

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE G. BASAVARAJA

CRIMINAL REVISION PETITION NO.924 OF 2016

BETWEEN:

...PETITIONERS

(BY SRI CHANDRA MOULI H.S., SENIOR ADVOCATE FOR
SRI. RAJATH, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY THE POLICY OF
SADASHIVANAGAR POLICE STATION
BNAGALORE CITY
REPRESENTED BY

THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001

...RESPONDENT

(BY SRI CHANNAPPA ERAPPA, HCGP)

THIS CRL.RP IS FILED UNDER SECTION 397(1) READ WITH SECTION 401 CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 22.06.2016 PASSED BY LEARNED L ADDITIONAL CITY CIVIL AND S.J., BANGALORE CITY IN SPL.C. NO.234 OF 2015 AND DISCHARGE THE PETITIONERS OF ALL THE CHARGES IN THE SAID CASE.

IN THIS PETITION ARGUMENTS BEING HEARD, JUDGMENT RESERVED ON 17.01.2024, COMING ON FOR "PRONOUNCEMENT OF ORDERS", THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Revision petitioners have presented this Revision Petition against the order dated 22nd June, 2016 passed on the application filed under Section 227 of Code of Criminal Procedure in Spl.C.No.234 of 2015 by the L Additional City Civil and Sessions Judge, Bangalore City, whereby, the application filed by the accused came to be dismissed.

2. Sri H.S. Chandra Mouli, learned Senior Counsel representing the revision petitioners, argued that the petitioners are innocent of the alleged offences and have not committed any wrongdoing as claimed by the prosecution. The learned Senior Counsel contended that the impugned order passed by the court below contradicts both on law and the facts

presented in the material on record, and therefore, should be set aside. Further, learned Senior Counsel asserted that the averments made in the complaint are misconceived, self-serving, and speculative, lacking any substantial evidence to support the allegations. Even when considering all the evidence provided by the prosecution, there is no indication that the revision petitioners have committed any offence, rendering charges baseless. Emphasizing the necessity for intentional aid in abetting the accused to commit suicide for an offence punishable under Section 306 of the Indian Penal Code to be established, learned Senior Counsel argued that this legal principle set out by the Hon'ble Apex court in the case of SANJAY SINGH SENGAR v. STATE OF MADHYA PRADESH as reported in (2002) 5 SCC 371, was not taken into account. Additionally, learned Senior Counsel highlighted that aside from the death note, there is no other evidence against the accused to support charges either under Section 306 or under Section 107 of the Indian Penal Code. Referring to Page No.42 of the inquest mahazar, which indicates that the accused, as teachers, provided advise to the deceased to improve the education for their benefit without any physical or mental ill-treatment, learned Senior Counsel argued that there is no direct or indirect

incitement to the commission of suicide, and no material evidence to suggest that the accused abetted deceased students to commit suicide. Despite this, learned Senior Counsel contended that the trial Court erroneously rejected the application filed on behalf of the accused under Section 227 of the Code of Criminal Procedure, which according to him is legally unsustainable. To substantiate his arguments, he relied on the following decisions:

1. SANJU @ SANJAY SINGH SENGAR v. STATE OF M.P. - (2002)5 SCC 371;
2. P. VIJAYAN v. STATE OF KERALA AND ANOTHER - (2010)2 SCC 398;
3. M. ARJUNAN v. STATE BY INSPECTOR OF POLICE - (2019)3 SCC 315;
4. UDE SINGH AND OTHERS v. STATE OF HARYANA - (2019)17 SCC 301;
5. GEO VARGHESE v. STATE OF RAJASTHAN AND ANOTHER - 2021 SCC OnLine 873;
6. YUVARAJ v. STATE OF KARNATAKA in Criminal Petition No.200102 of 2014 decided on 13th March, 2015.

3. Per contra, Sri Channappa Erappa, learned High Court Government Pleader submitted that there are prima facie materials to frame charges against accused for commission of offence under Section 306 of Indian Penal Code. Accordingly, the trial Court has observed the same and rejected the

application filed on behalf of the accused. He further submitted that there are no grounds to interfere with the order passed by the trial Court and prays for dismissal of the revision petition. To substantiate his arguments, he relied upon the following decisions:

1. STATE OF KARNATAKA v. SWATI PAI AND ANOTHER RENDERED IN CRIMINAL APPEAL NO.62 OF 2018 DECIDED ON 11TH JANUARY, 2018;
2. CRIMINAL REVISION PETITION NO.943 OF 2023 DECIDED ON 04TH SEPTEMBER, 2023, RENDERING IN THE CASE OF JAGADEESH v. STATE BY SHO, MAYAKONDA POLICE STATION;
3. CRIMINAL REVISION PETITION NO.949 OF 2023 DECIDED ON 03RD NOVEMBER, 2023 RENDERED IN THE CASE OF VIDHYA AMARNATH AND ANOTHER v. STATE OF KRARNATAK AND ANOTHER.

