

**IN THE COURT OF MS. GEETANJLI GOEL,
ADDITIONAL SESSIONS JUDGE / SPECIAL JUDGE (PC ACT OF 2008)
(CBI)-24, ROUSE AVENUE DISTRICT COURT, NEW DELHI.**

**SC No. 3/2020
CIS No. 2/2020
FIR No. 213/20
PS : Neb Sarai
U/s 306/386/506/34 IPC**

IN THE MATTER OF:

State

Versus

Prakash Jarwal & Ors.

ORDER

1. Vide this order, I shall decide the question of charge. A perusal of the record shows that the FIR was registered on the basis of the complaint dated 18.04.2020 of Hemant Singh, wherein he had stated that his father late Shri Rajender Singh was doing the work of supply of water through tankers since 2005. Delhi Jal Board had never harassed his father. However, since the accused Prakash Jarwal had won and become MLA of Aam Admi Party, he and one Kapil Nagar who worked with him and others started harassing his father for money regularly. Accused Kapil Nagar, at the instance of the accused Prakash Jarwal used to take monthly amount and used to give to the accused Prakash Jarwal. The accused Prakash Jarwal was a member of Delhi Jal Board and without taking the monthly amount, he did not allow the plying of their

tankers with Jal Board. He stated that if his father did not pay the monthly amount to the accused Prakash Jarwal, he used to himself threaten his father and also threatened to destroy him. His father used to regularly give monthly of lakhs of rupees to accused Prakash Jarwal who was harassing his father forcibly and mentally. His father had written about the same in a diary. When his father opposed the giving of monthly amount, his tankers were got removed from Delhi Jal Board about which his father made a complaint to the Executive Engineer, Delhi Jal Board, GK-I on 09.04.2020. It is stated that the father of the complainant had pleaded with the accused Prakash Jarwal several times not to harass him as he was a heart patient but the accused Prakash Jarwal did not listen and kept harassing his father continuously of which they also had a phone recording.

2. It is further stated that the accused Prakash Jarwal used his power to get the payment of the deceased stopped. The father of the complainant had written about the mental harassment in his diary and he had also mentioned the amount given to accused Prakash Jarwal in the diary which amount was taken forcibly. It is alleged that due to the exploitation and pressure, the deceased used to remain troubled and used to write about the instances in his diary. It is also alleged that the father of the complainant had sold his ancestral land and taken loan on the jewellery of his wife for which they also had receipt and at the instance of accused Prakash Jarwal had given the money to Kapil Nagar. The deceased had many a times told the complainant, his mother and uncles about the harassment. It is also stated that whenever the accused

Prakash Jarwal, Kapil Nagar and others used to threaten to kill his father and to destroy him, he would tell about the same to the complainant and his mother but they used to make him understand and tried to boost his morale. They had harassed him so much that he could not tolerate it anymore and always used to remain troubled. It is further stated that on 18.04.2020, at about 5.30 a.m. the deceased, due to harassment caused by the accused Prakash Jarwal, Kapil Nagar and others had committed suicide and he had taken the said step due to the threats given by the said persons to kill him and to destroy him and due to their taking the monthly amount forcibly.

3. As per the charge sheet, on 18.04.2020 on receipt of DD No.11A, SI Shiv Singh along with HC Tej Pal reached at the spot of incident i.e. H.No.A-144, 2nd Floor, Durga Vihar, Devli, New Delhi, where one person had hung himself from the railing of the terrace of the room. The name of the said person was found to be Dr. Rajender Singh. Crime team was called by SI Shiv Singh which took photographs. During search of the room, one diary, six page suicide note and bill book were found and taken into possession. The dead body was sent for postmortem. FIR was got registered under Sections 386/306/506/34 IPC. Statement of Hemant Singh was recorded who had stated that on 18.04.2020 at about 5.45 a.m. their tenant Mrs. Promila Pandey had informed that his father had hung himself on which Hemant Singh reached the terrace and the other relatives also reached there. Police was called. Statement of Mrs. Promila was recorded and also of other witnesses. Subsequently, investigation was transferred to District Investigation Unit vide order dated 28.04.2020 from PS Neb

Sarai. During investigation the complainant Hemant Singh had given written complaint on 12.05.2020 regarding threats for dire consequences being extended by accused Prakash Jarwal. As per the documents, an amount of around Rs.17.5 lakhs was taken by the deceased Rajender Singh after mortgaging jewellery items of the female family members. As per the postmortem report, the cause of death was suicide by hanging. The files of water tankers belonging to the deceased and his family were seized from the office of Delhi Jal Board. The mobile phone of the accused Prakash Jarwal was also seized.

4. After completion of investigation charge sheet was filed against the accused Prakash Jarwal, Kapil Nagar and Harish Kumar Jarwal under Sections 306/386/506 IPC in the court of Ld. ACMM – I. After completion of proceedings under Section 207 Cr.P.C., matter was committed to the Court of Sessions and received in this court. Supplementary charge-sheet was filed to place on record the FSL Report dated 31.12.2020. Thereafter the second supplementary charge sheet was filed to place on record FSL report dated 12.04.2021 and a third supplementary charge sheet was filed to place on record the Forensic Voice Examination Report of CFSL dated 12.08.2021.

SUBMISSIONS

5. I have heard the Ld. Additional PP for State Shri Manoj Garg, Shri S. P.

Kaushal, Ld. Counsel for accused No.1 Prakash Jarwal and Shri Ravi Drall and Sh. Mohd. Irshad, Ld. Counsels for accused persons (also through CISCO Webex) and perused the record.

6. The Ld. Additional PP for State had argued that the FIR was registered on the basis of the statement of the son of the deceased. It was submitted that names of all the three accused persons were there in the suicide note and the FSL report was also there with regard to the handwriting of the deceased. Reliance was placed on the statements of employees of Delhi Jal Board. It was submitted that the accused Prakash Jarwal had made a call on the mobile of the deceased and in fact the SIM was used in the mobile of Revadhar Bhatt who was an employee of the deceased. Reference was made to the statement of Revadhar Bhatt as also his statement under Section 164 Cr.P.C. and the statements of Hemant Singh and Sanjay Singh. It was submitted that the material on record showed that the accused persons had extended threats to the deceased and extorted money from him and also abetted commission of suicide by him.

7. The Ld. Additional PP had further submitted that Prakash Jarwal was a sitting MLA of the Delhi Assembly and charge sheet had in addition been filed against Kapil Nagar and Harish. Charge sheet and three supplementary charge sheets had been filed. On 18.04.2020, DD No.11 A was received at PS Neb Sarai about commission of suicide by Dr. Rajender. It was submitted that names of all the three accused persons were mentioned in the suicide note as also there were specific allegations of extortion

and harassment. The FIR was registered on the basis of the complaint made by the son of the deceased in which he had again made specific allegations including of threat to kill the deceased and his family members. Further accused Prakash Jarwal had made call to the deceased threatening him of which the recording was there. The record also showed that the accused persons were forcing the deceased to pay extortion money and prior to the elections as well extortion money was demanded. The statements of various tanker owners and drivers were there. It was submitted that the documents from DJB were there that after March 2020, no tanker of the deceased had been engaged and the tankers which were there were in the name of family members of the deceased. The suicide note was mentioned in the charge sheet as also the conversations and the statements of witnesses which showed that extortion money was demanded and threats were extended to the deceased and his family members and ultimately the deceased committed suicide. It was submitted that offences under Sections 306, 386 and 506 IPC were prima facie made out against the accused persons.

