

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 22198 of 2018****With****R/CRIMINAL MISC.APPLICATION NO. 14677 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIRZAR S. DESAI Sd/-**

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

RAMESH BABUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Cri.Misc. Appln. No. 22198 of 2018

MR SHALIN MEHTA, SR. ADVOCATE WITH MR ABHISST K THAKER

(7010) for the Applicant(s) No. 1

Cri.Misc. Appln. No. 14677 of 2018

MR MITUL SHELAT for MR RUTUL DESAI for the Applicant(s) No..1

MR NIKUNJ SAVALIYA for MR CHAITANYA M VYAS(5651) for the Respondent(s) No. 2

MR HARDIK SONI, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI**Date : 18/08/2022****COMMON ORAL JUDGMENT**

1 Both the applications are arising out of the same FIR being CR No.I-32 of 2018 registered with Vadodara Taluka (Rural) Police Station, Vadodara for the offences punishable under Sections 306 & 114 of the Indian Penal Code and Criminal Case No.40106 of 2018 pending before the court of learned Chief Judicial Magistrate, Vadodara.

2 Heard Mr.Abhisht Thaker, learned advocate for the applicant in Criminal Misc. Application No.22189 of 2018, Mr.Mitul Shelat, learned counsel with Mr.Rutul Desai, learned advocate for the applicant in Criminal Misc. Application No.14677 of 2018, Mr.Hardik Soni, learned Additional Public Prosecutor for the State respondent and Mr.Nikunj Savaliya, learned advocate for Mr.Chaitanya Vyas, learned advocate for the respondent No.2 – original complainant in both the matters.

3 By the consent of learned advocates for the parties, both the matters were taken up for hearing.

Hence, Rule. Mr.Hardik Soni, learned Additional Public Prosecutor waives rule for the State respondent and Mr.Savaliya, learned advocate waives rule on behalf of respondent No.2 in both the matters.

4 Brief facts giving rise to both the applications are states as under.

4.1 One Heenaben, widow of Alpeshbhai Vinubhai Thakkar filed the impugned FIR on 11.5.2018. It is alleged in the FIR that her husband was into the business of building construction as contractor through his firm `Sahyog Infrastructure Works' and used to carry out construction work of Ramesh Babubhai Patel, the applicant of Misc. Criminal Application No.22198 of 2018, who is owner of Kasata Hometech (India) Pvt. Ltd. as also the work of Hitesh Shah, Managing Director of Acquafil Polymers Co. Pvt. Ltd., who happens to be the applicant of Misc. Criminal Application No.14677 of 2018.

4.2 According to the complaint, upon carrying out the construction work for the firms of both the applicants, the husband of the complainant was required to get the outstanding amount of Rs.4,50,00,000/- from the applicant of Criminal Misc. Application No.22198 of 2018 and around Rs.15,00,000/- from the applicant of Criminal Misc. Application No.14677 of 2018. The husband of the complainant went to the office of Ramesh Babubhai Patel before a month of registration of the FIR and requested him to pay the outstanding amount. However, Ramesh Babubhai Patel did not pay the outstanding amount of Rs.4,50,00,000/- and told the husband of the complainant that the bills raised by him were not genuine and when the husband of the applicant said that if the amount is not paid to him, he will have to die. At that point of time, Ramesh Babubhai Patel told husband of the complainant that he may do whatever he likes and if he wanted to die, he may die and he will not pay the amount requested by him. Similarly, when the complainant along with her husband visited other persons, all of them refused to

pay the alleged outstanding amount to husband of the complainant. As per the complaint, a whatsapp group with title of 'Alvida' was created by the husband of the complainant and in that group he added three persons viz. Gaurav, Mehul and Tarun, with whom he used to work with him and sent a message to them that despite having worked sincerely on the construction sites and completing the projects his outstanding dues were not paid and he had even paid interest of around Rs.3,50,00,000/- in respect of the aforesaid sites and now he was fed up, and therefore, committing suicide. Ultimately, while driving the car, the complainant and her husband consumed poison together. However, thereafter the husband of the complainant Alpesh died and the complainant was discharged from the hospital and thereafter she filed the impugned FIR, in all against 12 persons, including the present applicants.