4. Having heard the arguments of the learned Senior Counsel and the learned High Court Government Pleader and on perusal of records, the following points would arise for my consideration:

1. Whether the revision petitioners have made out a ground to interfere with the order passed by the trial Court which is impugned in this revision petition?
2. What order?

5. My answer to the above points are as under:

Point No.1: In the affirmative;

Point No.2: as per final order

Regarding Point No.1:

6. I have carefully examined the material placed before this Court.

7. Before appreciating the facts, it is appropriate to mention as to the provisions of Section 107 of Indian Penal Code. The same reads as under:

"107. Abetment of a thing.- A person abets in doing of a thing, who.-

Firstly.- 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, in doing of that thing;

Explanation 1.- A person who, by willful misrepresentation, or by willful concealment of a material fact which his 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 the thing.

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

8. It is also relevant to mention as to the provisions of Section 306 Indian Penal Code. The same reads thus:

"The ingredients of abetment of suicide are as follows:

The Prosecution has to prove.-

- (i) the deceased committed suicide;*
- (ii) the accused instigated or abetted for committing suicide (committing suicide by itself is a crime);*
- (iii) direct involvement by the accused in such abetment or instigation is necessary.*

9. In understanding the sanctity of student-teacher relationship, few noteworthy sayings of our elders are required to be mentioned here:

10. Alexander The Great said, *"I am indebted to my father for living but to my teacher for living well."*

11. In Indian culture, the position of teachers is even higher than Gods, as we call them "*Guru*". A famous Sanskrit shloka explains very aptly the importance of a Guru:

*"Gurur Brahma Gurur Vishnu Guru Devo Maheshwarah |
Guru Saakshaat Parabrahma Tasmai Sri Gurave Namaha||"*

12. Another very popular couplet by a well-known Indian poet Kabir puts Teacher even ahead of God. He says, "*Guru Govind dou khade, kake lagoon paay; Balihari Guru aapne, Govind diyo batay.*" Here, Kabir is wondering whose feet should he touch first, either the Guru (the teacher) or God. He then says that he knows of God only because of the teacher who led him to God.

13. *Aum Saha Navavatu, Saha Nau Bhunaktu, Saha Viiryam Karavaavahai| Tejasvi Navadhitamastu Maa Vidvishaavahai|| Om Shanthi! Shanthi! Shanthi"*

Oh Lord (Brahman)! May You protect and nourish us (Teacher & Student) both together. May we both work together in harmony with great courage and energy. May our study be enlightened, brilliant, vigorous and effective. May we not hate each other. May Lord (Brahman) bless us Peace forever– Physically! Mentally and Spiritually! This, in fact, is one of the Mantras for Peace, which has been described in the

Brahmananda valli of Taittiriya Upanishad and is specially important to the Students or Youth who are exploring aggressive learning and capable to design and mould the peaceful world ever. This great Mantra has been set-up in the form of the request of students and their teachers to the Lord for protecting and blessing them with the bliss of Knowledge, to exercise together for studying well what they study, but without hatred or quarrel with each other, and for being them in the reality of peace ever. As often whispered, teachers are nation builders, who can build the nation solid and strong by imparting right education among their students. Discipline can improve students' character and analytical skills – which are important to succeed in life. **Effective discipline requires a balance between punishment and positive reinforcement.**

14. The Hon'ble Apex Court, in the case of GEO VERGHESE v. STATE OF RAJASTHAN reported in 2021 SCC ONLINE 873, at paragraphs 27 and 28 of the judgment, has held as under:

"27. It is a solemn duty of a teacher to instil discipline in the students. It is not uncommon that teachers reprimand a student for not being attentive or

not being upto the mark in studies or for bunking classes or not attending the school. The disciplinary measures adopted by a teacher or other authorities of a school, reprimanding a student for his indiscipline, in our considered opinion, would not tantamount to provoking a student to commit suicide, unless there are repeated specific allegations of harassment and insult deliberately without any justifiable cause or reason. A simple act of reprimand of a student for his behaviour or indiscipline by a teacher, who is under moral obligations to inculcate the good qualities of a human being in a student would definitely not amount to instigation or intentionally aid to the commission of a suicide by a student.

