

(SHRI VEERENDRA SINGH PAL -DY. ADVOCATE GENERAL
AND SHRI ARSHAD ALI – ADVOCATE FOR RESPONDENT
NO.1)

Reserved on : 29-08-2023
Delivered on : 24-01-2024

This petition having been heard and reserved for orders coming on for pronouncement this day, delivered the following:-

ORDER

1. The present petition under Section 482 of Cr.P.C. is preferred by the petitioner seeking following reliefs:

“1. May it please this Hon'ble Court, the Petitioner humbly prays for:

a. That this Hon'ble court may kindly be pleased to allow this Petition and Charge sheet bearing Challan No. 01 filed in relation to the F.I.R. bearing Crime No. 371/2022 registered on 04th November, 2022 lodged at Police Station Bilauva, District Gwalior, M.P. for the offence alleged u/s. 306, 34 of the Indian Penal Code, 1860 as well as all other consequential proceedings arising therewith qua the present petitioners in relation to the aforesaid crime number, may kindly be quashed and set aside.

b. For such further and other relieves as this Hon'ble Court may deem fit be granted.”

2. Petitioner No.1 is Principal of Vivekanand School, Tekanpur, Dabra District Gwalior, petitioner No.2 is Vice -Principal of Vivekanand

School, Tekanpur, Dabra District Gwalior and petitioner No.3 is Teacher at Vivekanand School, Tekanpur, Dabra District Gwalior. Petitioners are taking exception to registration of FIR and trial conducted as referred above.

3. Case of the prosecution as disclosed from the details scribed in the FIR dated 04-11-2022 containing the allegations that the deceased Mahendra Kushwah alias Rohit Kushwah used to study in Class 12th in Vivekanand Higher Secondary School, TCP. Around 10:35 am school had lunch interval and thereafter classes reassembled. 15 minutes thereafter, some boys blasted some crackers in the school toilet which created disturbance in the classes. School management immediately responded, searched bags and pockets of the students and found students namely, Mahendra Kushwah, Ritik Raj and Ashish Yadav as mischievous students. They were taken before the Principal of the school namely Virendra Singh Rana – petitioner No.1 herein. He admonished them for their conduct and as alleged petitioner No.2 talked to their parents and asked them to visit the Principal next day, so that parents may be apprised about the misconduct of their children. Apparently, this way, a psychological pressure is mounted on students to behave properly in future.
4. Being disturbed by such admonition and alleged insult, Mahendra Kushwah (one of the students) went to his house and in afternoon around 3:30 pm he committed suicide by hanging himself. On complaint, case was registered against the petitioners for offence under Sections 306 and 34 of IPC.
5. Matter was investigated in which petitioners were implicated as accused and after investigation, charge-sheet was filed. The said

charge-sheet is under challenge by way of this petition.

6. It is the submission of learned counsel for the petitioners that petitioners are teachers of the school where deceased pupil Mahendra Kushwah was studying. The deceased caused nuisance in the school with his friends by blasting crackers in bathroom of the school whereby wall of the bathroom got damaged, then to protect the interest of other students, deceased was admonished for the same. A call was made to the house of Mahendra Kushwah at mobile No.9516999146 and parents of other two students and parents were directed to remain present on the next day to avoid repetition of such event. Therefore, whole exercise was done as a measure to protect the other students and to make erring pupil realized their misconduct. School authorities are meant for this purpose and therefore, there was no element of abetment as such as per Section 107 of IPC.
7. It is further submitted by learned counsel for the petitioners that by admonition, the children were persuaded or even compelled to behave in proper manner so that they can learn good values from the school and become good citizen. It is not a case where petitioners intentionally harboured a notion against the deceased. In fact, no physical torture or violence is being made. It is a case of simple imposing social control by way of scolding.
8. Learned counsel for the petitioners argued at length and relied upon the judgment of Apex Court in the case of **Geo Varghese Vs. State of Rajasthan and another, (2021) 19 SCC 144**. According to him, said case also bears discussion of almost similar set of facts and therefore, applies in the present case. He also relied upon the judgment of Bombay High Court in the case of **Ms. Rekha alias Vidhila Faldessai**

Vs. State Through PP, 2023 SCC OnLine Bom 271. It is not a case of even corporal punishment. He further relied upon the judgment of Apex Court in the case of **Sathish Mehra Vs. State of N.C.T. of Delhi and Anr. 2013 Cri.L.J. 411** and the judgment of this Court in the case of **Ravikant Vs. State of M.P. and another, 2014 (1) MPLJ (Cri.) 282** to submit that at later stage of trial even petition under Section 482 of Cr.P.C. is maintainable.

