

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 4597 of 2016

With
R/CRIMINAL MISC.APPLICATION NO. 2564 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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CHANDRESH VASANTBHAI MALANI
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR ASMI PANDYA, SENIOR ADVOCATE WITH MR GAURAV VYAS (9855)
for the Applicant(s) No. 1
MR UTPAL M PANCHAL (1075) for the Respondent(s) No. 2
MR DHAWAN JAYSWAL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 04/04/2024

COMMON CAV JUDGMENT

1. Since the relief prayed for in both the petitions is to quash a selfsame FIR, those were heard analogously and are being disposed of by this common judgment and order.

2. By way of preferring these applications under Section 482 of the Code of Criminal Procedure, 1973, the applicants seek to invoke the inherent powers of this Court praying for quashing of the FIR being C.R.No.I-12 of 2016 registered with Puna Police Station, Surat for the offence punishable under Sections 306 and 114 of the Indian Penal Code and consequential proceedings arising out of the said FIR.

3. The case made out by the respondent No.2 - original complainant in the First Information Report may be summarized as under:

3.1. The son of the First Informant Rakesh, aged about 18 years, was studying in 12th Science Stream in Samarpan School. On 22nd January, 2016, the son of the complainant has committed suicide by jumping from 11th floor, B Wing of Darshan Residency. It is the specific case of the complainant that she received information from the fellow students of her son viz. Maulik and Sandip that one week before the incident, a student viz. Milan Pansuriya told to the trustee of the school Shri Janakbhai (applicant of Criminal Misc. Application No.2564 of 2016) in the form of

complaint that earlier teaching staff of the school was good and new teaching staff is not comparatively up to the mark. The aforesaid conversation overheard by one teacher Chandresh sir (applicant of Criminal Misc. Application No.4597 of 2016) and therefore he had beaten Milan on that day and asked him the reason as to why he had made complaint to the trustee that new teaching staff was not good one. At that point of time, Chandresh Sir had also administered threat that he will also beat other students on the next coming days. On 21.01.2015, during the class of said Chandresh Sir, an incident of commotion occurred behind the bench of deceased therefore he called his student viz. Rakesh (the deceased) near the dias and without asking anything, he slapped him twice or thrice. Therefore, the deceased asked why he was slapped and beaten in front of the class without any fault on his part. Chandresh Sir replied that he would inform him the reason at 5:10 p.m. Since the deceased insisted upon the reason, at that relevant point of time, the teacher told him that he is spoiling the atmosphere of the classroom and directed him to go out of the classroom and on that day after the school time, the trustee of the school also called the deceased in his office and he was told to go home at around 6 O'clock and on that day, in the evening, the deceased had made a phone call to teacher (Chandresh Sir) by using mobile of his friend and abused him.

3.2. On the very next day, the deceased was instructed by trustee Janakbhai through the caretaker of the school and directed him to sit on fourth floor of the school and he sat over there for more than 2 hours ideally without doing anything and as per the case of the prosecution fourth floor of the school is empty and curricular or any extra curricular activities have not been done over there and thereafter he was called by the trustee and directed that entire incident was brought to the notice of his parents and he should have to leave for home and come along with his parents at 3:00 p.m. and thereafter the said unfortunate incident took place.

4. Heard learned Senior Advocate Mr. Asim Pandya assisted by learned advocate Mr. Gaurav Vyas for the applicants, learned APP Mr. Dhawan Jayswal for the respondent - State and learned advocate Mr. Utpal Panchal for the original complainant.

5. Learned Senior Advocate Mr. Asim Pandya submitted that if Hon'ble Court would go through the contents of the FIR, plainly on the face of the record, it is found out that the basic, necessary and essential ingredients to constitute the offence of Section 306 of IPC are missing. The entire narration of story as well as sequence of events mentioned in the FIR are based upon the hearsay evidence as complainant herself stated that she had inquired and came to know about the incident from other students.