5 Mr.Shalin Mehta, learned Senior Advocate with Mr.Abhisst Thaker, learned advocate for the applicant in Criminal Misc. Application No.22189 of

2018 and Mr.Mitul Shelat, learned counsel with Mr.Rutul Desai, learned advocate for the applicant in Criminal Misc. Application No.14677 of 2018 jointly submit that even if the FIR is believed as it is, then also it would not constitute any offence, which can be attributable to the present applicants. Learned counsels appearing for the applicants in both the applications relied upon the judgment of the Hon'ble Apex Court in the case of **Sanju vs. State of Madhya Pradesh** reported in **2002(5) SCC 371** and submitted that in respect of Section 306 of the Indian Penal Code, the Hon'ble Apex Court has held that, a word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation. It is further submitted that even if Rameshbhai Babubhai Patel, the applicant of Criminal Misc. Application No.22198 of 2018 has uttered the words like, you may do whatever you like and if you want to die, you may die, then also that itself does not constitute the ingredients of instigation. There must be presence of mens rea, and therefore, the present

applicants cannot be said to have committed offence under Section 306 of the Indian Penal Code.

5.1 Learned counsels for the applicants also submitted that in the FIR itself it is stated that, the present applicants and the complainant met before a period of almost a month before the date of registration of FIR. The FIR was filed on 11.5.2018, whereas the husband of the complainant committed suicide on 16.4.2018 and the complainant came to know about the same on 21.4.2018. The complainant was discharged from hospital on 27.4.2018, and about 15 days thereafter, FIR against the present applicants was registered on 11.5.2018. Therefore also learned counsels for the applicants submitted that ingredients of instigation cannot be established against the applicants.

5.2 Learned counsels for the applicants also submitted that the complainant has initiated civil proceedings against the accused No.1 - Ramesh Babubhai Patel. It is further submitted that with

regard to the outstanding amount, dispute was going on between the parties. Learned counsels further submitted that in all there are 12 accused, out of them in case of 3 accused i.e. accused Nos.7, 10 and 11 viz. Dilipbhai Devjibhai Trambadiya, Ketanbhai Amrutbhai Patel and Kamleshbhai Bhikhabhai Patel, the dispute was settled between the parties and accordingly application for consent quashing was preferred by the above three accused persons being Special Criminal Application No.6037 of 2018 and ultimately the impugned FIR as well as all the consequential proceedings arising there from were quashed by a co-ordinate Bench vide order dated 24.6.2021.

5.3 Learned counsels further drew attention of this Court that even on merits, case of one Nileshbhai Arvindbhai Gandhi, Director of Cube Construction Engineering Limited, was considered by a co-ordinate Bench in Criminal Misc. Application No.13010 of 2018, which was decided vide CAV Judgment dated 17.2.2020 and ultimately co-ordinate Bench

while allowing the application quashed and set aside the impugned FIR and all consequential proceedings arising out of the same qua that applicant.

5.5 Learned counsels appearing for the applicants submit that considering the fact that the impugned FIR was quashed by a co-ordinate Bench in the above referred application and as the role of the present applicants is identical to the role of the above applicants, this Court may exercise powers under Section 482 of the Code of Criminal Procedure and quash and set aside the impugned FIR and all consequential proceedings arising there from qua the present applicants.

6 Mr.Hardik Soni, learned Additional Public Prosecutor and Mr.Savaliya, learned advocate appearing for respondent No.2 – original complainant vehemently opposed both the applications. Learned advocate Mr.Savaliya submitted that as far as three accused persons viz. Dilipbhai Devjibhai Trambadiya, Ketanbhai Amrutbhai Patel and Kamleshbhai Bhikhabhai

Patel, FIR and consequential proceedings in respect of the aforesaid FIR were quashed by co-ordinate Bench as the dispute between the parties was settled and hence the order dated 26.6.2021 in Special Criminal Application No.6037 of 2018 was passed on the basis of consent given by the complainant, and therefore, the same may not be considered by this Court while considering the case of the present applicants.

6.1 Learned advocate Mr.Savaliya further submitted that it is only and only because of non-payment of dues by the present applicants, a situation was created by the applicants, which compelled husband of the complainant to commit suicide. However, learned advocate Mr.Savaliya could not point out as to how the role of the applicants is different as compared to the role of the applicant of Criminal Misc. Application No.13010 of 2018 in respect of whom the impugned FIR and all consequential proceedings were quashed by taking into consideration the merits of the matter by co-ordinate

Bench vide CAV judgment dated 17.2.2020.

6.2 Learned advocate Mr.Savaliya by making the aforesaid submissions prayed for dismissal of both the applications.

7 Mr.Soni, learned Additional Public Prosecutor tried to distinguish the role of the applicants of Criminal Misc. Application No.22198 of 2018 by stating that it was the applicant of Criminal Misc. Application No.22198 of 2018 who instigated the husband of the complainant to commit suicide as he said to the husband of the complainant that, you may do whatever you like and if you want to die, you may die. Mr.Soni, learned Additional Public Prosecutor further submitted that the utterance of the aforesaid words would clearly indicate that it is only on the basis of the instigation of the applicant of Criminal Misc. Application No.22198 of 2018, the husband of the complainant committed suicide, and therefore, once the charge sheet is filed and when the prima facie offence qua the present applicants is

disclosed, the impugned FIR and all consequential proceedings may not be quashed, more particularly, when the investigation has revealed the role of the applicants, the impugned FIR may not be quashed and the applicants may be directed to face the trial. However, Mr.Soni, learned Additional Public Prosecutor could not distinguish the role of the applicants of Criminal Misc. Application No.14677 of 2018 to the role of the applicant of Criminal Misc. Application No.13010 of 2018.

