S. Unnikrishnan and Others (supra), Netai Dutta Vs. State of W.B.(supra), Kaptan Singh Vs. State of Uttar Pradesh and Others (2021) 9 SCC 35, & Neeharika Infrastructure Pvt. Ltd (supra). Thus, learned Counsel prayed that Petitions may be dismissed.

65. Mr. Ashok Mundargi, learned Senior Counsel appearing for Respondent No. 2 – Abhinav Delkar submitted that though the FIR makes reference to different persons and their individual acts, these acts will have to be treated as a joint and systematic act for a particular object and that object was to ill-treat and harass deceased constantly on one count or other or by one way or other that deceased is depressed and takes an extreme step. Mr. Mundargi also submitted that the contents of FIR clearly shows that the deceased was under a tremendous pressure. Mr. Mundargi also submitted that deceased put forth his grievance before the said committee also and the proceedings before the said committee were conducted on 12th February, 2021 and deceased committed suicide on 22nd February, 2021 as it raised a close proximity between this two events. Mr. Mundargi, in support of his submissions, relied on judgment in the matter of State of Orissa and Another Vs. Saroj Kumar Sahoo (2005) 13 SCC 540. Thus, learned Counsel prayed that Petitions may be dismissed.

66. Mr. Ponda, learned Senior Counsel appearing for Respondent supports the submissions of Mr. Dada, Mr. Mohite and relied on in unreported judgment in the matter of Jagmohan Singh Vs. Vimlesh Kumar and Others Criminal Appeal No. 741 of 2022 dated 05th May, 2022. Mr. Ponda also submitted written submissions and substance of his argument as well as written submission is that there is sufficient material in the FIR and this Court may not undertake the exercise of a detailed scrutiny of the material collected so far at this stage and as such this is not a fit case for exercising the powers under Section 482 of CrPC.

67. Mr. Venegaonkar, learned Counsel appearing for Respondent No. 3 – Union Territory submitted that officers at the relevant time now posted at different places and if trial is permitted to proceed they will have to attend Dadra and Nagar Haveli. Mr. Venegaonkar further submitted that the acts committed by the Petitioners are done in their official capacity.

68. Mr. Dada, in his usual fairness handed over a compilation of documents collected by the investigating agency during the course of investigation. Mr. Dada, also made available a document under caption “ejhu M^akbZOg ikshl Bk.ks] xq-j- dza- ૩ & @૨૧ pk izxrh vgoky”, meaning thereby, progress report of the investigation conducted by Marine Drive Police Station in Crime No. 36/21. It may be stated here that the suicide note referred to in the FIR is in Gujarati language and a English translation along with certificate of one Assistant Professor and Head of Department of English, is also placed on record. We deem it appropriate not to disclose the name of the concerned person, we may only state that what is stated in the certificate as under:

“I am proficient in English as well as Gujarati Language. I have put my signatures on on all twelve translated pages. I have done this translation on the request of Shri. Pandurang Shinde, Assistant Commissioner of Police, Colaba Division on 27th February, 2021 and I have been paid Rupees --- as my professional charges for translation”.

69. After perusal of material placed on record and on hearing learned Counsel appearing for respective parties, we are of the opinion, that there is considerable merit in the submissions of learned Counsel appearing for Petitioners.

70. As we have made detailed reference to the contents of the FIR, it may not be necessary for us to repeat these contents.

71. The Counsel for Petitioners were justified in submitting before this Court firstly that deceased was in social and political life for considerable long period and it is specifically stated in the FIR that deceased faced many adversities in the life boldly. A reference is made to the incidents are mostly of the public functions. It was only the impression carried out by the deceased that he was ill-treated or humiliated, on the contrary, there is sufficient material placed on record to show that in view of peculiar circumstances namely, Covid 19 pandemic, these public functions were celebrated by taking the precautionary measures under the various directives and SOPs. It was an admitted fact that in these peculiar times the attempts were being made to avoid the large gatherings in public places so as to prevent the spread of Covid 19.

72. The material placed on record clearly shows that in another function the deceased was properly welcomed. Now in so far as other incidents, namely, the visit of Hon’ble Home Minister for State to Silvassa, and no proper protocol was offered to deceased is concerned, it can be said that it was only an impression carried by the deceased whereas the material placed on record shows that the deceased was informed about the visit of the Hon’ble Minister for State well within time on his official email address.