The complainant is not the eye-witness. One of the applicants is a teacher and another is a trustee of the school where the deceased was studying. Learned Senior Advocate Mr. Pandya further submitted that for the sake of arguments without admitting it, if the allegations/accusations levelled against the applicant are to be considered as true and genuine, even though the FIR *prima facie* fails to establish the basic and essential ingredients of Section 306 IPC. Learned Senior Advocate Mr. Pandya further submitted that as per the case of the prosecution, the so-called incident took place due to solitary incident occurred within the school premises between the students and teacher and by no stretch of imagination it can be said that the act of the applicant would fall under the category of aiding or instigating the deceased to commit suicide. It is settled proposition of law and in numerous case laws, the Hon'ble Supreme Court as well as different High Courts have held that for the purpose of attracting the ingredients of provisions of Section 306 IPC, the first and foremost condition which is required to be satisfied is that there must be instigation in some form on the part of the accused which ultimately led the deceased to commit the suicide. Admittedly, from bare perusal of the contents of the FIR, it clearly goes on to show that there was no aid or instigation on the part of the present applicant which led the deceased to commit suicide. Learned Senior Advocate Mr. Pandya further submitted if the sequence of

events mentioned in the FIR is accepted as it is without admitting it, even though, it fails to establish the basic ingredient of commission of crime i.e. '*mens rea*'. Learned Senior Advocate Mr. Pandya further submitted that there was no intention on the part of the present applicant accused to aid and/or instigate the deceased to commit suicide and it is within the knowledge of one and all that for the purpose of attracting the provisions of Section 306 IPC, the act of the instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has left with no choice except to commit suicide and such instigation must be in a close proximity to the act of committing suicide. Learned Senior Advocate Mr. Asim Pandya further submitted that on the ground of absence of essential intention of commission of crime i.e. '*mens rea*' even in the cases where the deceased have purportedly written suicide note by specifically alleging against the concerned accused persons, however, in absence of aid and/or instigation on the part of the accused which ultimately drives the deceased to commit suicide, the Hon'ble Apex Court has quashed number of FIRs, whereas in the instant case, no suicide note is written by the deceased inter alia alleging any aid and/or instigation on the part of the present applicant which led the deceased to commit suicide.

6. To buttress his submissions, the learned Senior

Advocate Mr. Pandya has put reliance upon the decisions of the Hon'ble Apex Court and submitted that law has been crystallized by the Hon'ble Apex court very sufficiently in the catena of decisions which are as under:

1. Mohit Singhal & Anr. v. The State of Uttarakhand & Others rendered in Criminal Appeal No.3578 of 2023;

2. Geo Verghese v. State of Rajasthan, reported in AIR 2021 SC 4764;

3. Kanchan Sharma v. State of Uttarpradesh, reported in AIR 2021 SC 4314;

4. State of W.B. v. Indrajit Kundu, reported in AIR 2019 SC 5164; and

5. Madan Mohan Singh v. State of Gujarat, reported in 2010(8) SCC 628.

7. Learned Senior Advocate Mr. Pandya submitted that the ratio enunciated in the aforesaid case laws would squarely applicable to the facts of the present case and considering the above stated factual aspects, the FIR registered against the applicants and pending consequential proceedings based upon the said FIR would surely fall under the category of abuse of process of law and therefore the same is

required to be quashed and set aside. Learned Senior Advocate Mr. Pandya further submitted that before two months from the date of incident, the deceased was facilitated by the school management since he got second rank in the school, and therefore, his efforts and hard work was appreciated openly in the presence of one and all. Therefore, by no stretch of imagination it can be said that intentionally applicants had insulted and vilified the deceased which ultimately led him to commit suicide. Thus, considering the aforesaid factual aspects, the applications may be allowed and the FIR may be quashed.