8. The Ld. Counsel for the complainant had argued that the sting operation which was referred to by the Ld. Counsel for accused Harish was not part of the charge sheet so it could not be looked into at the stage of framing of charge. It was submitted that the statements of Lalit and Revadhar were there on record and Lalit had specifically submitted that he had met the deceased on 17.04.2020 and he was harassed at that time and on 18.04.2020 the deceased had committed suicide. Reliance was placed on

the extract of the telephonic conversation and it was submitted that even offences under Sections 386 and 506 IPC were clearly made out.

9. The Ld. Counsel for the accused Prakash Jarwal had argued that Section 34 IPC would not be attracted in the present case. It was submitted that apart from the statements of witnesses under Sections 161 and 164 Cr.P.C., the material on record had also to be seen i.e. the recorded conversations and the handwriting of the deceased in the so called suicide note. It was submitted that there was nothing to show that the conversations were in close proximity to the death of the deceased and in fact there was a gap of 10 months between the two. The hand written material did not bear any date. Even the conversation with Revadhar Bhatt was of 18/19.07.2019 whereas the death had occurred in April 2020. It was submitted that there was no evidence on record to satisfy the court that from July 2019 onwards, the accused Prakash Jarwal was holding the authority to continue or discontinue tankers with Delhi Jal Board or to pay anyone. There was also no document on record to show that the deceased had any tanker attached with Delhi Jal Board. There was further no evidence to show that any tanker of the deceased that had been attached with Delhi Jal Board was removed and there was no tanker in the name of the deceased. There was no question of putting or removing his tankers. Moreover, as per the case of the prosecution, compromise had taken place after the alleged telephonic conversation and the hand written material could not be called a suicide note. Further, Rajbir Singh in his statement had stated something different.

10. The Ld. Counsel for accused Prakash had further submitted that the source of information of the FIR and the entire complaint were on the basis of observations made in the diary of the deceased and the complainant himself was not a witness to the demands of extortion. At most places, reference was to 'they' and no names were mentioned. Moreover, it was stated that the deceased was pressurized to pay money to Jarwal and there was nothing to show that the accused Prakash Jarwal had himself demanded money. There was no tanker in the name of the deceased with DJB. There was no date on the so-called suicide note and the so-called suicide note was only part of the diary. The alleged telephonic conversation was of 7 to 8 months prior to the death and as per the case of the prosecution itself, the matter had thereafter been resolved. It was submitted that though it was a case of unnatural death but the abetment had to be proximate. It was argued that all the allegations made in the charge sheet were bald and no date, time or place were mentioned.

11. The Ld. Counsel had further submitted that as per the material on record, the deceased had been left hanging from the rope and it was not checked whether he was dead or alive and only when the police came they removed him from the ceiling. As per the statement of Rajbir, the deceased had threatened to commit suicide if his tankers were not put. Reliance was placed on the judgment of Hon'ble Supreme Court in **State Tr. Insp. of Police v. A. Arun Kumar and Anr.** 2014 SCC Online SC 1018. It was argued that if there was only suspicion and not grave suspicion, then the

accused could be discharged and in the present case, no grave suspicion had arisen and the recorded conversation pertained to the period 10 months prior to the alleged incident and there was nothing to show that from the date of the alleged conversation till the date of the so called suicide, anything had happened. It was argued that the documents of the prosecution did not inspire confidence and did not attract the ingredients of Section 306 IPC and the statement of Rajbir helped the case of the accused. It was contended that in fact the deceased should have been the accused in the present case. It was also submitted that the offence under Section 386 IPC was not attracted in the present case as the complainant had neither received any calls nor was threatened.

12. The Ld. Counsel for the accused Harish had argued that the FIR was got registered in April 2020 which did not mention the name of the accused Harish anywhere. There was no mention of the name of the accused Harish in the statements that were recorded under Section 164 Cr.P.C. of Revadhar Bhatt, Hemant Singh, Rajbir Singh, Chiranji Lal and all these were recorded in May 2020. Rajbir Singh was quite close to the deceased and even he did not name the said accused. The accused Harish was named for the first time in June 2020 and he moved an application for anticipatory bail before the Hon'ble High Court and was granted 15 days interim bail. It was submitted that police was putting pressure on all the persons who were named in the suicide note that either they should be willing to join as witnesses or they would be made accused and some of the said persons were made witnesses. The accused

Harish stated that he did not know the deceased Rajender and he did not want to be the witness. He was beaten and harassed and CCTV footage was there and the accused had also made a complaint before the Ld. CMM. His name was not there even on the first page of the so called suicide note and till page eight of the diary, his name was not there. There was a complaint but even in the said complaint which was of 2018, no accused was named nor in the subsequent complaints. The pages of the diary referred only to payment and also showed the mental status of the deceased. None of the pages of the diary bore any date or time and they mainly showed that the deceased had dispute with DJB over payment. The names of the two co-accused were there on subsequent pages but not of the accused Harish and it was only much later, in the diary that the name of the accused Harish was mentioned. However, Harish is neither the brother of the accused Prakash Jarwal nor his cousin and his name was not even Harish Jarwal but was Harish Kumar.

13. The Ld. Counsel had further referred to the fact that statements of three persons were recorded namely of Satte, Ramesh and Tilak Raj but rather than making them accused, their statements were recorded under Section 161 Cr.P.C. There were allegations against Rajbir but he had got scared and surrendered before the police and as such he was joined as a witness and his statement under Section 164 Cr.P.C. was got recorded instead of making him an accused. There were specific allegations against Rajbir of having taken Rs.2 lakhs but the investigation was silent about him. There were no allegations in the so-called suicide note that Harish had taken any

money. The name of the accused Harish appeared only two times in the entire so-called suicide note and it was not even there in the statement of any witness. There was also no allegation that the accused Harish had threatened or demanded anything or met the deceased on any particular date. In fact, if the accused Harish had agreed to join as a witness, he would not have been named as an accused. The accused had never met the deceased or his family members. Reliance was placed on several authorities to argue that there should be some positive act of the accused or instigation by him whereas there was no such allegation qua the accused Harish. There was even nothing to show any conspiracy on the part of accused Harish. There was no harassment by the accused Harish. It was contended that in fact, the deceased had called himself unfortunate. The deceased had received Rs.62 lakhs in 2019-20 from DJB so there was no reason to commit suicide and he was under depression due to his own acts. It could not be that the entire amount had been extorted from him and further more amount had been extorted for which he had to sell his land and jewellery.