Though it is vehemently submitted that particular email address was not functional and deceased was using another email address, but the communication forwarded to the deceased is on his official email account. The officers were not expected to know that how many email accounts are operated

by a particular person and out of these email accounts, how many accounts are functional. Petitioner and officers concerned communicated details on an official email account, no blame can be put on the Petitioner and officers for not forwarding the communication on another email account of deceased.

73. In the reply it is submitted that the deceased was not referred to as "Honorable" and this was an act of humiliation. Again there is sufficient material placed on record to show that this particular communication was in respect of a public notice and in the notice, which was communicated to the deceased, reference to deceased was "Shri. Mohan S. Delkar, Member of Parliament". This reference now clearly suggests that deceased was addressed with a prefix "Shri" which certainly shows respect to a person. These notices were proforma notices issued by the office of the Petitioner and one cannot jump to the conclusion that this act was a purposeful humiliation of the deceased.

74. There is also considerable merit in the submissions of learned Counsel appearing for the Petitioners that admittedly deceased attended the said committee and detailed hearings were conducted by said committee.

75. Perusal of translation of suicide note shows that the grievance about the Administrator and the Officers in the administration by hatching a conspiracy ill-treated and harassed deceased is reiterated. Then there is a reference to certain talks with some private persons to whom deceased expressed the very apprehension that the Administrator may implicate him in some false cases and see that he is behind bars. Then there is a short note to the wife of deceased by deceased, and a short note to his sons.

76. It is admitted fact that neither copy of suicide note nor translated version of the said suicide note is provided to Petitioners, thus, Counsel for Petitioners submitted that as the contents of the suicide note are not made known to them, they are unable to make any submissions on the suicide note.

Learned Counsel appearing for Petitioners were justified in making this submissions. Though, we refrain to critically analyze the said suicide note, it can safely be said that the majority of the grievance in the suicide note are reflected in the FIR. It is also stated in the suicide note that deceased had addressed the communications to higher dignitaries such as, Hon'ble Speaker, Lok Sabha, Hon'ble Prime Minister and the Hon'ble Home Minister, GoI.

77. It is stated in the report that on receipt of the information that deceased committed suicide on 22nd February, 2021 in Room No. 512 of Sea Green South Marine Drive, Mumbai, Accidental Death no. 5/21 was registered under Section 174 of CrPC and preliminary inquiry was conducted. On 09th March, 2021 son of deceased attended the police station for lodging report. His statement was recorded and accordingly, Crime No. 36/2021 was registered for the aforementioned offences. Then it is stated that a special team for investigation was constituted under the orders of the State Government. The Assistant Commissioner of Police was head of the team and other members of the team

were to assist the head of the team. It is stated that the material collected during the course of investigation is exchange of communication by deceased, certain documents referred to in the FIR in respect of certain Court proceedings or quasi judicial proceedings, a self video prepared by the deceased, etc. It is stated that by drawing necessary panchnama the documents were collected and the video clips were also stored in a pen drive by drawing necessary panchnama. Then reference is made to certain statements recorded by the investigating officer.

78. It is then stated in the report that deceased was under mental pressure. It is further stated in the report that the investigation is now stopped at this stage and for further investigation custodial interrogation of the Petitioners is necessary. We may state that by way of an interim order, Petitioners were protected and the investigating agency was permitted to record the statement of Petitioners. It is stated in the report that the Petitioners who have hatched conspiracy under the orders of the Administrator and the Administrator had two fold object against deceased. Firstly to take control of the educational institutions particularly, college being run by the trust of deceased and secondly, to prevent the deceased from contesting elections. In so far the second object is concerned, it is admitted fact that the deceased in an earlier election contested election as a candidate of political party and he was elected subsequently, he contested election as an independent member and he was again elected.

Thus, learned Counsel appearing for the Petitioners submitted that when it is an admitted fact that deceased contested election as an independent member and was elected, it clearly show that there was no substance in the allegation in so far as the second object is concerned. It is then submitted by learned Counsel for Petitioners in so far as first object is concerned, even for that object only with bare allegations, there is absolutely no other material to show any positive and active role played by any of the Petitioners either personally to take control of the college being run under the trust of the deceased or assisting the Administrator by any direct or indirect way so as to facilitate the Administrator to take control over the college. In such a situation, if both these alleged objects are not substantially established and it is only in the form of certain allegations and an impression of the deceased, then on such an unacceptable and unsustainable material asking the Petitioners to undergo the rigors of criminal prosecution, is nothing but an abuse of process of law.