8. Learned advocate Mr. Utpal Panchal appearing on behalf of the original complainant has objected present petition with vehemence and submitted that due to the act and action committed by the applicants, one innocent student has lost his valuable life. Learned advocate perused the FIR and submitted that the entire sequence of events of incident is mentioned in the FIR very categorically. It is stated in very clear terms that how the incident is occurred in the school, and at that relevant point of time, in front of entire class, the deceased was insulted and humiliated by the teacher without any fault on his part and as expected as a natural reaction the deceased countered the teacher specifically by putting question to him, why he is been beaten in front of class? And at that point of

time, instead of giving proper answer, he was directed to go outside of the class and it is also found out from the record that before beating the deceased, applicant has not inquired/verified about the identity of the person who has committed the mischief/mistake and without verifying it, the deceased was called upon by the applicant and he was beaten and said fact is also corroborated from the statement of other students. Learned advocate Mr. Panchal further submitted that the students have replied in chorus, specifically stating that Rakesh (deceased) has not committed any mischief/mistake. Learned advocate Mr. Panchal further submitted that by no stretch of imagination the act, conduct behaviour of the deceased would fall under the category of 'non-disciplinary' student. Therefore, the act of the teacher clearly goes on to show that the basic ingredients of Section 306 IPC are fully satisfied in the present case. Learned advocate Mr. Panchal further submitted that, if deceased committed any mistake and misbehaved with the teacher in the class in front of fellow students, in that event, the act of the present applicant to beat him can be said to be justifiable one, but without any fault on the part of the deceased, if teacher had beaten him in front of other students and also insulted by directing him to go out of the classroom, the said act, conduct, behaviour, approach and attitude of the applicant cannot be said to be justifiable one. Just a day before the date of incident, a student viz.

Milan was beaten by the applicant solely on the count that he had made complaint to the trustee regarding poor quality of teaching method of newly recruited teaching staff by praising that the pattern and quality of old teaching staff was good. The said student was also beaten by the applicant solely on the count that he had made complaint to the trustee. Therefore, the conduct, action and behaviour of the present applicant accused is not befitting to the teacher and in a given situation a prudent person cannot behave like this. The complainant is the mother of tender age boy and she has lost his 18 years old son and the son of the complainant has committed suicide on account of the wrongful act and insulting behaviour of the present applicants, as the deceased was insulted, humiliated and vilified by the applicants in front of entire class without any fault on his part. Therefore, both the applications are required to be dismissed with cost.

9. Learned APP Mr. Dhawan Jayswal appearing on behalf of respondent State has objected present applications with vehemence and submitted that the so-called incident is occurred on 22.01.2016 and FIR is registered on 24.01.2016. The applicants have preferred the applications for quashing of the FIR in question and on 03.02.2016, this Court issued rule and granted ad-interim relief in terms of paragraph 9(B) of Criminal Misc. Application No.2564 of 2016. Therefore, charge-sheet is not filed but during the

interregnum period, statements of the student were recorded wherein they have narrated the entire sequence of event of incident and if Hon'ble Court would go through the contents of those statements, in that event, the Court would find that the facts mentioned by the students in their statements are corroborated with the facts mentioned by the complainant in the FIR. Learned APP Mr. Jayswal further submitted that during the course of investigation, the investigating officer has collected CCTV footage of the school premises which clearly goes on to show that on the date of incident, the deceased was directed to go and sit on fourth floor of the school and he sat there for more than 2 hours. Not only that, the CCTV footage of incident of slapping the deceased by the teacher has also been recovered. Learned APP Mr. Jayswal, therefore, submitted that prima facie the story narrated by the complainant at the time of registration of the FIR is supported by the statements of the witnesses as well as other scientific evidences collected by the IO and cumulative effect of all those set of evidences *prima facie* goes on to show that the involvement of the applicant accused in the commission of crime. Therefore, considering the above stated factual aspects, present applications deserve to be dismissed with exemplary cost.

10. Having heard the learned counsel appearing for the parties and having gone through the material

placed on record, it is found out from the record that applicants have been arraigned as accused in connection with FIR being C.R.No.I-12 of 2016 registered with Puna Police Station, Surat for the offence punishable under Sections 306 and 114 of the Indian Penal Code. It is the specific case of the prosecution that the son of the complainant committed suicide on account of the fact that one of the the applicants slapped him in the classroom in presence of other fellow students and he was also made to sit for few hours at fourth floor of the school, on the next day on the basis of instruction issued by the trustee.