28. 'Spare the rod and spoil the child' an old saying may have lost its relevance in present days and Corporal punishment to the child is not recognised by law but that does not mean that a teacher or school authorities have to shut their eyes to any indiscipline act of a student. It is not only a moral duty of a teacher but one of the legally assigned duty under Section 24(e) of the Right of Children to Free and Compulsory Education Act, 2009 to hold regular meetings with the parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other act or relevant information about the child."

15. In the recent decision, in the case of VISHNU KUMAR SHUKLA AND ANOTHER v. STATE OF UTTAR PRADESH AND ANOTHER reported in AIR 2024 SC 90, in paragraphs 21 to 23, the Hon'ble Supreme Court as observed as under:

"21. In *Niranjan Singh Karam Singh Punjabi (supra)*, this Court was alive to reality, stating that 'it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.' If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in *Sajjan Kumar v Central Bureau of Investigation, (2010) 9 SCC 368*. The Court, in *Dinesh Tiwari (supra)* had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is 'strong suspicion', reference to *Dipakbhai Jagdishchandra Patel (supra)* is warranted, where it was explained that it is 'the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.'

22. In a recent judgement viz. *State of Gujarat v Dilipsinh Kishorsinh Rao, 2023 INSC 89414*, this Court held:

'7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are

sufficient to proceed against the accused on basis of charge sheet material.

The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. *It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.*

11. *The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.*

12. *The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.'*

23. *On a careful conspectus of the legal spectrum, juxtaposed with our view on the facts and merits expressed hereinbefore, we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offence alleged. It would be*

unjustified to make the appellants face a full-fledged criminal trial in this backdrop. In an appeal dealing with the refusal of the High Court to quash an FIR under Section 482, CrPC albeit, this Court, while setting aside the judgment impugned therein and quashing that FIR, took the view that 'the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial. The protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts. The High Court should have intervened and discharged the appellants. But this Court will intervene, being the sentinel on the qui vive."

16. In the case at hand, the prosecution alleges that accused 1 and 2 frequently ill-treated Ms. Priyanka and Ms. Sonali, leading to the loss of their tolerance and subsequent suicide by drowning in Sankey Tank within the jurisdiction of Sadashivanagar Police Station, on March 18, 2014, at 4:30 pm. Prior to their suicide, they left behind a death note implicating these accused. Therefore, the accused are charged with an offence punishable under Section 306 of the Indian Penal Code. Following a complaint filed by B.V. Janardana, father of

deceased Priyanka, the Sadashivanagar Police registered a case in Crime No.52 of 2014 against accused Maria and Philomena, teachers at Mary Immaculate High School, Bangalore, for allegedly abetting the suicide under Section 306 of the Indian Penal Code and submitted a First Information Report to the Court. Subsequently, on the same day, the police conducted a spot panchanama, seized the death note signed by Priyanka and Sonali, conducted an inquest panchanama, recorded voluntary statements of the accused, obtained post-mortem reports, recorded statements of other witnesses, obtained forensic science laboratory reports regarding the death note, and finally submitted the charge sheet against the accused for allegedly committing an offence punishable under Section 306 of the Indian Penal Code.

17. The piece of evidence to this case is the death note executed by deceased Priyanka and Sonali. The copy of the death note dated 18th March, 2014 is produced before this Court. The same reads as under:

"GOOK LUCK OR BAD LUCK GOD KNOWS

18.03.2014.

We are Priyanka and Sonali

We are dead

THE REASON IS

*Trouble of Philomina Immanual and
Srs. Maria Lila A.C. of N.I.S. (Mary
Immaculate High School, Wilson Garden)*

*We are really sorry parents and
especially our Brothers (Manu and Bruno)*

Sorry Mis. Vanaja, We really love you

We had so many dreams ... But you both spoilt all of it..

*Miss Philomina has to be punished.
It is not only our wish, but also many others..*

*We all miss you dear friends
All the best for your Exams
Plz don't think about us.*

Priyanka and Sonali"