14. It was further submitted that in 2016, a sting operation had been carried out against the deceased and he had been blacklisted by DJB for black marketing of water and thereafter he had put the tankers in the names of his family members and even his employee. He had also received a notice from the Medical Council as he was not a doctor to which he had replied and thereafter his clinic was closed. The son of the deceased wanted to play internationally but he was not taken for practice which affected the mental status of the deceased. It was submitted that there was no *mens rea*

on the part of the accused Harish and merely because his name was there in the so-called suicide note, it did not necessarily mean that he had committed any offence and the mentality of the deceased had also to be seen. It was contended that there was problem with the deceased himself and he himself had mentioned in the suicide note about the clinic being closed and his son not getting opportunity in games and his tankers being removed due to the sting by IBN 7. Throughout 2015, 2016, 2017 and 2018 the deceased had not named any of the accused persons. The first complaint was made on 24.01.2020 vide DD No.3963 in which no one was named. The second complaint was of 09.04.2020 vide DD No. 5378 which was made 10 days before the death but again the name of none of the accused persons was mentioned. In fact the documents on record showed that the bills of payment regarding the tankers were processed and the notings showed that no documents had been submitted by the deceased or his family members in March 2020 that they wanted to engage their tankers with DJB. Further, the name of the accused Harish was not there either in the FIR or in the complaint to DJB or in any of the statements under Section 164 Cr.P.C. It was argued that the persons who had been named specifically in the suicide note had been made witnesses.

15. The Ld. Counsel had further asserted that the accused Harish had no motive or intention to do any act against the deceased or his family and he did not make any threat or call and was not in touch with the family. He did not instigate the deceased and even the deceased or his family had not stated about him threatening them. There

was no CDR to show that the accused Harish had ever called the deceased or that he was part of any conspiracy and there was no allegation of extortion against him. Accused Harish was never in a position to get the tankers put or to get the payment stopped. He was a driver by profession and there was no persistent torture or harassment by him. It was contended that for the offence under Section 306 IPC to be made out, proximity of time had to be there but there was no date in the suicide note. The only dated complaint was of 09.04.2020 which was 10 days before the death of the deceased which did not name any of the accused. Reliance was placed upon the order of bail of the Hon'ble High Court. It was submitted that the prosecution was relying upon a call of July 2019 but the suicide had taken place 10 months later. So there was no proximity of time. In fact, the conversation was not even with the deceased but it was allegedly between the accused Prakash Jarwal and Revadhar and the fact of the matter was that the accused Prakash Jarwal being the MLA was receiving complaints against the deceased and he was looking into them.

16. The Ld. Counsel for the accused Kapil Nagar had argued that the main allegations in the present case were contained in the pages of the diary and the so-called suicide note. The crux of the case of prosecution was that the accused persons were demanding money and committing extortion. Reference was made to the definition of abetment and it was argued that *mens rea* had to be established. It was submitted that the state of mind to commit a particular crime must be visible and the accused must have a guilty mind to abet the commission of suicide. It was submitted

that as per the prosecution case, the accused persons were regularly threatening or demanding money but if the deceased was paying money to the accused there was no reason why they would compel the deceased to commit suicide. Moreover, there was no way that the accused could know that the deceased had suicidal tendency. It was submitted that a number of people had been named who were allegedly demanding money. It was argued that if Section 386 IPC was attracted, then Section 306 IPC would not lie and both the charges were contrary to each other. It was submitted that the mental state was not established. There were no allegations that the accused Kapil Nagar threatened the deceased even as per the case of the prosecution. It was submitted that charge under Section 306 IPC was not sustainable. The name of accused Kapil Nagar was taken in the diary but it was not the case of the prosecution that it had proved the guilty mind that the accused wanted the deceased to commit suicide. It was submitted that there must be some act to provoke, instigate or encourage and each person's suicidal pattern was different. It was argued that the accused could not be blamed for the death of the deceased and there could be other factors which led the deceased to commit suicide.

DISCUSSION

17. Regarding the considerations to be kept in mind while framing charge, the Ld. Addl. PP for State had submitted that if there was a strong suspicion, the trial would proceed. At the stage of charge, only the prima facie case is to be looked into and the Court is not to marshal the evidence and meticulous examination of the material on

record is not required and the Court is required to examine the question only prima facie. Reference may be made to the judgment of Hon'ble Supreme Court in **Union of India v. Prafulla Kumar Samal** AIR 1979 SC 366 wherein the considerations to be kept in mind while framing charge have been laid down as under:

- “(1). That the Judge while considering the question of framing the charges under Section 228 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;*
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial;*
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused;*
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

Reliance was placed on the judgment of the Hon'ble Supreme Court in **State Tr. Inspector of Police (supra)** to the same effect. The law is well settled that at the stage of framing of charge, the court is only to see if there is strong suspicion that the accused had committed an offence and not whether the material on record would lead

to conviction or not. At the stage of framing of charge, the Court is required to evaluate the material and documents only to the extent and with a view to finding out if the facts taken on their face value disclose the existence of a prima facie case.

18. The Ld. Addl. PP had further submitted that a detailed order was not required to be passed in case charge was directed to be framed and reasons were required to be given only when the accused was discharged. In **Kanti Bhadra Shah v. State of West Bengal** Appeal (Crl.) 5 of 2000 decided on 05.01.2000 it was held that while exercising power under Section 228 Cr.P.C., the judge is not required to record his reasons for framing the charge against the accused which was reiterated in **Dinesh Tiwari v. State of Uttar Pradesh and another** (2014) 13 SCC 137. Again the law in this regard is well established.

Section 306 IPC

19. The accused persons in the present case have been charge-sheeted for the offence under Section 306 IPC which prescribes the punishment for abetment of suicide. Section 306 IPC may be reproduced here for ready reference:

“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.”

In order to make out an offence under Section 306 IPC, it has to be shown that:

- i) the deceased committed suicide; and
- ii) the accused abetted the commission of the suicide.

The Hon'ble Supreme Court in **Pinakin Mahipatray Rawal v. State of Gujarat** (2013) 10 SCC 48 held that *“to constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide.”* In **Gurcharan Singh v. State of Punjab** (2017) 1 SCC 433 the Hon'ble Supreme Court discussed at length what constituted the offence under Section 306 IPC and it was observed as under:

*“... 21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide. 27. The pith and purport of Section 306 IPC has since been enunciated by this Court in **Randhir Singh vs. State of Punjab** (2004) 13 SCC 129, and the relevant excerpts therefrom are set out hereunder.*

“12. Abetment involves a mental process of instigating 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. Vs. Orilal Jaiswal (1994) 1 SCC 73, 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 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.”

28. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707.

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30. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Chhena vs.

Vijay Kumar Mahajan.”