11. At this juncture, before adverting to the issue involved in the matter, I would like to refer to certain case laws wherein the Hon'ble Apex Court as well as different High Courts have very succinctly crystallized the position of law so far as Sections 306 and 107 of the Indian Penal Code are concerned. The Hon'ble Supreme Court, in the case of Geo Verghese (supra), observed and held as under:

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under :-

"306. Abetment of suicide.—If any person

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

14. Though, the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium' , 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same. Abetment is defined under Section 107 of IPC which reads as under :-

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

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

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

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

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

16. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh¹ has defined the word 'instigate' as under :-

“Instigation is to goad, urge forward, provoke, incite or encourage to do an act.”

17. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr.² , it was observed as under:-

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

18. In a recent pronouncement, a two-Judge Bench of this Court in the case of Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.³ , while considering the co-relation of Section 107 IPC with Section 306 IPC has observed as under :-

“47. The above decision thus arose in a

situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of the 14 (2014) 4 SCC 453 PART I 33 CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self restraint imposed by law, has the jurisdiction to quash the investigation –and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in State of Haryana vs Bhajan Lal (Bhajan Lal) include a situation where the allegations made in the FIR 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. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in Kamal Shivaji Pokarnekar vs State of Maharashtra.

48. The striking aspect of the impugned judgment of the High Court spanning over fifty-six pages is the absence of any evaluation even prima facie of the most basic issue. The High Court, in other words, failed to apply its mind to a 15 1992 Supp. 1 SCC 335 16 (2019) 14 SCC 350 PART I 34 fundamental issue which needed to be considered while dealing with a petition for

quashing under Article 226 of the Constitution or Section 482 of the CrPC. The High Court, by its judgment dated 9 November 2020, has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant's prayer for interim bail and relegated him to the remedy under Section 439 of the CrPC. In the meantime, liberty has been the casualty. The High Court having failed to evaluate prima facie whether the allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 of the IPC, this Court is now called upon to perform the task."

19. In the case of M. Arjunan Vs. State, Represented by its Inspector of Police⁴, a two-Judge Bench of this Court has expounded the ingredients of Section 306 IPC in the following words:-

"The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C."

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23. In the backdrop of the above discussion, we may now advert to the facts of the present case to test whether the ingredients of offence under Section 306 IPC exist, even prima-facie, to continue with the investigations.

24. The FIR recites that victim boy was under deep mental pressure because the appellant herein had harassed and insulted him in the presence of everyone and he was not willing to go to school on 25.04.2018 but was persuaded to go to school by the complainant. When he returned from the school, again he was under very much pressure and on being enquired told that today again he was harassed and insulted by the GEO, PTI Sir (the appellant). The boy was informed that the parents have been called to school next day and this brought him under further severe pressure and tension."

12. In the facts of the present case, clause secondly and thirdly in Section 107 will have no application. Now, the question remains is as to whether the applicants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have '*mens rea*' to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide. In the present case, taking the contents of the FIR and the statements of the witnesses as correct, it is impossible to conclude that the applicants instigated the deceased to commit suicide by way of so-called humiliation meted out to the deceased. By no stretch

of the imagination, the alleged acts of the applicants can amount to instigation to commit suicide.

13. In the aforesaid decision of the Hon'ble Supreme Court in the case of Geo Varghese (supra), the Hon'ble Supreme Court has observed and held as under:

"32. Considering the facts that the appellant holds a post of a teacher and any act done in discharge of his moral or legal duty without their being any circumstances to even remotely indicate that there was any intention on his part to abet the commission of suicide by one of his own pupil, no mens rea can be attributed. Thus, the very element of abetment is conspicuously missing from the allegations levelled in the FIR. In the absence of the element of abetment missing from the allegations, the essential ingredients of offence under section 306 IPC do not exist.