18. The prosecution alleges that accused 1 and 2 frequently harassed their students, Priyanka and Sonali, who were studying at their school. Allegedly, unable to bear this harassment, the duo committed suicide by drowning in Sankey Tank on March 18, 2014. According to the prosecution papers, on March 17, 2014, when accused No.2, along with other teachers, was heading to attend a meeting, deceased were found playing Holi with a boy instead of returning home after special classes. On March 18, 2014, accused No.2 purportedly informed accused No.1 about the incident, and during her daily rounds, accused No.1 called the deceased students to enquire about the Holi incident. Accused 1 and 2 allegedly called the mother of both students to the school, and only Priyanka's

mother arrived around 1:00 pm. Accused No.1 reportedly informed Priyanka's mother that the deceased need not attend special coaching classes as they were not interested in learning and were spending time elsewhere. Priyanka's mother admitted of hitting Priyanka for playing Holi in her school uniform and advised her to mend her ways. When Priyanka's mother and teachers did not find Priyanka and Sonali, they presumed that both had returned home. Priyanka and Sonali were later found at Sankey Tank in Sadashivanagar, where they bought maize corn from a street vendor named Satish (CW6). Subsequently, on March 18, 2014, at 4:30 pm, a First Information Report was registered against the accused for the offence punishable under Section 306 of the Indian Penal Code.

19. In order to constitute an offence punishable under Section 306 of Indian Penal Code, there has to be intentional aid in abetting the accused to commit suicide, i.e. ingredients of Section 107 of Indian Penal Code are to be satisfied. As stated above, there must be proximity and nexus between the alleged abetment and death of the deceased, which is also not forthcoming in the material placed on record by prosecution.

20. The prosecution primarily relies on the death note purportedly written by the deceased, Sonali. However, upon reviewing the contents of the death note, it is observed that the alleged averment fails to disclose the nature of the purported harassment. Additionally, it does not provide any indication as to how the accused individuals were responsible for the suicide of the deceased.

21. In order to substantiate the accusation, the prosecution has placed reliance on the deposition of CW1-Janardan, CW2-Bhagyamma, CW6-Satish and CW10-Pramila. CW1-Janardan the informant is the father of deceased Priyanka. CW5-Bhagyamma who is the mother of deceased Priyanka, has not spoken about any harassment except stating that on the date of incident, she was summoned to school by teachers and informed her that the deceased had applied Holi colour and were advised. Further CW5 was advised to accommodate for studies of Priyanka in the house. CW6-Satish is the corn vendor near Sankey Tank. He has stated that on the date of incident, deceased have approached him and purchased corn. CW10-Pramila is the mother of deceased Sonali. She has stated that her daughter Sonali used to tell her that accused 1

and 2 used to scold her for not studying properly and she was also scolded for playing Holi.

22. A careful examination of the prosecution material does not constitute an offence punishable under Section 306 of the Indian Penal Code. There is no cogent and cohesive material available to establish the case of the prosecution, and no prima facie case is being made out to showcase that the accused instigated or abetted the deceased to commit suicide.

23. In order to constitute an offence under Section 306 of the Indian Penal Code, there must be an allegation of either direct or indirect act of incitement to the commission of the offence of suicide. Mere allegations of harassment of the deceased by any person would not be sufficient in itself, unless there are allegations of said action on the part of the accused which compel committing suicide, which is inherently absent in the instant case. The contents of the death note reveal that the reason for death is the trouble caused by Philomena Immanuel and Sr. Maria Lila of NIS Mary Immaculate High School, Wilson Garden. Except for this allegation, there is no reference to the nature of trouble caused by accused towards deceased.

24. The Hon'ble Supreme Court, in the case of GEO VARGHESE (supra) has observed that it is the solemn duty of the teacher to instill discipline in the students. It is uncommon that teacher reprimand a student for not being attentive or not being upto the mark in the studies or for bunking classes or for not attending the school. The prosecution papers, including the voluntary statement of the accused, reveals that only in order to safeguard the future educational interest of the deceased students, as they were not up to the mark in preparatory examination, accused have taken special coaching classes to them. Further, the voluntary statement of the accused 1 and 2 reveals that they have not given any mental or physical harassment to the deceased students.

25. Considering the facts and circumstances of the case and also keeping in mind the aforesaid decision of the Hon'ble Supreme Court relied upon by the learned Senior Counsel, I am of the considered opinion that the prosecution has failed to place any sufficient material to frame the charge against the accused for commission of offence punishable under Section 306 of Indian Penal Code. Accordingly, revision petitioners have made out a ground to interfere with the impugned order

passed by the trial Court. Hence, I answer point No.1 in the affirmative.

Regarding Point No.2:

26. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

1. Revision Petition is allowed;
2. Order dated 22nd June, 2016 passed in Spl.C.No.234 of 2015 by the L Additional City Civil and Sessions Judge, Bengaluru, is set aside;
3. Revision petitioners/Accused 1 and 2 are discharged of commission of offence punishable under Section 306 Indian Penal Code;
4. Registry to send the trial Court records along with the copy of this order to the concerned Court.

Sd/-
JUDGE

LNN