20. In the instant case, the material on record points to the fact that the deceased had committed suicide and the post mortem report states the cause of death as asphxia due to ante-mortem hanging. Even as per the case of the prosecution, on receipt of call, when SI Shiv Singh reached the spot along with HC Tej Pal, the deceased was found hanging by a rope from the railing of the terrace of the room. The Ld. Counsel for the accused Prakash Jarwal had tried to contend that when the complainant or the others found the deceased hanging, they did not make any attempt to find out if he was alive or dead or to remove him but the complainant in his statement under Section 161 Cr.P.C. had stated that when he saw his father hanging from the rope, he immediately caught hold of his feet and lifted him and Pramila put a chair under the feet of his father though he also stated that when the police came, they cut the rope and brought his father down. Even Pramila had stated to that effect. Moreover, the said argument would not help the case of the accused at this stage as at the time of consideration of charge, only a prima facie view is to be taken.

21. The question for consideration is whether the prosecution has been able to show, prima facie that the accused persons had abetted the commission of suicide by the deceased. Section 306 IPC nowhere defines what is meant by ‘abets’ so we have to look for the definition of ‘abetment’ elsewhere which is contained in Section 107 IPC which, in so far as is material, is reproduced hereunder:

*“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.
Xxxx”*

Thus, abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. The Hon’ble Supreme Court in **Ramesh Kumar v. State of Chattishgarh**, (2001) 9 SCC 618 in para 20 examined the different shades of ‘instigation’ and observed as under:

“20. 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.”

In this judgment, it is significant that it was observed that instigation may be inferred where the accused had, by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide. In

Gurcharan Singh v. State of Punjab (2020) 10 SCC 200 the Hon'ble Supreme Court

elaborated the concept of abetment and it was observed as under:

“10.... In order to give the finding of abetment under Section 107 IPC, the accused should instigate a person either by act of omission or commission and only then, a case of abetment is made out...

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15. 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 appellant 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. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime he is held to have committed. The conviction of appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

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17. While dealing with a case of abetment of suicide in Amalendu Pal v. State of West Bengal (2010) 1 SCC 707, Dr. M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms: (SCC p.712, paras 12-13)

“12. 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 there 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.

13. In order to bring a case within the purview of Section 306 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.”

*18. In **Mangat Ram v. State of Haryana** (2014) 12 SCC 595, which again was a case of wife’s unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnan, J. rightly observed as under: (SCC p.606, para 24)*

“24. We find it difficult to comprehend the reasoning of the High Court that “no prudent man is to commit suicide unless abetted to do so”. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.”

19. Proceeding with the above understanding of the law and applying the ratios to the facts in the present case, what is apparent is that no overt act or illegal omission is seen from the appellant’s side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased faced persistent harassment from her husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The trial court and the High Court speculated on the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife.”

22. This has been reiterated by the Hon'ble Supreme Court in the latest judgment in the case of **Shabbir Hussain v. The State of Madhya Pradesh & Ors.** SLP (Crl.) No.7284/2017 decided on 26.07.2021 observing:

“In order to bring a case within the provision of Section 306 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 instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal (2010) 1 SCC 707]

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605]”

Thus, it stands settled that for an offence under Section 306 IPC to be made out, the prosecution has to show that suicide was committed and that the accused who is said to have abetted the commission of the suicide had played an active role in the same and there was some positive act proximate to the time of the occurrence on the part of the accused (reiterated by the Hon'ble Supreme Court in **Satbir Singh v. State of Haryana** decided on 28.05.2021). It has also been held that instigation could be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide.

23. In the present case, the Ld. Counsel for the accused Prakash Jarwal had submitted that the entire complaint was made on the basis of observations made in the diary of the deceased and that the complainant himself was not a witness to the demand or extortion of money and it was stated that the deceased was pressurized to pay money to Jarwal and there was nothing to show that Prakash Jarwal himself had demanded money. It was also submitted that there was nothing to show any positive act on the part of the accused to instigate the deceased. It may be mentioned that the Ld. Counsels for the accused persons have disputed the 'suicide note' which was relied upon by the prosecution and also submitted that the diary written by the deceased did not contain any date or time. A perusal of the 'suicide note' would show that it was stated therein that the accused Prakash Jarwal and Kapil Nagar had destroyed the deceased. In order to ply his vehicles with DJB, the said persons had taken a lot of money from him as loan for which he had mortgaged his house and jewellery and when he asked for the money back, they threatened that he would die. He was very disturbed because of the said two persons and they threatened to kill him and his family if he made any complaint to anyone. He had also stated that he was so harassed by the said persons that he was giving his life. During his life time he could not get them punished but after his death they should be given strict punishment. It was also stated that the deceased was leading a good life and was happy with his family but the accused MLA Prakash Jarwal and his persons had made his life difficult and they used to threaten to kill him. They also stated that if he made a complaint to the police they would finish his entire family and he was nothing and they had beaten

many JEs and IPS. He was scared of them that they could kill him and cause harm to his family. The deceased had stated that he was a patient of heart disease and was totally broken as accused Prakash Jarwal and Kapil Nagar were harassing him badly and in every way. He had stated that he was committing suicide out of their fear. He had stated that even on 18.07.2019 in the evening at 8.20 they had threatened to kill him and that he would die.

24. The deceased had further stated that he was disturbed by the daily harassment by Kapil Nagar and Prakash Jarwal. They had demanded that he pay Rs.1 lakh to them if he wanted to ply his vehicles with DJB, otherwise they would kill him and his family and destroy him. He was a heart patient and he was very disturbed since the day he had received the threat from the MLA Prakash Jarwal. He was unwell and he had pain in his chest. He had also stated that on 18.07.2019 at 8.20 in the evening, the accused Prakash Jarwal had threatened that he would die and his gundas were harassing him and they could take his life. He had also stated that on 18.7.2019 at 8.30 in the evening, the accused Prakash Jarwal had threatened to kill him and he had given the same to four of his trusted persons. He did not know that in order to defame him, they would viral it and defame him illegitimately. On 01.03.2020 Prakash Jarwal and Kapil Nagar had got his vehicles removed from DJB out of anger over the same and had snatched his means of livelihood and were harassing him from all sides. It was also stated that if any unfortunate incident happened with him or his family, then the

accused Kapil Nagar and Prakash Jarwal would be responsible and they had destroyed his life.

25. The question whether the aforesaid note could be construed as a suicide note or not would be considered at the time of trial and suffice it to say at this stage that the deceased in the said note had specifically stated the names of the accused Prakash Jarwal and Kapil Nagar and further that due to the threats and harassment by the said persons he was committing suicide. He had also stated several times about the threat extended by the accused Prakash Jarwal on 18.07.2019 and about loss of his livelihood. Moreover it was stated about the said persons having taken a lot of money from him.

26. As regards the pages of the diary written by the deceased Dr. Rajender Singh, it is seen that the deceased had stated that since 2005 he was plying tankers in DJB and he did not have any difficulty but since the accused Prakash Jarwal had become an MLA, he and his person Kapil Nagar who used to take monthly had started harassing him and had destroyed him and they had threatened that he should give Rs.1 lakh every month, otherwise he and his family would be killed. They had stated that he was nothing and they had beaten many IPS and they had remained in jail also. They stated that they would not leave him. The deceased had also stated that the accused Prakash Jarwal had many hooligans with him. They further stated that if he ever made a complaint against them, they would kill his entire family. They had also got his

tankers removed from DJB and out of their fear, he was ending his life. He had a family but in five years, he was broken. He had given Rs.50 lakhs to them so that they would not harass him and his family but the accused Prakash Jarwal and Kapil Nagar had threatened to kill him which was given on 18.07.2019 at 8.20 in the evening. He had also stated that he had sold his village land and given to Kapil Nagar but he still got him threatened from Prakash Jarwal. He had also stated about the recording of the threat. It was also stated that after the recording was made viral, they had made it difficult for him to live and accused Kapil Nagar and Prakash Jarwal should be held responsible for his death. He has also stated about taking loan from Muthoot after keeping his gold and giving the money to Kapil Nagar but they kept repeatedly demanding money otherwise they would remove his vehicles and the same was done at the instance of MLA Prakash Jarwal. It was also stated that Rs.5 lakhs were given to Kapil Nagar and Prakash Jarwal through Rajbir Singh, still they had got his vehicles removed on 01.03.2020. He had also stated that some persons had become his well-wishers and taken the phone recording and made it viral namely Tilak Raj @ Dhillu, Ramesh Goswami, Pawan and Rajbir.

27. It is true that no date or time is mentioned in the diary except that on one page, the date 01.03.2020 is mentioned but repeatedly similar allegations have been made by the deceased against the accused Prakash Jarwal and Kapil Nagar in the 'suicide note' and the pages of the diary on similar lines and that due to harassment by them he was committing suicide and even regarding payment of money to them. The

report of the FSL is also there regarding the writing of the deceased in the 'suicide note' and the pages of the diary and it would be a matter of trial whether the same were indeed written by the deceased. Even the voice samples were sent to FSL to match the voice in the recording dated 18.07.2019 and as per the same, the voices were the probable voices of Revadhar Bhatt and Prakash Jarwal. It was argued that the conversation was with Revadhar Bhatt and not the deceased but it is apparent from the conversation that it was in respect of the deceased. The Ld. Counsel for the accused Prakash Jarwal had submitted that there was nothing to show that the conversation was in close proximity to the death of the deceased and in fact there was a gap of 10 months between the two. It is true that the recording which was done by Revadhar Bhat of the alleged threatening call of 18.7.2019 was almost 8 months prior to the death of Dr. Rajender Singh and it was also stated that the matter was thereafter compromised but it is pertinent that the deceased had specifically mentioned in the pages of the diary and even in the 'suicide note' about the accused Prakash Jarwal being angry as the said recording had gone viral and thereafter as well, the deceased kept paying money to the accused. Though the call may be of 2019 but the deceased had written that the accused persons had stopped threatening him telephonically and had started sending new new persons to threaten him.

28. The deceased had stated about more money being demanded just prior to the elections but he was not able to give the entire money so his tankers were removed and other witnesses had also stated to that effect in their statements under Section 161

Cr.P.C. The statements of the witnesses recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. also reiterate what was alleged by the deceased in the suicide note and the pages of the diary regarding giving of money to accused persons, threats being extended by Prakash Jarwal, removal of tanks, more particularly the statement of Himmat Singh, JE with DJB who had stated in his statement recorded under Section 164 Cr.P.C. that five tankers of the deceased were plying with DJB in the name of his family members and that in February, 2020 the accused Kapil Nagar had asked him to remove the five tankers of the deceased but he refused. He had further stated that Kapil Nagar had stated that if Dr. Rajender did not send a request to Jal Board, he would not be able to engage his tankers and as per the contention of the accused persons, no request was made by the deceased or his family members to continue their tankers with DJB. Further, the CDRs are on record as per which the accused Prakash Jarwal had called the deceased 9 times in one year and 55 calls were made by accused Kapil Nagar to the deceased in one year. All the calls made by Prakash Jarwal to the deceased could not be to warn him in respect of complaints allegedly received by him against the deceased as was sought to be contended on behalf of the accused persons and there is no explanation for so many calls by Kapil Nagar. The documents from Muthoot Fincorp Ltd. are also on record as per which the deceased had raised loans in his own name and in names of his family members in 2019 and January, 2020.

29. The Ld. Counsel had further submitted that there was no evidence on record to satisfy the court that from July 2019 onwards, the accused Prakash Jarwal was holding

the authority to continue or discontinue tankers with DJB or to pay anyone. However, at the stage of charge, the court has only to take a prima facie view and the said argument would not help the accused as it would only point to that even when the accused Prakash Jarwal did not have the authority to continue or discontinue tankers with DJB, the accused Prakash Jarwal kept taking money from the deceased. It was also contended that there was no evidence to show that any tanker of the deceased attached with DJB had been removed and that there was no tanker in the name of the deceased. However, even if the tankers were in the name of the family members of the deceased, the fact remains that he had specifically stated about the tankers being removed and losing his livelihood and the statement of Himmat Singh is on record. It was also argued that there was nothing to show that the accused Prakash Jarwal had himself demanded money but the alleged call dated 18.7.2019 was stated to be by the accused Prakash Jarwal himself. The Ld. Counsel had then submitted that as per the statement of witness Rajbir, the deceased had threatened to commit suicide if his tankers were not put but the pages of the diary and suicide note also show that he was committing suicide out of fear of the accused Prakash Jarwal and Kapil Nagar and due to continued harassment by them. It was submitted that in fact the deceased should have been made the accused but the said argument is neither here nor there.

30. The Ld. Counsel for the accused Kapil Nagar had submitted that as per the prosecution case, the accused persons were regularly threatening or demanding money but if the deceased was paying money to the accused, there was no reason why they

would compel the accused to commit suicide. However, it is the specific case of the prosecution that the deceased was not able to pay the entire extortion money so his tankers were removed and the circumstances created were such that the deceased had no option but to commit suicide. It was submitted that the accused could not know that the deceased had suicidal tendency but again it is the case of the prosecution that the accused persons had created such circumstances that the deceased was compelled to commit suicide. It was also argued that the mental state had not been proved and though the name of the accused Kapil Nagar was taken in the diary but it was not the case of the prosecution that it had proved the guilty mind that the accused wanted the deceased to commit suicide and the accused could not be blamed for the death of the deceased. However, it is reiterated that at the stage of framing of charge, the court has to take only a prima facie view and it has also been held that instigation could be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. In the present case, as per the pages of the diary and the suicide note, the accused Prakash Jarwal and Kapil Nagar had repeatedly been demanding money and the deceased had paid a huge amount of money to them and still they kept threatening to kill him and his family members and to remove his tankers and due to the alleged continued harassment over 5 years, it could prima facie be said that the accused persons had created such circumstances that the deceased was left with no option except to commit suicide, more so as his source of livelihood was also affected.