13.1.As discussed hereinabove, the applicants are teacher and trustee respectively of the school where the deceased was studying and from the facts of the present case, it cannot be said that there was any intention on their part to abet the commission of suicide by one of his own students and therefore no *mens rea* can be attributed. Thus, in the opinion of this Court, the very element of abetment is missing from the allegations levelled in the FIR and in absence of the element of abetment from the allegations, the offence under Section 306 IPC would not be attracted. Moreover, as submitted by learned Senior Advocate Mr. Pandya, the deceased was

facilitated by the school management including the applicants for his achievement of getting second rank in the school and therefore it can hardly be believed that there was any intention on the part of the applicants to abet the commission of suicide by one of his scholar students.

14. At this stage, I would like to refer to the decision rendered by this Court in the case of Lalitbhai Vikramchand Parekh v. State of Gujarat, Criminal Misc. Application No.16032 of 2014 and allied matters decided on 10th April, 2015, wherein the following observations were made:

"11. Abetment of suicide is made punishable by [Section 306](#) which provides that "if any person commits suicide, whoever abets the commission of such suicide, shall be punished." (emphasis supplied) The section does not define the expression "abet", nor is the expression defined in Chapter II of the Code which deals with the general explanations".

However, Chapter V of the Code incorporates an elaborate statement of "abetment". [Section 107](#) in this Chapter defines "abetment of a thing", while [Section 108](#) defines the expression "abettor". This is how these sections run : [Section 107](#)-Abetment of a thing "A person abets the doing of a thing, who First.-Instigates any person to do that thing or Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the .doing of that

thing. Explanation 1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2.---Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

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

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

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

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

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

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

13. As the expressions "abetment" and "abettor" have been legislatively defined, the ordinary dictionary meaning of the expressions would not be determinative of their import. It may, HC-NIC Page 5 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER however, be useful to have a look at the dictionary meaning of the expression "abet". According to Webster, Webster's Third New International Dictionary Vol. I, the expression "abet", means to incite, encourage instigate, or countenance-now usually used disparagingly. According to Wharton, Whartone's Law Lexicon, 14th ed., "abet" means to stir up or excite, to maintain or patronize : to encourage or set on and the "abettor" is an instigator or setter on, one who promotes or procures a crime to be committed. Stroud, Stroud's Judicial Dictionary, 4th ed., has given various meanings of the expression "aid" or "abet", based on judicial pronouncements in England, in the context of different statutes. Thus, according to Hawkins, 51 L J.M.C. 78-R. v. Coney, J., "To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals. Encouragement does not, of necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwillingly encourage another in fact by his presence, by misinterpreted gestures, or by his silence or non-interference- or he may encourage intentionally by expressions, gestures, or actions, intended to signify approval. In the latter case, he aids and abets; in the former he does not." Stroud also cites the case of Du Cros v. Lambourne, 1907 (1) K. B. 40.. in which it was held that "the owner in, and in control of, a motor car which is being driven at an improper speed by a driver who is not his servant, "aids or abets" in the offence if he (the owner) does not interfere." It is further noticed on the basis of decision in the case of Rubie v. Faulkner, 1980 (1) K.B. 571 : "For a supervisor of a learner driver to see that an unlawful act

is about to be done and to fail to prevent it is he can is for him to aid and abet." It is further noticed, on the authority of the decision in the case of Callow v. Tillstone, 83 L.T. 411, that "A man does not by negligence aid and abet a person to expose unsound meat for sale." It is further noticed, on the basis of the decision in the case of Ackroyds Air Travel v. Director of Police Prosecutions, 1950 (1) All. E.R. 933 and Thomas v. Lindop, 1950 (1) All. E.R. 966, that "If a person knows all the circumstances which constitute the offence he will be guilty of aiding and abetting whether he knew that they did in fact constitute the offence or not " Stroud also quotes Lord Goddard C J. in Ferguson v. Weaving, 1951 (1) K.B 814, that "it is well know that the words 'aid and abet are apt to describe the action of a person who is present at the time of the commission of an offence and takes some part therein."