79. Mr. Dada and Mr. Mohite vehemently submitted that as the investigation is in process and investigating authority be permitted to complete the investigation, it is further submitted that at this stage it may not be apt to allow the Petitions. It is also submitted that let the investigating agency complete the task of investigation.

In support of this submissions, reliance was placed on the various judgments. Though there cannot be any dispute on the proposition of law reflected in the judgments, we are of the opinion, that the learned Counsel appearing for the

Petitioners were justified in submitting before this Court these judgments are not applicable in view of the facts of the present case.

80. It is a consistent view of the Hon'ble the Apex Court as well as this Court that for consideration of the matter while exercising powers of this Court under Section 482 CrPC, this Court is not expected to undertake the exercise of detailed scrutiny or assessment of the material collected in the investigation, and it is expected from this Court to go through the contents of the FIR and material along with it. As such, we have only made reference to the material collected during the course of investigation and refrain ourselves from any scrutiny or assessment of this material of the investigation.

81. There is also considerable merit in the submissions of learned Counsel appearing for the Petitioners that the contents of FIR falls too short for attraction of 120 (B) of IPC. So as to attract Section 120 (B), there must be positive material to show that the Petitioners came together for hatching a conspiracy and effect was given to that conspiracy. In the present case except bare words that the Petitioners were acting under the directions of Administrator there is not a single incident to show that these Petitioners came together and acted under the dictates of the Administrator.

82. In so far as the attraction of Atrocities Act is concerned, even the contents of the FIR falls too short for attracting the provisions of Atrocities Act. It is only an allegation in the report that the deceased was belonging to scheduled tribe community and this fact was known to the Petitioners and Petitioners have harassed and ill-treated deceased. Now in support of these allegations, reference is made to the incidents i.e., function of liberation day and visit of Hon'ble Minister.

At the cost of repetition, we may state that firstly there was sufficient material placed on record to show that the particular function of liberation day was performed under the directions of GoI on the backdrop of pandemic situation. The dignitaries who have attended the function were welcomed. We have also made a detailed reference to the grievance in so far as deceased wherein the word Hon'ble missing.

83. There is also considerable merit in the submissions of learned Counsel appearing for Petitioners that in so far as attraction of Section 306 of IPC, the pre-requisite is abetment. There must be material of a positive act, as a pre-requisite for satisfying the word abetment, the contents of FIR and reference made to incidents falls too short to show any positive act committed by the Petitioners so as to satisfy the term abetment which is a pre-requisite of Section 306 of IPC. It may not be out of place to quote the observations of the Hon'ble the Apex Court while dealing with Section 306 of IPC in the matter of Madan Mohan Singh (supra) as under:

10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section

306, IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.

12. In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306, IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta Vs. State of W.B.* [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.

14. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of

the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.

Similarly, the Hon'ble the Apex Court in the matter State of Kerala Vs. S. Unnikrishnana Nair (supra), observed as follows:

9. To appreciate the rivalised submissions in the obtaining factual matrix, it is necessary to understand the concept of abatement as enshrined in Section 107 IPC. The said provision reads as follows:-

"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 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."

16. We have quoted in extenso from the said judgment and we have no hesitation in stating that the suicide note therein was quite different, and the Court did think it appropriate to quash the proceedings because of the tenor and nature of the suicide note. Thus, the said decision is distinguishable regard being had to the factual score exposted therein.

17. Coming to the case at hand, as we have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, we are disposed to think that the High Court is justified in quashing the proceeding, for it is an accepted position in law that where no prima facie case is made out against the accused, then the High Court is obliged in law to exercise the jurisdiction under Section 482 of the Code and quash the proceedings. [See V.P. Shrivastava v. Indian Explosives Ltd.]

18. Before parting with the case, we are impelled to say something. Mr. Bhushan, learned counsel appearing for the respondent No. 1 & 2 has drawn our attention to a facet of earlier judgment of the High Court wherein it has been mentioned that at one time the deceased was pressurised by some superior officers. We have independently considered the material brought on record and arrived at our

conclusion. But, regard being had to the suicide note and other concomitant facts that have been unfurled, we are compelled to recapitulate the saying that suicide reflects a "species of fear". It is a sense of defeat that corrodes the inner soul and destroys the will power and forces one to abandon one's own responsibility. To think of self-annihilation because of something which is disagreeable or intolerable or unbearable, especially in a situation where one is required to perform public duty, has to be regarded as a non-valiant attitude that is scared of the immediate calamity or self-perceived consequence. We may hasten to add that our submission has nothing to do when a case under Section 306 IPC is registered in aid of Section 113A of the Evidence Act, 1872.