31. The Ld. Counsel for the accused Harish had argued that the FIR was got registered in April 2020 which did not mention the name of the accused Harish anywhere. There was no mention of the name of the accused Harish in the statements that were recorded under Section 164 Cr.P.C. of Revadhar Bhatt, Hemant Singh, Rajbir Singh, Chiranji Lal and Rajbir Singh. The accused Harish was named for the first time in June 2020 and he was made an accused only as he did not succumb to the pressure of the police to join as a witness. His name was not there even on the first page of the so called suicide note and till page eight of the diary, his name was not there. There was a complaint but even in the said complaint which was of 2018, no accused was named nor in the subsequent complaints. Throughout 2015, 2016, 2017 and 2018 the deceased had not named any of the accused persons. The first complaint was made on 24.01.2020 vide DD No.3963 in which no one was named. The second complaint was of 09.04.2020 vide DD No. 5378 which was made 10 days before the death but again the name of none of the accused persons was mentioned and there were no allegations of extortion or threat in the same. It is true that in the statements of the witnesses that were recorded, the name of Harish has nowhere been mentioned. Even in the FIR, the name of Harish was not mentioned. In the 'suicide note' as well it was nowhere alleged that the accused Harish had threatened or demanded anything or met the deceased on any particular date. Further in the pages of the diary, there is reference to Harish Jarwal for the first time on page dated 23.1.2019 (date referred to for easy identification of the page) wherein it is stated that Prakash Jarwal and Kapil Nagar and his persons harass him such as Harish Jarwal and his brother Anil Jarwal

and then on page dated 4.2.2019 (date referred to for easy identification of the page) it is only stated that the deceased was harassed due to Harish Jarwal along with Prakash Jarwal and Kapil Nagar. There is another reference to Harish Jarwal on the page dated 11.2.2019 (date referred to for easy identification of the page) wherein it is stated that they were using their power- Prakash Jarwal, Kapil Nagar, Harish Jarwal and brother of Prakash Jarwal Anil Jarwal and they had destroyed his life. As such it is not that there is no reference to Harish, though there is no specific allegation against Harish Jarwal of having made any demand or of extorting any money or of any money being paid to him.

32. The Ld. Counsel had also submitted that the pages of the diary referred only to payment and also showed the mental status of the deceased but they also contain allegations against accused Prakash Jarwal and Kapil Nagar and cannot be ignored at this stage. It is true that the pages of the diary did not bear any date or time but it cannot be said that they mainly showed that the deceased had dispute with DJB over payment, when there are specific allegations against the accused persons. It was also argued that Harish is neither the brother of the accused Prakash Jarwal nor his cousin and his name was not even Harish Jarwal but was Harish Kumar but it would be seen at the stage of trial what the role of Harish was. It was then contended that the statements of three persons were recorded namely of Satte, Ramesh and Tilak Raj but rather than making them accused, their statements were recorded under Section 161 Cr.P.C. However, even if the said persons have not been joined as accused persons, it

would not absolve the accused persons at this stage if there is material on record, prima facie to show that the offences are made out against them. It was also asserted that there were allegations against Rajbir but he was joined as a witness instead of making him an accused but again that would not absolve the other accused persons at this stage.

33. The Ld. Counsel had further argued that there was even nothing to show any conspiracy on the part of accused Harish. It was contended that in fact, the deceased had called himself unfortunate. The deceased had received Rs.62 lakhs in 2019-20 from DJB so there was no reason to commit suicide and he was under depression due to his own acts. It could not be that the entire amount had been extorted from him and further more amount had been extorted for which he had to sell his land and jewellery. It was also pointed out that the documents on record showed that the bills of payment regarding the tankers were processed and the notings showed that no documents had been submitted by the deceased or his family members in March 2020 that they wanted to engage their tankers with DJB. It is true that the record reflects payments being received by the deceased but the deceased had also stated about payments made to accused Prakash Jarwal and Kapil Nagar and also that he could pay only part of the money demanded at the time of elections. Further the statement of Himmat Singh, JE is on record and a perusal of the same raises questions as to why no application or documents were submitted by the family members of deceased to engage their tankers though they have themselves not stated anything in that regard in their statements.

34. The Ld. Counsel had submitted that in 2016, a sting operation had been carried out against the deceased and he had been blacklisted by DJB for black marketing of water and thereafter he had put the tankers in the names of his family members and even his employee to which the Ld. Counsel for the complainant had contended that the same could not be taken note of as the same was not part of the record. Even otherwise, as per the own contention of the accused, tankers were being plied in the names of the family members of the deceased. It was submitted that the deceased had also received a notice from the Medical Council as he was not a doctor to which he had replied and thereafter his clinic was closed and further the son of the deceased wanted to play internationally but he was not taken for practice which affected the mental status of the deceased. However, the sting was in 2016 whereas the suicide was committed much after in 2020 and it is seen that the deceased had made specific allegations in the pages of the diary and the 'suicide note' which are also corroborated by the statements of witnesses. It was also argued that the accused Harish was never in a position to get the tankers put or to get the payment stopped and was a driver by profession but it is the case of the prosecution that he was a person of the accused Prakash Jarwal. It was contended that there was no CDR to show that the accused Harish had ever called the deceased and there was no allegation of extortion against him and that the accused Harish had no motive or intention to do any act against the deceased and his family but it is the specific case of the prosecution that Harish was acting at the instance of accused Prakash Jarwal. The record shows that a large

number of calls were exchanged between Prakash Jarwal and Harish but there is nothing to show any call made by the accused Harish to the deceased or his family members.

35. The Ld. Counsel had submitted that for the offence under Section 306 IPC to be made out, proximity of time had to be there. Reliance was also placed on several authorities to argue that there should be some positive act of the accused or instigation by him whereas there was no such allegation qua the accused Harish. The Ld. Counsel had relied upon the judgment of Hon'ble High Court of Bombay in **Gulab v. State of Maharashtra** AIR 2019 Bom 224 wherein the Hon'ble High Court had relied upon the judgment of the Hon'ble Supreme Court in **M. Mohan v. State represented by the Deputy Superintendent of Police** (2011) 3 MhLJ (Cri) 127, wherein the Hon'ble Supreme Court had observed as under:

*“44. This Court in **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)**, (2009) 16 SCC 605 (CRI): 2011 (1) Mh.L.J. (Cri.) (SC) had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word “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 others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.*

45. 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.

46. The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under section 306, Indian Penal Code 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 seeking no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

It was further observed by the Hon’ble High Court of Bombay that the mere fact that certain persons had been named in the suicidal note to be responsible for his death was not by itself a ground to fasten one with the charge of abetment and in terms of Section 107, it must prima facie appear to hold that the person named in the suicide note to be responsible for commission of suicide had abetted in the act. The act or conduct of the accused, even if there may be any, however, insulting and abusive it may be, will not by itself suffice to constitute abetment of commission of suicide, unless it is reasonably capable of suggesting that the accused intended by such acts the consequences of suicide.

36. The Ld. Counsel had also relied upon the judgment of Hon’ble High Court of Delhi in **Ashish Chaudhary v. State I** (2009) DLT (CrI.) 567 wherein reference was made to several judgments namely:

“I. In the case of Pradeep Kumar v. State of Punjab, 2003 (1) Cr.CC 117 it has been held that there must be a direct or reasonable nexus between the act and consequences in committing suicide.

II. In Rikhee Ram v. State of Chattisgarh, (2006) 4 Cr.CC 604 it has been said that a charge under Section 306 IPC cannot be framed merely because the applicants as accused were searching

for the deceased for making good their loss to their tractor. It was held that in the absence of any evidence to show that the accused persons instigated the abetment of suicide the charges framed against appellant/accused persons were not sustained.

III. In the case of Mahesh v. State of Madhya Pradesh, 2002 (3) Cr.CC 432 (M.P. High Court) it was held that even if the death note (suicide note) mentions about taking a loan by the accused from deceased for getting a plot allotted by the development authority and deceased was harassed when accused refused to give the plot dishonestly where after the deceased committed suicide, would not fulfill ingredients of abetment as no other positive act attributed to the accused was alleged to justify framing of the charge under Section 306 IPC .

IV. In the case of Jugal Kishore v. State of Madhya Pradesh, 2002 (2) Cr. CC 161 not returning the loan amount, which the accused had taken from the deceased and taking away the ornaments from the deceased to ensure payment of dues with a threat that if such payment is not made, Police action will be taken against him was not found to be an act of abetment for commission of suicide by the deceased who committed suicide thereafter and the charge framed against the accused under Section 306 IPC was set aside.

V. In the case of Manish Kumar Sharma v. State of Rajasthan, 1995 Cr. L.J. 3066 where persistent demand for the refund of an amount advanced by the accused to the deceased was not taken as sufficient to bring the instance/demand of the accused in the realm of abetment so as to frame a charge under Section 306 IPC.

VI. In the case of Colonel G.C. Ghura v. State of Rajasthan, 1996 Cri. L.J. 2158 where also a suicide note was found near the dead body of the deceased alleging that accused had demanded sum from the deceased and on his refusal to pay the same the accused declared him unfit for recruitment to the Army which resulted in suicide. It was held that the refusal of the accused in recruiting the deceased in the Army being not a member of the Selection Board was not an act of abetment as per the provision of Section 107 of the IPC and, therefore, the petition under Section 482 Cr.P.C. was allowed.

VII. In the case of Cyriac v.. S.I. Police, 2005 (4) CrI.CC 78 (Kerala) it was held that insulting statements in public that the deceased was not even having Rs. 200 should go and die was not found sufficient to constitute abetment. It was also held that such

statement was not enough to cause persuasion to the deceased to commit suicide and, therefore, the accused could not have been held guilty of offence under Section 306 IPC and accordingly charges framed were quashed.”

Reference was also made to the judgment of Hon’ble Supreme Court in **Sanju v. State of Madhya Pradesh** AIR 2002 SC 1998 wherein it was held that where the appellant had used abusive language and told the accused to go and die and the deceased committed suicide by hanging himself after two days of the quarrel, it was held that the conduct of the appellant could not have been construed as an act of either instigation or abetment as the suicide by the deceased was not proximate to the abusive language uttered by the appellant and the court also observed that in the relevant period the deceased was without any work or vocation and used to indulge in drinking as a frustrated man and, therefore, the act of committing suicide on his part could not have been the direct result of quarrel under the provisions of Section 306 IPC and the conduct of the accused in telling the deceased to go and die would not tantamount to instigation. Reference was also made to the judgment of Hon’ble Supreme Court in **Netai Dutta v. State of West Bengal** AIR 2005 SC 1775 (on which reliance was also placed by the Ld. Counsel for the accused) wherein a suicide note was recovered from the dead body of the deceased making some reference to the appellant without any averment that the appellant caused any harm to the deceased and also taking into consideration that the deceased at the relevant time was dissatisfied with the working conditions in the office where he was doing work, in the absence of any evidence that the appellant played any part or role in any conspiracy

which might have instigated or resulted in the commission of suicide by the deceased, the order of the High Court dismissing the petition filed for quashing of the petition was reversed. Reliance was also placed in this judgment on the judgment of the Hon'ble High Court of Delhi in **Laxmi and Anr. v. State** 2001 (2) JCC 297 (Del) wherein it was observed as under:

“14. Abetment involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence and it is of the essence of the crime of abetment that the abettor should substantially assist towards the commission of the offence. In other words, in order to convict a person of abetting the commission of a crime, it is necessary to connect him with those steps in the transaction which are criminal. It is not the case of the prosecution that when the deceased had committed suicide, the accused were present at the place of incident. There is no material, direct or indirect, to show that the accused had either instigated or conspired or aided the deceased in committing the suicide at that time. And it could not be said that the accused persons had abetted the suicide. On the material available no offence punishable under Sections 306/34, IPC is made out against either of the accused.”

It was thus held that in the entire suicide note there was no whisper that any overt act was committed by either of the petitioners which may either come within the definition of abetment or as a part of conspiracy to compel the deceased to commit suicide or to instigate him to commit suicide.

37. The Ld. Counsel had further relied upon the judgment of Hon'ble Supreme Court in **State of Kerala & Ors. v. S. Unnikrishnan Nair & Ors.** VI (2015) SLT 511 wherein it was observed that to think of self-annihilation because of something which

is disagreeable or intolerable or unbearable, especially in a situation where one is required to perform public duty, has to be regarded as a non-valiant attitude that is scared of immediate calamity or self-perceived consequence. In this case reference was made to the judgments in **Kishori Lal v. State of M.P.** (2007) 10 SCC 797, **Analendu Pal @Jhantu v. State of West Bengal** (2010) 1 SCC 707, **Netai Dutta (supra)** and also the judgment in **M. Mohan (supra)** and it was held that the suicide note did not state about any continuous conduct of harassment and it was held that the High Court was justified in quashing the proceedings. It is pertinent that in the present case, it is specifically alleged that the accused persons had subjected the deceased to continuous harassment and torture.

38. Reliance was also placed by the Ld. Counsel on the judgment of Hon'ble High Court of Delhi in **Hira Lal Jain v. State** 87 (2000) DLT 265 wherein it was observed that the dicta of all the judgments appears to be that where the allegations made in the FIR or the complaint and statement of witnesses recorded in support of the same taken on their face value, do not make out a case against the accused and do not disclose the essential ingredients of the offence which is alleged against the accused, then the proceedings ought to be quashed. It was held that from the contents of the suicide note, it could not be said that the petitioner had goaded, provoked, incited, urged or encouraged the deceased to commit suicide and as such it was held that there being no material on record to show that the ingredients of the offence of abetment had been satisfied the framing of charge under Section 306 IPC against the petitioner was bad in

law. The Ld. Counsel had then relied on the judgment of Hon'ble High Court of Delhi in **Laxmi & Anr. v. State** 85 (2000) DLT 319 in which reference was made to the judgment in **Emperor v. Amiruddin Solebhoy** AIR 1923 Bombay 44 wherein it was observed as under:

“A person is said to instigate another to act when he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement.”

It was observed that in order to constitute abetment by aiding, the abettor must be shown to have “intentionally” aided the commission of the crime (**Sri Ram v. State of UP**. AIR 1975 SC 175) and that in that case, there was nothing to show that the accused persons intended that the deceased should commit suicide or knew that he was likely to commit suicide but it was an independent act of the deceased himself. In this case the Hon'ble High Court of Delhi quashed the proceedings.

39. The Ld. Counsel had also relied on the judgment of Hon'ble High Court of Delhi in **Pradeep S. Ahluwalia v. State** 81 (1999) DLT 111 wherein it was held that mere allegation of harassment in dying declaration was not sufficient to constitute the offence of abetment of suicide and even though the deceased was harassed by the petitioner before occurrence in question took place, the petitioner could not be said to have abetted the suicide by the deceased within the meaning of Section 306 IPC. Reliance in this case was placed on the judgment of Hon'ble Supreme Court in **Mahendra Singh and Another v. State of Madhya Pradesh** 1996 Cr.LJ 894

wherein the Hon'ble Supreme Court had held that mere allegation of harassment made by the deceased in her dying declaration against the accused was not sufficient to constitute offence punishable under Section 306, IPC. Lastly, reliance was placed on the judgment of Hon'ble Supreme Court in **Gangula Mohan Reddy v. State of Andhra Pradesh** 1 (2010) SLT 1 wherein it was held that there was no evidence and material on record from which an inference could be drawn of the accused having abetted commission of offence of abetment of suicide and the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in day to day life.

40. In **Netai Dutta v. State of WB** (2005) 2 SCC 659 wherein there was no allegation that the accused was in any way harassing the deceased, it was held that the case was without any factual foundation and the criminal proceedings were quashed observing that the prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result.; in **V. Shankaraiah v. State of AP** 2002 (2) A.P.L.J. 195(HC); and in **A.R. Madhav Rao & Ors. v. State of Haryana & Anr.** CRM M-2068 of 2012 (O&M) decided on 22.05.2018 as well the proceedings were quashed.

41. In the present case, while there are allegations of continuous harassment at the hands of accused Prakash Jarwal and Kapil Nagar which prima facie created circumstances under which the deceased had no option but to commit suicide but as regards accused Harish, except the reference to his name at three places in the diary, it

is seen that there is no reference of any specific act or incident whereby he had committed any wilful act or omission or harassed the deceased or extorted money from him. There are no instances or illustrations of instigation or aiding pointed out against the accused which would be covered under 'abetment' as interpreted in a catena of judgments. As such the accused Harish is entitled to be discharged for the offence under Section 306 IPC while the offence under Section 306 read with Section 34 IPC is prima facie made out against the accused Prakash Jarwal and Kapil Nagar.

Other offences

42. The accused persons have also been charge sheeted for the offences under Sections 386 and 506 IPC. From the material on record, it can be said that the accused Prakash Jarwal and Kapil Nagar had hatched conspiracy to extort the tanker owners and the deceased by threatening them to pay money if they wanted to ply their tankers with Delhi Jal Board and further demand was raised at the time of elections of Delhi Legislative Assembly in the year 2020 and they were frightened that if they did not pay the money as demanded, their tankers could not ply in Delhi Jal Board and would be discontinued and the said accused persons also threatened to kill the deceased and his family members. As such, the accused Prakash Jarwal and Kapil Nagar would be liable to be charged, prima facie for the offences under Section 120-B IPC read with Sections 384, 386 and 506 IPC. While it is the case of the prosecution that the accused Harish was acting at the instance of the accused Prakash, there is nothing specific on

record to show that the accused Harish had entered into a conspiracy with the other accused persons.

43. It is seen that there is sufficient material on record to prima facie show that the accused Prakash Jarwal and Kapil Nagar extorted the deceased and other tanker owners who, in their statements, have also stated about the extortion by threatening them to pay the money (Rs.15,000/- for small tankers and Rs.20,000/- for big tankers monthly) to accused Prakash Jarwal and Kapil Nagar, if they wanted to continue plying their tankers with Delhi Jal Board and at the time of election of Delhi Legislative Assembly in the year 2020 demanded Rs.51,000/- for small tanker and Rs.71,000/- for big tanker as election expenses from tanker owners, apart from the monthly charges and threatened them that in case they did not pay money as demanded by them their tankers could not ply in Delhi Jal Board and would be discontinued and in fact it is the case of the prosecution that as the deceased could not pay the entire extortion money, his tankers were discontinued. As such the offence under Section 384 IPC read with Section 120 B IPC would be made out against the accused Prakash Jarwal and Kapil Nagar though there is nothing specific in the 'suicide note' or in the pages of the diary that any demand was made by the accused Harish. Reliance was placed by the prosecution on the alleged recordings between witness Sanjay and accused Harish to argue that he used to demand money from tanker owners but the same does not show anything qua the deceased and as such no case under Section 384 IPC is made out against the accused Harish.

44. It is further seen that there is enough material on record to prima facie show that the accused Prakash Jarwal and Kapil Nagar extorted the deceased Dr. Rajinder by threatening to kill him and his family, if he did not pay the money for plying his tankers with DJB. As such the offence under Section 386 IPC read with Section 120 B IPC would also be made out against the accused Prakash Jarwal and Kapil Nagar though again there is nothing specific in the statements of the witnesses or in the 'suicide note' or in the pages of the diary that the accused Harish had extorted the deceased by threatening to kill him and his family. The Ld. Counsel for the accused Prakash Jarwal had argued that the offence under Section 386 IPC would not be attracted in the present case as the allegation was not that the accused Prakash Jarwal had extorted the money but that the deceased was asked to give him money and also as the complainant himself had neither received any calls nor was threatened but looking to the material on record, at this stage prima facie offence under Section 386 IPC would also be attracted against the accused Prakash Jarwal and Kapil Nagar as also the offence under Section 506 IPC read with Section 120 B IPC.

45. The Ld. Counsel for the accused Harish had argued that merely because the name of Harish was there in the so-called suicide note, it did not necessarily mean that he had committed any offence. While there are references to the accused Harish in the pages of diary, the allegations are regarding harassment. Moreover, it is the case of the prosecution that in the recording of the alleged calls between Sanjay and the accused Harish, the voice of the accused Harish is there and as per the report of FSL the voice

is probably of Harish in the recording and as such there is material on record to prima facie show that the accused Harish had criminally intimidated the deceased and the witness Sanjay. In these circumstances, the offence under Section 506 IPC would prima facie be attracted against the accused Harish.

CONCLUSION

46. In view of the above discussion, the offences under Sections 120 B IPC read with Sections 386, 384 and 506 and offences under Section 384 read with Section 120 B IPC, Section 386 read with Section 120 B IPC and Section 506 read with Section 120 B IPC and also under 306/34 IPC are prima facie made out against the accused Prakash Jarwal and Kapil Nagar. The accused Harish is discharged for the offence under Sections 306 and 386 IPC but he is liable to be charged, prima facie for the offence under Section 506 IPC.

The charge be accordingly framed against the accused persons.

ANNOUNCED IN THE OPEN COURT (GEETANJLI GOEL)
On this 11th day of November 2021 ASJ/ Special Judge (PC Act) (CBI) -24
(MPs/MLAs Cases) RADC, New Delhi