14. It may be useful to refer to some of the early English decisions, dealing with different ways of taking part in a felony, it was recognised that a felony may be committed by the hand of an "innocent agent" who, having no blamable intentions in that he did, incurred no criminal liability by doing it. In such a case, the man who "instigates" this agent is the real offender; his was the last mens rea that preceded the crime, though it did not cause it "immediately but mediately". "Thus, if a physician provides a poisonous draught and tells a nurse that it HC-NIC Page 6 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER is the medicine to be administered to her patient, and then by her administration of it the patient is killed, the murderous physician-and not the innocent nurse-is the principal in the first degree Kel. 52 (T.A.C.)." In English Law, as it stood before the later developments, "a principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed;

for instance, a car-owner sitting beside the chauffeur who kills some one by over-fast driving, or a passenger on a clandestine joy-riding expedition which results in manslaughter 1930 (22) Cr, App. R. 70 : 144 L.T. 185, "or bigamist's second 'wife' if she knows he is committing bigamy, or even be spectators if they actively encourage such a contest even by mere applause. "But a spectator's presence at a prize-fight docs not of itself constitute sufficient encouragement to amount to an aiding and abetting 1882 (8) Q.B.D. 534." It was also recognised that a man may effectively "aid and abet" a crime and at the very moment of its perpetration, without being present at the place where it is perpetrated. "To be guilty of aiding and abetting, a person must either render effective aid to the principal offender or else must be present and acquiesce in what he is doing. Before a person can be convicted of aiding and abetting the commission of an offence, he must at least know the essential matters which constitute the offence 1951 (1) All. E.R. 412(414)." "But acquiescence sufficient to constitute the offence may be established by evidence of the accused persons motive and of his subsequent conduct 1951 (1) All. E.R. 464."

In the category of "accessory before the fact" comes a person who "procures or advises" one or more of the principals to commit the felony. This "requires from him an instigation so active that a person who is merely shown to have acted as the stakeholder for a prize-fight which ended fatally, would not be punishable as an accessory 1875 (2) C.C.R. 147." "The fact that a crime has been committed in a manner different from the mode which the accessory had advised will not excuse him from liability for it. But a man who has counselled a crime does not become liable as accessory if, instead of any form of the crime suggested, an entirely 'different offence is committed 1936 (2) All. E.R. 813." Kenny, Kenny's Outlines of Criminal Law, New ed. by J.W.C.

Turner, p. 88, points out that it is not always easy to decide whether or not the crime actually committed comes within the terms of the "incitement." so as to make the inciter legally responsible for it. He further observed that the courts in some of the older cases tended to "take a strict view of the facts" and refers by illustration to the case of R. v. Saunders, Kel. 52 (T.A.C) and Archer in 1578. referred to in Plowden.

15. For obvious, reasons an act of suicide is not penal, even though an unsuccessful attempt at it is punishable. Suicide takes the victim or the perpetrator outside the purview of penal consequences, even though the common law in England at one time endeavoured to deter men from this crime by the threat HC-NIC Page 7 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER of degradations to be inflicted upon the "suicide's corpse", which by a natural, if unreasoning association of ideas, were often a "potent deterrent", and also by threatening the forfeiture of his goods, a "vicarious punishment" which though falling wholly upon his surviving family, was likely often to appeal strongly to his sense of affection. Thus the man who feloniously took his own life was at one time "buried in the highway", with a stake through his body; and his goods were "forfeited". The burial of suicides lost its gruesome aspect in 1824 when the original mode was replaced by the practice of burial "between the hours of nine and twelve at night", without any service. In 1870, the confiscation of the goods of suicides was put to an end in the general abolition of forfeitures for felony. And in 1882, the statute removed every penalty, except the purely ecclesiastical one that the interment must not be solemnised by a burial service in the full ordinary Anglican form, Kenny's Outlines of Criminal Law, New ed. by J.W.C.,, Turner, p. 138.