84. Learned Counsel appearing for the Petitioners were also justified in placing heavy reliance on the judgment of Dilip Shirsao (supra). It may not be out of place to reproduce observations as under:

13. The Apex Court in Sanju @ Sanjay Sengar's case considered the earlier judgments in paragraphs 9 to 12 of the said judgment. It would be appropriate to refer to the same -

"9. In Swamy Prahaladdas v. State of M.P., 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

10. In Mahendra Singh v. State of M.P., 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"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 those reasons and being harassed I want to die by burning."

11. This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire.

Acquitting the accused this Court said :

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference 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 for abetting the offence of suicide should be found guilty."

21. Perusal of the said suicide note would not reveal as to on what date the deceased has written the suicide note. However, even taking the allegations to be true at its face value, the question would be as to whether is it sufficient to book the persons like applicants for the offence punishable under Section 306 of the Indian Penal Code. Perusal of the various statements recorded of the employees working under the deceased would show that the deceased had never made any complaint with regard to any of the applicants. No doubt that there is a statement of one Judicial Officer, who had friendly relations with the deceased, that the deceased was disturbed on account of he being transferred to Darwha and not being permitted to do up and down from Darwha and on account of certain event that happened in the workshop. The question would be as to whether the fact of a person being disturbed on account of official act done by a superior would be sufficient to book such a superior officer for the offence punishable under Section 306 of the Indian Penal Code or not. We find that the issue is squarely answered by the Apex Court in Madan Mohan Singh's case cited *supra*.

(Emphasis supplied).

22. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least *prima facie* establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves 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 in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear *mens rea* to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.

23. No doubt that the judiciary has lost one of its officers in an unfortunate incident. However, as held by the Hon'ble Supreme Court, the response of a person to a situation may differ from a person to person. A person, who is sensitive, may be hurt if the things do not happen as per his wish and may unfortunately commit an act, which leads to his death. No doubt, our all sympathies are with the family of the Judicial Officer, who lost his life in prime age. However, can that be said to be sufficient to prosecute the other Judicial Officers, for no fault of theirs. As already discussed hereinabove, except applicant no.1, there is not even whisper in the affidavit of the non-applicant no.2 insofar as the other applicants are concerned. Even the allegations against the applicant no.1 are with regard to discharge of his official duties. As pointed out hereinabove, it cannot also be a case of harassment inasmuch as the deceased was the junior most Judicial Officer in the cadre of Civil Judge Senior Division and transferring him out of the District headquarters to another place in the same district, cannot be said to be an act by the applicant no.1 causing harassment to the deceased. If the deceased had any grievance against his superiors, it was always open for him to approach the learned Guardian Judge of the District or Registry of this Court.

85. Learned Counsel appearing for Petitioners were also justified in submitting before this Court the case of Petitioners squarely covers under the guidelines in the matter of Bhajan Lal (supra). It may be useful for our purposes to refer to these guidelines as under:

(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. (Emphasis supplied).

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the

Code or the concerned Act (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.”

86. Considering all these aspects, we find merit in the submissions of learned Counsel appearing for the Petitioners and in our opinion, these are the fit cases so as to exercise the powers of this Court under Section 482 of CrPC to prevent an abuse of process of law.

87. Accordingly, Writ Petitions are allowed and the FIR bearing C.R. No. 36 of 2021 dated 09th March, 2021, registered at the instance of Respondent No. 2 – Abhinav Delkar with Marine Drive Police Station, Mumbai for the offences punishable under Sections 306, 506, 389, 120-B of Indian Penal Code, 1860 read with Sections 3 (1)(N), 3(1)(P), 3(2)(ii), 3(2)(Va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is quashed and set aside qua Petitioners herein only. Rule made absolute in above terms.

88. In view of disposal of Writ Petitions, pending applications, if any, does not survive for consideration and the same are accordingly disposed of.

89. The sealed packets containing suicide note in Gujarati along with its translation were taken on record vide order dated 27th June, 2022 and which were marked as 'X' and 'X1' for identification. In view of the disposal of the Writ Petitions, the Investigating Agency shall approach the Registrar (Judicial-I) and obtain those two sealed packets.