9. Learned counsel for the petitioners by way of synopsis referred different types of Social Controls to be exercised over a child and it includes Shaming also. Therefore, petitioners did not abet or instigate deceased in any manner.
10. Learned counsel for the respondent/State opposed the prayer. According to counsel for the respondent/State, trial will unfold the truth because nature of culpability is to be seen by way of evidence. He relied upon the judgment of Apex Court in the case of **Central Bureau of Investigation Vs. Aryan Singh Etc. 2023 SCC OnLine SC 379.**
11. Learned counsel for respondent No.2/complainant also opposed the prayer and submitted that trial is going on and evidence of some of the witnesses have taken place. Therefore, at this stage, no case for interference is made out. Child of complainant committed suicide because of scolding of petitioners. Therefore, being sensitive in nature, deceased committed suicide. If petitioners would not have scolded him then he would not have committed suicide. Their role is apparent for instigation. He relied upon the judgment of Apex Court in the case of **Manik B. Vs. Kadapala Sreyes Reddy and Anr. passed in SLP No.2924 of 2023.** He prayed for dismissal of this petition.
12. **Heard** learned counsel for the parties at length and considered the

documents appended thereto.

13. This is a tragic case where a young boy committed suicide. Really painful for the family and for the society when such young life was consumed by the vagaries of life in such manner.
14. However still question arises **“Whether the alleged act of scolding and reprimand of a Student by a Teacher would be an Attempt of Course Correction or would Constitute an Offence”**.
15. In earlier days it is usually called “spare the rod and spoil the child”. In vernacular school premises, it is gloriously reiterated “छड़ी पड़े छमा-छम, विद्य आये घमा-धम”. In a way corporal punishment was the only mode of course correction. Earlier Vedic Gurukuls and Jesutis' induced Convent Schools engaged in giving harsh punishment as they believed in such measures as the only mode for course correction. But with time, things changed.
16. Later on, many other ways of course correction were employed. Now a days, corporal punishment is banned by virtue of Section 2(24) read with Section 82 of Juvenile Justice (Care and Protection of Children) Act, 2015 which provides punishment in terms of fine and disciplinary action for first offence and for subsequent offence with imprisonment for three months.
17. However to correct the deviant nature of individuals specially school going children, different tools in form of Social Control are devised. Social Control Theory is one of the facets of Sociology as well as Criminology which provides ways to correct a deviant nature of individual by use of various modes. It bifurcates into Formal Social Control (through law, police, institution, officer, organization etc.) and

Informal Social Control which includes different mechanism.

18. As per Chekroun, 2008 p. 214 as contained in *HelpfulProfessor.com*, Informal Social Control is the sanctioning of an individual by a peer... or a group member, someone with the same or with a different social statuswhose specific social role or social function is not to sanction the transgression of social norms.
19. Different Informal Social Controls have been prescribed which includes Shaming a peer and Praising a student for their hard work. Following Informal Social Control examples are given by SanamVaghefi (Ph.D. Candidate) a peer reviewed by Chris Drew (Ph.D.) 2023. The said authors referred 16 examples of Informal Social Control along with definition, they are as under.
 1. **Shaming:** Shaming is an informal type of social control which is often applied by someone's peers, social group or society to discourage their behaviors or attitudes that are seen as socially unacceptable.
 2. **Praising:** Praisal is an informal social control strategy which often takes place in interpersonal contexts to encourage the continuity of a behavior or a trend.
 3. **Gossiping:** Gossiping is a collective form of informal social control which can create social pressure on individuals. Talking about someone behind their back can lead to their stigmatization and/or social exclusion from a community.
 4. **An Aggressive Comment:** Making an aggressive comment can be an informal social control against unwanted or deviant social behavior or trends.
 5. **A Personal Insult:** Insulting is a negative form of informal

social control which is a reaction to deviant or unwanted behavior.

6. **A Polite Comment:** Making a polite comment can be an informal means of either encouraging or discouraging an attitude.
7. **An Angry Look:** Looking to someone in an angry way is a non-verbal reaction which can be considered an informal social control mechanism as it shows discontent.
8. **A Loud Audible Sigh:** Sighing loudly and audibly is a non-verbal way of reacting to an unwanted situation, which can be classified as a way of informal social control (Chekroun, 2008).
9. **Physical Aggression:** In some communities, physical aggression against someone who behaves in an unwanted or deviant way can be an informal social control strategy. However in some other contexts, physical aggression itself can be considered a deviant behavior too.
10. **Informal Dress Codes:** Informal dress codes are unwritten expectations about how to dress somewhere, which is asserted by how the majority dresses. These unwritten expectations can be considered as a type of informal social control.
11. **Ignoring:** Ignoring someone who behaves in a socially unacceptable way is a form of informal social control which can be an effective way of discouraging certain behaviors or attitudes.
12. **Encouraging:** Encouraging someone to engage in positive behaviors or attitudes is an informal social control strategy which can reinforce desirable behaviors or trends.

13. **Social Support:** Social support is a form of informal social control which can be used to promote positive behaviors or attitudes, by providing encouragement and reinforcement.
14. **Nonverbal Cues:** Nonverbal cues, such as shaking one's head or rolling one's eyes, can be an informal means of expressing disapproval or disagreement.
15. **Humor:** Humor can be used as a form of informal social control to discourage unwanted or deviant behavior, by making light of the situation and defusing tension.
16. **Peer Feedback:** When peers, rather than teachers or other authority figures, give each other negative or positive feedback about their actions or performance.
20. According to Sociologist Albert Hunter there are three types of Informal Social Controls which can be categorized as Private, Parochial and Public. According to Hunter's categorization, they are as follows:
- i. Private Social Control is enforced by friends and family.
 - ii. Parochial Social Control is enforced by close contacts such as neighbours and colleagues.
 - iii. Public Social Control is maintained by one fellow citizens.
21. In Sociology we tend to look four types of norms that can affect our behaviours:

Type of Norms	Description	Mode of Enforcement
Folkways	Folkways are customs that we follow but are often not written down. We learn them through	Informal Social Control: Social pressure, social inclusion, gossiping, praising etc.

	intuition as we grow up.	
Mores	Mores are moral norms. If you break them, you would be seen as not just in poor taste, but immoral. They're often linked to religious rules.	Informal Social Control: Ignoring, shunting, gossiping etc.
Taboos	Taboos are 'negative norms' - things that people find offensive and socially inappropriate if you are caught doing them.	Informal Social Control: Shock, gasps, group, exclusion, avoidance, gossip, parental guidance.
Laws	Laws are norms that are actually defined as being legal or illegal. The government has decided these norms are so important that you could get in trouble for breaking them.	Formal Social Control: Fines, Imprisonment, community service.

22. The purpose of above discussion in the present case is that all these Informal Social Controls are those mechanisms (some of them may be disapproved) by which a person can be kept under control without resorting to legal procedure. Since teachers in the present case were having mantle of mentoring students, therefore, they have to resort to such type or related to such type of Informal ways of control to guide and mentor the students. Such Informal Social Controls if applied to guide the students then it can not be said to be Abetment or Instigation.
23. In society in general type of five means of Informal Social Control are Shaming, Praising, Gossiping, Physical Aggression and Informal Dress Codes. Although, some of the Informal Social Controls cannot be

given approval in our societal surroundings.

- 24.** In sum and substance, children are required to be tutored not only to be good in academics but they ought to be tutored to become a good citizen so that they may add to the assets of the society rather than becoming liability. If corporal punishment is banned and if child out of his curiosity or ignorance or peer pressure (which is very high in school days) commits any deviant behaviour or unaccepted way of pupilship, then he is required to be corrected by measured reprimand or scolding. Reason is obvious. To take him over the right path so that his conduct may not become an example for others to follow or a source of agony for others to suffer.
- 25.** Section 89 of IPC contemplates a situation where any act done in good faith for the benefit of any child or insane person by or without consent of guardian is provided is required to be seen in pragmatic manner. Since school is a place where children of below 12 years of age are also getting education, therefore, it is prime duty of the Principal and other Teachers to maintain discipline and peaceful atmosphere in the premises so that other children may not suffer adversely and grow holistically.
- 26.** Now the controversy is to be seen from this vantage point. In the present case, allegations against the petitioners are that they scolded and reprimanded the deceased in such a manner where he committed suicide. As per CCTV footage (submitted by petitioners but omitted by Investigation in charge-sheet), it is obvious that the deceased Mahendra Kushwah, Ashish Yadav and Ritik Raj were present in the school when crackers blast occurred in the school's bathroom which caused damage to the wall. Attendance Register is filed in charge-sheet. Concern of

Principal and other Teachers was reflected in immediate response to the situation and they enquired about the course of event and found the role of the deceased and other two boys of implicative nature and call them in Principal room. It is obvious that Principal must have reprimanded them for their conduct and had to initiate all possible steps for course correction. As per version of petitioners, immediately they called parents of all the three boys through their respective mobile phones. They called parents of Ashish Yadav on mobile phone No.7415398623, parents of Ritik Raj on mobile No.9713450006 and parents of the deceased Mahendra Kushwah on mobile No.9516999146. It appears that Call Details Record constitutes the record which tallies with the contact numbers of parents of students mentioned in the school record, however C.D.R. details have not been included in charge-sheet. Therefore, it is obvious that the whole course of events unfolded in a manner as a course correction rather than any abetment and instigation.

27. Section 306 of IPC postulates:-

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.

28. Moreover essential condition to charge and prosecute the person is abetment by such person to the commission of suicide. The provision of abetment as contained in Chapter V of Indian Penal Code deals in respect of different contingencies. Section 107 of IPC defines abetment which is reiterated for better understanding:

“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.”

29. The essential three conditions that are necessarily required to be present individually in the sequence leading to the commissioning of suicide by a person are as below:
 - i. a. Instigation to commit suicide.
 - b. Conspiracy leading to person committing suicide
 - c. Intentionally aiding by an act or omission to commit suicide.
30. If any of the conditions is found present against the person sought to be prosecuted under Section 306 IPC, such person shall be held responsible for abetting commissioning of suicide. Per contra in the absence of the any of the above three conditions, a person cannot be held responsible for committing crime under section 305 IPC.
31. In all three cases of instigation, conspiracy or aid, direct and active involvement of the accused is essential to convict him for abetment of suicide. The term '**instigation**' is not defined in IPC. The instigation on the part of the accused should be active and proximate to the incident. It has been held in number of cases that to constitute "instigation", the person who instigates another person has to provoke, incite, urge or

encourage doing of an act by the other by "goading" or "urging forward". A mere statement of suggesting the deceased to end his life without any mens-rea would not come under the purview of abetment to suicide. Mens-rea is a necessary ingredient of instigation and the abetment to suicide would be constituted only when such abetment is found intentional.

32. Supreme Court in **Geo Varghese (supra)**, while dealing with the matter wherein a 9th standard student committed suicide and left a note alleging that his PTI teacher harassed and insulted him in front of everyone, the Court emphasised two essentials for conviction under Sec. 306. *First*, there should be a direct or indirect act of incitement. A mere allegation of harassment of the deceased by another would not be sufficient. *Secondly*, there must be reasonableness. If the deceased was hypersensitive and if the allegations imposed upon the accused are not otherwise sufficient to induce another person in similar circumstances to commit suicide, it would not be fair to hold the accused guilty for abetment of suicide. Thus, Supreme Court quashed the FIR in the lack of any specific allegation and material on record as the essentials to prove the allegation under Section 306 were not satisfied. Here is the present case, three students were scolded but deceased appeared to be over sensitive, therefore, committed suicide, whereas other two students remained grounded. Therefore, it appears that the deceased was sensitive and being afraid of consequences of his misconducts, took such drastic and painful decision.
33. The Apex Court in the case of **Sanju alias Sanjai Singh Sengar Vs. State of M.P. 2002 AIR SC 1998**, has acquitted the person and

quashed the chargesheet filed under section 306 of IPC inter alia holding therein that mere say of the prosecution version will not subserve the purpose for slapping the charges under section 306 of IPC. The presence of *mens rea* is vital and indefeasible ingredient for to swing the criminal proceeding into the motion. It is a common knowledge that some of the words uttered during the altercation or scuffle cannot be assumed to have been uttered with mens rea.

34. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens-rea, there has to be something on record to establish or show that the petitioners herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens-rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.
35. Although all Informal Social Controls as discussed above coming out from different Sociological Theories, cannot be befitting in our social milieu but it is also to be seen that for betterment of children, some Informal Social Controls are necessary. Here, calling parents for counseling was a mechanism which could have given lesson to the erring students and calling parents cannot be inferred as abetment.
36. There is no allegation in the charge-sheet regarding abetment qua the present petitioners. Their role is confined to causing reprimand or scolding the boy for his act which was the duty of the Principal and other Teachers as discussed above. They never had any intention in respect of the deceased boy that he should commit suicide. They tried

to correct him for his alleged wrong doing and at the same time one cannot ignore the fact that Principal and other Teachers have responsibility of safety and well being of other students also. Any misadventure or misconduct of a student can endanger the life, liberty and progress of other students. Parents hand over the children to the school with the trust that school will take care their wards as their parents and therefore, such reposition of trust cannot go in vein with timidity and fear of backlash. Teachers should be placed over and above such fear, else they will be failing in their duties in formulating the future of mankind. Therefore, on this count also, case of petitioners deserves consideration and case of prosecution falters.

37. The prosecution failed to produce clinching electronic evidence in the case in hand. The attendance register is part of charge-sheet along with certification by the Principal but CCTV footage and CDR details are not part of charge-sheet but the same is filed by the petitioners as Annexure A/5 apparently as defence document. CDR details indicate that on fateful day telephonic calls were sent by petitioner No.2 to the parents of erring students. Attendance register indicates that the deceased and other two students attended class and they are shown in the CCTV also in classroom and while coming out from bathroom. Except admonition, no other conduct is being referred by prosecution to infer abetment. No sign of physical violence or injury found in the postmortem report or narrated by any witnesses. Therefore, in the light of Section 114(g) of Evidence Act and the judgment of Apex Court in the case of **Tamaso Bruno and another Vs. State of Uttar Pradesh, (2015) 7 SCC 178**, petitioners' case deserves consideration.
38. Other aspect raised by complainant is status of trial but in the light of

the judgment **Sathish Mehra (supra)** it is no longer res integra that jurisdiction of this Court under Section 482 of Cr.P.C. can be invoked at any stage of trial if it furthers the cause of justice. Here in the present case, in view of nature of allegations and alleged role of the petitioners, it is required that they should not be prosecuted by procedure, because pendency of case itself is punishment for a common man specially teacher. Undue suffering through prosecution and procedure deserves to be avoided. Therefore, this is a fit case to invoke extraordinary jurisdiction of this Court under Section 482 of Cr.P.C.

39. The Apex Court in the matter of **State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** laid down the different exigencies under which interference under Section 482 of Cr.P.C. can be made. Following exigencies are as under:

- “(a) 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;*
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;*
- (c) 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;*
- (d) 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;*

- (e) *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;*
- (f) *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;*
- (g) *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.”*

The case of petitioners falls within exigencies (a), (b), (c) and (e) of the judgment.

40. In the case of **Rajiv Thapar and others Vs. Madanlal Kapoor (2013) 3 SCC 330** the Apex Court has given guidance, under which circumstances, documents relied by the accused can be considered in a petition under Section 482 of Cr.P.C. which reads as under:

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the

charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

41. On the basis of attending facts and circumstances of the case and the discussion made above, it appears that no element of Abetment/Instigation/Conspiracy exists qua petitioners. It is really painful for the family but for their pain and agony, others cannot be penalized.
42. Accordingly, the petition stands **allowed**. FIR registered at Crime

No.371/2022 on 04th November, 2022 at Police Station Billowa, District Gwalior for the offences under Sections 306, 34 of IPC and all other consequential proceeding are hereby quashed. Petitioners are discharged from all the charges/allegations.

43. Petition stands allowed and disposed of.

(Anand Pathak)
Judge

Anil*