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

17. It may be useful to notice some of the Indian decisions on the question of abetment. Among the early cases of abetment of suicide arose out of unfortunate incidents of Sati, which was common

in India, at one time. A person who induced the HC-NIC Page 8 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER woman to return to the pyre after she had once retired from it, and immolated herself, was held to have abetted suicide 1863 (1) R.L.P.J. 174. Where a woman prepared to commit suicide in the presence of certain persons who followed her to the pyre, stood by her and one of them told the woman to say 'Ram Ram' and "She would become sati", the facts were held sufficient to prove the active connivance of these persons and to justify the inference that they had engaged with her in a conspiracy to commit suicide 1871 (3) N.W.P. 316; (1933) A.L.J.R. 7. Where the accused prepared the funeral pyre, placed the victim's husband's body over it, and did not use any force to prevent her from sitting on the pyre and supplied her with ghee which she poured over the pyre were found guilty of abetment of suicide. Where a Hindu woman was burnt in the act of becoming sati, those who assisted her in taking off her ornaments, supervised the cutting of her nails and the drying of her feet, prepared the pyre on which she sat herself and put the corpse upon the pyre, were all held guilty of abetment of suicide. The defence that the abettors were in fact "expecting a miracle and did not anticipate that the pyre would be ignited by human agency was rejected, 1928 (8) Pat. 74. Similarly, where the accused, who were members of a crowd, who had joined the funeral procession from the house of the victim to the cremation ground, and were shouting "Sati Mata Ki Jai" it was held that all those persons, who joined the procession were aiding the widow in becoming sati and were guilty of an offence under [Section 306](#) of the Penal Code, 1958 Cr. L J. 967, 1958 Raj. 143.

18. Some later decisions arising out of other instances of instigation throw further light on the question. In the case of Parimal Chatterjee and others A.L.R 1932 Cal. 760, a Division Bench of the Calcutta High Court observed that the word

"instigate" literally means to goad or urge forward or to provoke, incite, urge or encourage to do an act. A person may however not only instigate another, but he may co-operate with him and his Co-operation - may consist of a conjoint action and that would amount to abetment. In the case of [State of Bihar v. Ranen Nath](#) and other A.I.R. 1958 Patna 259, a Division Bench of the Patna High Court was construing [Section 27](#) of the Industrial Disputes Act which uses the expressions 'Instigation and incitement' and observed that the words "should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement" and it was held that the words seem to convey the meaning "to goad or urge forward or to provoke or encourage the doing of an act." It was further observed that what acts should amount to instigation or incitement within the meaning of that section will depend upon the "particular facts of each case", and that in some circumstances a "throw of a finger" or "a mere turning of the eye" may give rise to an inference of either "incitement or instigation", and yet in others even "strong words, expressly used, may not mean that the person using them was

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2015 R/CR.MA/6788/2015 ORDER stimulating or suggesting to anyone to do a particular act." The court expressed the view that there must be something "tangible" in evidence to show that the persons responsible for such action were "deliberately trying to stir up other persons to bring about a certain object". According to a division bench of the Calcutta High Court, a person abets the doing of a thing when he or she, inter alia. "instigates any person to do that thing." The other modes of abetment, besides instigation, are "conspiracy and intentional aid". The word "instigation" literally means "to goad or urge forward to do an act." "It is something more than co-operation." In the case of

Shri Ram and another, 1975 (2) S.C.R. 622, the Supreme Court observed that in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. "Mere proof that the crime charged could not have been committed without the interposition of the alleged abetter is not enough compliance with the requirements of Section 107". A person may, for example, "invite another casually or for a friendly purpose and that may facilitate the murder of the invitee". But unless the invitation was extended "with intent to facilitate the commission of the murder", the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor "happens to facilitate the commission of the crime". "Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107".

19. In case of suicide how the evidence is required to be appreciated has been stated by the Hon'ble Supreme Court in number of judgments. In [State of West Bengal v. Orilal Jaiswal](#), (1994) 1 SCC 73, the Hon'ble Supreme Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. Further the Hon'ble Supreme Court in case

of Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the HC-NIC Page 10 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER basis of its own facts and circumstances.