8 No other submissions were made by learned counsels appearing for the parties nor any other judgments were relied upon by learned counsel for the parties except those which are referred to in the foregoing paragraphs.

9 I have heard learned counsels for the parties and perused the record. On perusal of documents on record, I found that though the complaint was registered on 11.5.2018, but the unfortunate incident took place on 16.4.2018 when the

husband of the complainant committed suicide. It is understandable that on 16.4.2018, the complainant and her husband consumed poison together, and thereafter the complainant informed about the death of her husband on 21.4.2018, as stated by the complainant in the complaint itself. She was thereafter discharged from hospital on 27.4.2018. Further, as per the complaint, on reaching the home after getting discharged from hospital, the complainant tried to search for certain bills about the outstanding payment from the applicants and other builders for whom the deceased husband had worked. The complaint does not indicate anything about why there was a delay of more than 15 days even after the complainant was discharged from hospital. Further, the complaint itself states that the complainant was well aware of the fact that her husband was demanding some outstanding amount from the applicants and she herself accompanied the deceased to the office of the applicant No.1 and when the applicant has allegedly uttered the word to the deceased that, you may do whatever you like and if you want to die, you may

die, which according to the complainant amounts to instigating the deceased to commit suicide. However, though the aforesaid incident has allegedly taken place one month before the registration of the FIR, but complaint was filed on 27.4.2018 and the complaint is absolutely silent about the delay of more than 15 days in registering the FIR.

9.1 Learned Senior Advocate Mr. Shalin Mehta with Mr. Abhisht Thaker and learned advocate Mr. Mitul Shelat appearing with learned advocate Mr. Rutul Desai relied upon the judgment of the Hon'ble Apex Court in the case of **Sanju (supra)** wherein in paragraphs 12 and 13, the Hon'ble Apex Court observed as under and ultimately quashed and set aside the proceedings of sessions trial, which was subject matter of challenge before the Hon'ble Apex Court:

12 In Ramesh Kumar v. State of Chhattisgarh MANU/SC/0654/2001 : 2001 CriLJ 4724, 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 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 for abetting the offence of suicide should be found guilty."

13 Reverting to the facts of the case, both the courts below have erroneously accepted the

prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the

alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

9.2 I have also considered the fact that in respect of the very same FIR, while considering the merit of the matter, a co-ordinate Bench of this Court while considering the case of Nileshbhai Arvindbhai Gandhi in Criminal Misc. Application No.13010 of 2018. In paragraphs 11, 12, 13, 14 and 15 of the CAV judgment dated 17.2.2020, it is observed

as under:

"11. To constitute an offence u/s 306 of the IPC, it has to be established that a person committed suicide and that such suicide was abetted by the accused. An offence u/s 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of abetment have been stated in section 107 of the IPC. In order to prove that the accused abetted commission of suicide by a person, it has to be established that accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words, or willful omission or conduct to make the deceased move forward in a direction and secondly that the accused had intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. The definition of "abetment" as given in section 107 of the IPC not only includes instigation, but also intentional aiding by an illegal omission.

12 Bearing in mind the scope of provisions of sections 306 and 107 the IPC, if we analyzed the scrutinized the FIR and other material as it is,

does not disclose with any qualified clarity to come to conclusive finding that the applicant's unassailable finding of culpability u/s 306 of the IPC. The material on record and facts of the case as asserted in the application do not indicate prima facie any act of cruelty or harassment mentally or physically so as to persistently/continuously provoke the deceased to take extreme steps with no other option. No such persistent or consistent applicant's conduct, which requires culpability, is found in the present case, more particularly, from the averments/allegations made in the FIR itself. The facts, as brought on record, clearly indicate that the contract between the applicant and the deceased came to be terminated on account of slowness of the work on 8.7.2013 and the deceased was paid the money under work contract and such payment was made as far back as in the year 2013 itself. Such fact reflects in the TDS form No.16A and also in the ledger account of the deceased contractor. So, in absence of any contractual relationship between the parties, more particularly, applicant - original accused No.6 and the deceased during the interregnum period from the date of termination of contract till the date he committed suicide and in absence of any steps taken by the deceased to ventilate any grievance

on the order of termination of contract or non-payment of any money under the contract and in absence of any legal proceedings being filed or initiated by the deceased, there cannot be any instigation by the applicant. Apart from it, there is no proximity or reasonable link between the commission of suicide and act attributed to the applicant - original accused No.6.

13. Thus, bare reading of complaint does not reveal any instigation by the applicant herein in a manner, which can be said to have pushed the deceased to take extreme steps of ending of his life. The complaint does not mention any specific instance of any instigation or doing of any act by the applicant, which can be said to cause any pressure upon the deceased so as to end his life. Thus, looking to the allegations made in the FIR vis-a-vis uncontroverted facts asserted and averred in the present petition u/s 482 of the Code of Criminal Procedure, 1973, there is no iota of evidence that the deceased ever visited the applicant's company for his alleged dues either immediately before the date of her husband committing suicide or even after termination of the work order till the date of suicide.

14. In light of this position and material on record, prima facie, no any case is made out to infer occurrence of any offence u/s 306 of the IPC, as alleged in the FIR and considering over all facts and circumstances of the case, present Criminal Misc. Application deserves to be accepted.

15. Resultantly, this application is allowed. Impugned F.I.R. being C.R.No.I-32 of 2018 registered with Vadodara Taluka Police Station for the offence u/s 306 and 114 of the IPC and other consequential proceedings arising out of the impugned FIR is hereby quashed and set aside qua present applicant only. Rule is made absolute to the aforesaid extent. Direct service is permitted.”

9.3 Considering the fact that in respect of identically situated person, a coordinate Bench has quashed the FIR and further proceedings by making the aforesaid observations, and therefore, the case of the applicant of Criminal Misc. Application No.14677 of 2018 would be squarely covered by the aforesaid CAV Judgment dated 17.2.2020 in the case of Nileshbhai Arvindbhai Gandhi. As far as the case of

Rameshbhai Babubhai Patel, applicant of Criminal Misc. Application No.22198 of 2018 is concerned, it is alleged in the FIR that he was the one who uttered those words and instigated the deceased to commit suicide. Therefore, the case of Rameshbhai Babubhai Patel, applicant of Criminal Misc. Application No.22198 of 2018, is required to be examined in light of the observations made in paragraphs 12 and 13 of judgment of the Hon'ble Apex Court in the case of **Sanju (supra)** and it would make it abundantly clear that the case of the applicant of Criminal Misc. Application No.22198 of 2018 would be squarely covered by the judgment of the Hon'ble Apex Court in the case of **Sanju (supra)**.

9.4 As far as the submission of Ms.Soni, learned Additional Public Prosecutor that now the charge sheet is filed and there is ample material against the applicants, and therefore, at this stage this Court may not exercise powers under Section 482 of the Code of Criminal Procedure and quash the complaint and all consequential proceedings is

concerned, this Court is of the view that when coordinate Bench has vide CAV Judgment dated 17.2.2020 quashed the FIR and all consequential proceedings in respect of that applicant of Criminal Misc. Application No.13010 of 2018 viz. Nileshbhai Arvindbhai Gandhi, the charge sheet was already filed, as according to learned advocate Mr. Thaker, the charge sheet was filed on 27.11.2018 itself. Further, as submitted by learned advocates for the applicants that the CAV Judgment dated 17.2.2020 passed in Criminal Misc. Application No.13010 of 2018 has become final and there are no proceedings against the said judgment. Learned advocate Mr.Thaker has even produced the order dated 2.7.2022 passed by the 8th Additional District and Sessions Judge, Vadodara in Sessions Case No.53 of 2020 below Exh.1 whereby the learned Judge has closed the proceedings qua accused Nos.5, 6, 7 and 8 in view of the order passed by this Court.

9.5 Considering the aforesaid reasons as well as considering the fact that the learned advocate for

the complainant as well as learned Additional Public Prosecutor could not point out any material against the applicants which would distinguish the case of the applicants to the case of Nileshbhai Arvindbhai Gandhi in respect of whom the FIR and all further proceedings are quashed and for the reasons recorded above, impugned FIR being CR No.I-32 of 2018 registered with Vadodara Taluka (Rural) Police Station, Vadodara for the offences punishable under Sections 306 & 114 of the Indian Penal Code and Criminal Case No.40106 of 2018 pending before the court of learned Chief Judicial Magistrate, Vadodara are hereby quashed and set aside qua both the applicants.

Rule is made absolute to the aforesaid extent.
However, there shall be no order as to costs.

P. SUBRAHMANYAM

Sd/-
(NIRZAR S. DESAI,J)