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

"15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under [Section 306](#) IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of [Section 306](#) IPC is not sustainable."

"16. In order to bring a case within the purview of [Section 306](#) of IPC there must be a

case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under [Section 306](#) IPC."

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

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

13. In [State of W. B. v. Orilal Jaiswal](#) this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive or ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belongs and such HC-NIC Page 11 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER petulance, discord and differences were not expected to induce a

similarly circumstances individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

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

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract [Section 306](#) IPC there has to be a clear mens tea to commit the offence."

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

"Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

24. In [Sanju alias Sanjay v. State of M.P.](#), (2002) 5 SCC 371. the deceased committed suicide

on 27.7.1998. whereas, the alleged quarrel had taken place on 25.7.1998 when it was alleged that the appellant had used abusive language and also told the deceased to go and die. The Supreme Court in the said circumstances held that the fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it was not the direct result of the quarrel taken place on 25.7.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die.

25. Taking note of various earlier judgments, in M. Mohan u. State Represented the Deputy Superintendent of Police, (2011) 3 SCC 626. the Supreme Court held that "Abetment involves mental process of instigating or intentionally aiding a person in doing of a thing. There should be clear mens rea to commit offence under Section 306. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push HC-NIC Page 12 of 15 Created On Sun Dec 06 01:54:01 IST 2015 R/CR.MA/6788/2015 ORDER victim into a position that he commits suicide."

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

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

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

It was a proposition relating to criminal prosecution.

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

29. Accepting the allegations made against the applicants by the prosecution as it is, they do not constitute the offence of abetment. I am conscious of the fact that five persons of one family lost their lives on account of drastic step taken by them for no reason. It is very

difficult to understand the mental state of mind of such persons who take an extreme step of putting an end to their life voluntarily by committing suicide."

15. Having regard to the provisions of Sections 107 and 306 of the Indian Penal Code and the principle laid down by the Supreme Court in various decisions referred to in the case of Lalitbhai Vikramchand Parekh (supra), it is apparent that in a case under Section 306 of the Indian Penal Code, there should be correct *mens rea* to commit the offence under this section and there should be direct and active role by the accused, which led the deceased to commit the suicide, that is to say that there cannot be same evidence of "instigation" or "initial assistance" by the accused to commit suicide by the victim/deceased.

16. The Hon'ble Apex Court in the recent decision in case of *Mahmood Ali & Ors. v. State of U.P. & Ors.*, rendered in *Criminal Appeal No.2341 of 2023*, observed and held as under:

"11. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604. The parameters are:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in

their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) 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.”

We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of [Bhajan Lal](#) (supra).

12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under [Section 482](#) of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under [Article 226](#) of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of

investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

13. In [State of Andhra Pradesh v. Golconda Linga Swamy](#), (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

"5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In [R.P. Kapur v. State of Punjab](#), AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power

can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under [Section 482](#) of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death...." (Emphasis supplied)

17. The scope and ambit of inherent powers of the

Court under Section 482 Cr.P.C. or the extra-ordinary power under Article 226 of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, the High Court has inherent power to act *ex debito justitiae* i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed. Thus, from the aforesaid discussion, I am of the opinion that the allegations in the first information report if taken at its face value and accepted in their entirety, they do not constitute the offence alleged.

18. I am conscious of the pain and suffering of the complainant who is the mother of the deceased boy. It is also very unfortunate that a young boy has lost his life but as observed by the Hon'ble Supreme Court in the case of Geo Verghese (supra), the sympathy of

the Court and pain and suffering of the complainant, cannot translate into a legal remedy, much less a criminal prosecution.

19. In the result, the applications succeed and are hereby allowed. Accordingly, the FIR being C.R.No.I-12 of 2016 registered with Puna Police Station, Surat for the offence punishable under Sections 306 and 114 of the Indian Penal Code and consequential proceedings arising out of the said FIR are hereby quashed and set aside.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI