A. F. R

(Reserved on 18.11.2022)
(Delivered on 06.01.2023)

Court No. - 20

Case :- CRIMINAL REVISION No. - 604 of 2019

Revisionist :- Melvin Saldanha And Anr.
Opposite Party :- State Of U.P. And Anr.
Counsel for Revisionist :- Anurag Shukla
Counsel for Opposite Party :- Govt. Advocate,Devika Singh,Harish Pandey,Rajendra Kumar Dwivedi,Sarvajeet Dubey,Suyash Bajpai

Hon'ble Brij Raj Singh,J.

1. Heard Sri D.D. Chopra, learned Senior Advocate assisted by Sri Anurag Shukla, learned counsel for the revisionists. Sarvajeet Dubey learned counsel for O.P. No.2, learned AGA and perused records.

2. This criminal revision under Section 397 CrPC read with 401 CrPC has been filed by the revisionists with prayer to set aside the order dated 14.3.2019 passed by the Additional Sessions Judge-Ist, Lucknow in S.T. No.34 of 2019 (State. Vs. Father Melvin Saldanha and another) consequently, with further prayer to acquit the revisionists of the charges levelled against them under Section 305 IPC after summoning the lower Court record.

Brief facts of the case:-

3. Brief facts of the case are that FIR was lodged on 4.12.2016 in Case Crime No.1121/2016 under Section 306 IPC, PS Madiyaon, district Lucknow later on, converted under Section 305 IPC on 21.3.2017.

4. As per FIR, the deceased Lalit Yadav son of O.P. No.2 was a regular student of Class-XII in Cathedral Senior Secondary School, Hazratganj, Lucknow. It has been stated in the FIR by the father of the deceased that his son used to attend the school regularly but he was making regular complaints to father and mother regarding the harassment done by the revisionist No.1, Melvin Saldanha (Father Melvil Saldanha) and the revisionist No.2 James John (P.T. Teacher James John). On 3.12.2016 the complainant's son Lalit Yadav had

gone to school and he was beaten by the revisionist No.1 and 2 andthey threatened to expel him from the school. There was call on the mobile phone of the complainant at 7.58 a.m. by the revisionist No.2 to bring his son from the school on which he made contact to his wife and asked her to bring his son from the school. When the wife of the complainant reached the school, she came to know that without waiting for her arrival, the revisionist No.2 PT Teacher had dropped his son Lalit Yadav to the home. His wife was told by the children that after prayer assembly, the revisionist No.1 and 2 had beaten, mentally harassed the deceased and threatened him to expel from the school. The wife of the complainant was coming back to home and she was informed by the revisionist No.2 P.T. Teacher that her son was dropped by him to her home. The wife reached the house and saw that her son had committed suicide by licensed revolver which was kept in almirah. She brought the son to Trauma Centre with the help of neighbours but her son died during medical treatment. The revisionists have challenged the FIR in the High Court by filing Writ Petition No.5269 (M/B) of 2018 and this Court vide order dated 20.2.2018, dismissed the writ petition on the ground that investigation was completed and chargesheet was likely to be filed.

5. The revisionists again challenged the sanctity of investigation by filing Writ Petition No.17509 (M/B) of 2018 requesting for free, fair, truth and logical investigation and to transfer the case to some other investigating agency in which notices were issued on 20.4.2018.

6. Chargesheet was filed in the case on 14.3.2018 under Section 305 IPC. The same was challenged by filing Application U/S 482 being Case U/S 482/378/407 No. - 2653 of 2018 renumbered as Application U/S 482 No.2653 of 2018 (Melvin Saldanha & another Vs. State of U.P. & Another) which was disposed of on 22.5.2018 and liberty was granted to revisionists to move application for discharge.

7. The revisionists approached the Supreme Court in Special Leave Petition (Crl.) No.5071 of 2018 (Melvin Saldanha & another. Vs.

State of U.P. and others.) wherein Supreme Court, vide order dated 19.8.2018 was pleased to issue notice and directed that the revisionists shall not be arrested.

8.. In the meantime, the revisionists preferred application for discharge under Section 227 CrPC before the learned District and Sessions Judge, Lucknow. The District and Sessi9ons Judge, Lucknow dismissed the application on 14.3.2019 for discharge moved by the revisionists. The order dated 14.3.2019 has been challenged before this Court in the present revision.

9.. In the meantime, the SLP (Crl.) No.5071 of 2018 preferred by the revisionists against the order of High Court was disposed of vide order dated 28.4.2022. Supreme Court observed and has taken note of the fact that application for discharge filed by the revisionists before the Court below was rejected and the same was under challenge in the High Court in the present revision. The Supreme Court has lastly observed that the interim order dated 6.1.2020 passed in SLP will operate and the same will continue for a period of six months and the order of High Court will be final. Further direction is issued that contention raised by the parties are left open to be decided in accordance with law.

Submissions of the Revisionists:-

The revisionists have made their following submissions before this Court:-

10. Learned counsel for the revisionists has submitted that on the basis of FIR bearing case no.1121 of 2016 under section 306 IPC (converted to section 305 by Additional Sessions Judge) filed by the Opposite Party No.2, who is the father deceased Late Lalit Yadav the Investigating Agency Police has filed its completion of Investigation Report (Chargesheet) under Section 173 of the CrPC before Additional Sessions Judge-I, Lucknow.

11. In accordance with liberty given to the Revisionists by Hon'ble High Court, Lucknow vide order dated 22.05.2018 in Case under Section 482/378/407 No.2653 of 2018, the present Revisionists had filed Discharge Application under Section 227 of CrPC bearing No.34/2019, State. Vs. Father Melvin Saldanha & another before Additional Sessions Judge-I and the same has been dismissed vide order dated 14.03.2019 by the Additional Sessions Judge-I, Lucknow.

12. That the Revisionists have filed the present Criminal Revision against above order dated 14.3.2019 passed by the Additional Sessions Judge-I dismissing the Discharge Application filed by the present Revisionist.

13. That the case of the Investigating Agency (Prosecution) proceeds on the premise that the Revisionists Melvin Saldahna and James John are responsible for the commissioning of suicide by Lalit Yadav as they had humiliated the deceased after mercilessly thrashing him alongwith Anshul Gupta in consequence of road accident caused by the deceased Lalit Yadav while Anshul Gupta was the pillion rider of the motorcycle driven by deceased.

14. For better understanding, Section 305 of IPC is reproduced hereinbelow:-

> **305. Abetment of suicide of child or insane person**.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

From the perusal of the above it is apparent that the person abetting the commission of suicide would be prosecuted and punished as per provision of section 305 of Indian Penal Code, meaning thereby that the person who abets any other person under 18 years of age in the commissioning of suicide by such person shall be held responsible for the commissioning of suicide and shall be punished accordingly. The

essential condition to charge and prosecute a person is abetment by such person to the commission of suicide.

15. The provision of abetment as contained under Section 107 of Indian Penal Code and for better understanding same is reproduced hereinbelow:

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

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

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

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

16. That from the conjoint reading of above two sections it is evident that abetment under section 107 is sine qua non before prosecuting a person under section 305 and in the absence of the necessary ingredients of abetment as provided under section 107 IPC, the accused cannot be charged under section 305 IPC. The Investigating Agency is therefore, under obligation to investigate and establish that the persons against whom FIR has been lodged under section 305 IPC is responsible for the commissioning of suicide by abating the person to do so.

17. That 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. Instigation to commit suicide.

ii. Conspiracy leading to person committing suicide

iii. Intentionally aiding by an act or omission to commit suicide.

18. That if any of the condition is found present against the person sought to be prosecuted under Section 305 IPC, such person shall be held responsible for abetting commissioning of suicide. Per contra in the absence of the any of the above 3 conditions, a person cannot be held responsible for committing crime under section 305 IPC.

19. That in all three cases of institution, 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 abetmentn to suicide would be constituted only when such abetment is found intentional.

20. That Supreme Court in **Geo Varghese v. State of Rajasthan, 2021 SCC Online SC 873**, 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. Firstly, 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.

21. That in the case of Sanju alias Sanjai Singh Sengar vs. State of M.P. 2002 AIR SC 1998, the Hon'ble Apex Court 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 with mens rea.

22. That the Delhi High court has quashed FIR filed under Section 306 IPC in Roop Kishore Madan v. State, while mentioning that even though the suicide note clearly mentions that the deceased committed suicide because of the accused but there is no material on record to show that the ingredients of the offence of abetment had been satisfied and, therefore the offence under Section 306 IPC cannot be said to have been committed. The instigation when not direct has to be gathered from the circumstances of the case.

23. That in the present case, it is most respectfully submitted that the Investigating Agency has failed to establish mens rea on the part of the Revisionists leading to the commissioning of suicide by the deceased Lalit Yadav.

24. That in the present case deceased was only scolded by the Revisionists for getting into road accident while riding bike that too without helmet and valid driving license, which was against the Code of Conduct of the Cathedral Sr. Secondary School where Revisionists are posted as Principal and P.T. Teacher. It is bounded duty of the revisionist to ensure proper discipline of students in and outside the school premises.

25. That Code of Conduct of the Cathedral Sr. Secondary School provides that students who misconducts and breaks the rules will be suspended from attending classed/school and may be expelled/rusticated from the school.

26. The above fact is also evident from the Statement Anshul Gupta who was the pillion rider on the bike of the deceased when the deceased got into accident and eye witness of the same. In fact Anshul Gupta I his Statement recorded u/s 161 CrPC had categorically stated that on the fateful day he was slapped by the Principal viz. Melvin Saldahna, the Revisionist after he tried to explain the reasons and the aftermath incidents of the accident and Lalit Yadav was not hit or slapped by the Revisionist.

27. That from the reading of the statement of Anshul Gupta it is also clear that deceased was afraid of his father and was assuming that he would be scolded once his father gets to know that he has been suspended from the School. It is further clarified from the statement of Anshul Gupta that the deceased was further afraid that due to the above incident he may get expelled from the school or may be barred from writing the exams which further indicated that the deceased was hypersensitive.

28. That in the present case FIR has been filed by the complainant who happens to be the father of the deceased and is serving as Sub-Inspector in U.P. Police and is in a position to influence the investigation against the Revisionists. The trial court while considering the discharge application has completely overlooked this particular fact.

29. That in the present case there is no eye witness corroborating that the deceased was mercilessly beaten by the Revisionists. Simultaneous consideration of the First Information Report as well as the statement of the Father of deceased Amar Nath Yadav made under section 161 of the CrPC shows that FIR has been lodged with a motion of vengeance.

30. That an unsuccessful attempt has been made to create a fictitious grievance about the harsh behaviour of revisionist towards the deceased however not even a single complaint was ever made not even a personal approach was made nor even any letter was sent to

the authorities in this regard. Therefore, the alleged allegations are nothing but reveals the vengeant behaviour of the father of deceased against the Revisionists.

31. That Burden of proof always lies on the prosecution and it never shifts. In view of the crux of the judgments of Hn'ble the Apex court as well as various High Courts if in the present matter the prosecution version even if accepted for a while (though not conceded) does not whisper any component of mental intention of crime pertaining to abetment to commit suicide by the deceased. Nor there happens to be any active or passive motive for the Revisionists for doing so because they are the Principal and Teacher and every teacher wants to see his pupil to reach peak of success.

32. That Section 227 of CrPC provides that the Court should be satisfied that the accusation made against the accused person is not frivolous and there is some material for proceeding against him. Section 227 statutorily binds the trial Judge to discharge an accused in cases exclusively triable by Court of Sessions after making compliance of under-mentioned four mandatory requirements;

(1)Consideration of the record of the case and the documents submitted therewith;

(2) Hearing the submissions of the accused and the prosecution in that behalf;

(3) Consideration that there is no ground for proceeding against the accused;

(4) Recording reasons for discharge

For better understanding Section 227 of CrPC is reproduced hereinbelow:

227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

33. That the parameters that govern the exercise of this jurisdiction (Discharge Application) have found expression in several decisions of

the Supreme Court. The Hon'ble Supreme Court in **(State of Karnataka Lokayukta Vs. M.R. Hiremath, 2019 (7) SCC 515**, have observed that at the stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the prosecution should be true and the Court should evaluate the material in order to determine whether the facts emerging from the material taken on its face value discloses the existence of the ingredients necessary to constitute the offence.

34. That Free, Fair and Transparent justice is inevitable & happens to be a fundamental right of every citizen guaranteed under Article 21 of the Constitution of India. This issue is well settled that free and fair investigation happens to be the integral part of free trial. Here I n the present matter the investigating officer has not been able to collect or demonstrate an iota of evidence which may even prima facie show that there was any mental intention of either of the revisionists in commissioning of the offence.

Learned counsel for the revisionists has relied on various judgments. They are:-

35. That Hon'ble High Court of Madhya Pradesh at Jabalpur in the case of **Sunil Kumar Sen. Vs. State of Madhya Pradesh** in **Writ Petition No.11763/2018 (MP HC)** has held that:

"10. From the narrative in the petition, it appears that the deceased was leaving school before the end of school hours and upon being so discovered in the act by the Respondent No.4, was allegedly slapped and admonished by the Respondent No.4. However, to hold that there must be an investigation against the Respondent No.4 for an offence u/s. 306 IPC based upon the above allegations is uncalled for. Such an investigation would expose the Respondent No.4 to an arrest and would send a loud message to all those involved in the imparting of education that there are perils of personal inconvenience and legal proceedings to be faced if students are admonished and chastised.

11. Thus, looking at the nature of the allegations, where there is a subsequent improvisation that the deceased was taken back to the school, in a van by the respondent No. 4, where she was again beaten is of suspicious authenticity and credence on account of the fact, that the first complaint that 10 was preferred by the same petitioner to the

police authority, this fact is conspicuous by its absence. Therefore, this court is of the opinion that it would be a travesty of justice to hang the proverbial sword of Damocles over the Respondent No. 4, who is the Principal of Government Higher Secondary School and imperil him with police investigation, where even the allegations levelled by the petitioner herein, do not disclose the commission of a cognizable offence much less one under Section 306 of the IPC. Under the circumstances, the petition is dismissed."

36. That Hon'ble Madras High Court in **P. Rajamohan Versus State & others in Cri. O.P.(MD) No.19293/2014** vide order dated 28.09.2018 while dealing with similar issue related to section 306 IPC has held that:

"13. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. The presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. Secondly, the said abusive words is said to have been uttered to the deceased by the Petitioners, when they had come to know that the deceased had stolen the money from the bag of the Anganvadi Teacher and money was also recovered from her. Thirdly, the deceased had her lunch in the School and attended the post lunch session classes and left the School only after it was over and she had committed suicide only after reaching the home. All these factors would clearly point out that it could not be a direct result of the utterances made by the Petitioners.

14. ……

15. One important thing to be noted in this case is that the Petitioners being the Teachers of the Government School in the interest of the Institution correct any mistake done by the student in order to cultivate good habits and get rid of bad habits, such as stealing money. In fact, the father of the deceased girl had been summoned and it is stated that he gave a letter of apology for the conduct of his daughter and also undertook that the same would not recur again. In such view of the matter, the act of the petitioners cannot be said that it would amount to abetment of suicide.

16. In the case of Sashi Prabha Devi Vs. State of Assam [2006-Cri.LJ-1762], the allegation is that the accused, a Head Mistress of a School wrongly struck off the name of the deceased from the Register of the Students in Class X, which induced the deceased to commit suicide and the High Court of Gujarat has held that there was no evidence showing that the accused had acted at any point of time, suggested or hinted for commission of suicide and when the accused was entitled to correct any wrong order, as in fact deceased had not

passed her class IX examination, no case of instigation or abetment of suicide was made out against the accused.

17. In the case of Nettai Dutta Vs. State of will be [2005-2-SCC-659], the Honourable Supreme Court upholding the order of the High Court, quashed the charge sheet filed under Section 306 of IPC on the ground that the offence under Section would stand only if there is an abetment for the commission of crime.

18. In a very recent decision rendered in the case of Sonti Ramakrishna Vs. Sonti Shanthi Shree and another [2009-1- SCC-554], the Honourable Supreme Court has held that though normally threshold interference should not be made under Section 482 Code of Criminal Procedure, quashing of the complaint on facts was just and necessary. It has also held that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation.

12.By applying the above said well settled principles guided by the Hon'ble Supreme Court of India, in a catena of decisions cited supra to the present case, on looking into the words uttered by the petitioner http://www.judis.nic.in cannot be said to be instigation. In the said circumstances, certainly it cannot be said that the petitioner had in any way instigated the deceased to commit suicide or was responsible for the commission of suicide by the deceased boy.

13.Taking into consideration of the totality of the materials on record and facts and circumstances of the case, this Court is of the view that the petitioner cannot be held responsible for the commission of suicide committed by the deceased boy as there was no instigation or abetment on the part of the petitioner in the commission of suicide by the deceased boy.

37. That Hon’ble High Court of Chhattisgarh at Bilaspur in the case of **Raj Shekhar Paliwal Vs. State of Chhattisgarh & another**, reported in **2020 SCC Online CHH 37** while dealing with similar issue related to Section 306 IPC has held that:-

“14. On perusal of the statement of witnesses under Section 161 of Cr.P.C., it is found that there had been occasions and reasons for which the deceased was taken to task by the applicants, it does not appear that the applicants had acted on any false pretext, there had been reasons for their acting or reacting with respect to the activity or any failure on the part of the deceased which is mentioned in the statements of the witnesses- Karambir Shashtri and Sukanti Shashtri. It appears that the deceased was very much sensitive and she used to become upset after such occasions when she taken to task by the applicants. By taking into consideration, the whole circumstances that occurred before the deceased committed suicide, it can be said that the applicants have acted when they found some kind of fault on the part of the deceased. Being Principal and teacher of the school, the applicants have authority to keep their students under discipline.

Imparting education is a serious business and the Principal and the teachers cannot overlook the mistakes or lapses committed by any student and they have to be straight forward and show strictness so that the students takes care to remain in discipline and obey the command of the Principal and teacher. I am of this view that the applicants have not done anything otherwise than what was required to be done.

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17…….

18. In this particular case, this applicant have acted when they had reasons to do so. The deceased used to become upset because of these incidents, there is nothing to suggest that the applicants had intended that the deceased would go and commit suicide, hence, it cannot be said that there had been any mens-rea on their part, neither it can be said that the applicants had created any circumstance from which the deceased could not come out and she was compelled to commit suicide.

19. Apart from that, the other things that are present in the evidence of this case are these, that the date written on the suicide note is 10.02.2018 and the suicide has been committed by the deceased on 20.02.2018. The acts alleged against the applicants are of previous dates and the last date mentioned is of 16.01.2018, which is about one month prior to the date of incident. Therefore, there appears to be difficulty in connecting all the incidents that have taken place between the applicants and the deceased with the incident of commission of suicide. Hence, I am of this view that in this case, the allegations are though against the applicants but there is nothing to suggest that these applicants have given any kind of abetment to the deceased to commit suicide. Hence, the framing of charge against these applicants under Section 306 read with Section 34 of I.P.C. is erroneous which is liable to be set aside. Hence, the revision petition is allowed and the impugned order framing charge against the applicant is set aside. The applicants are discharged."

38. That the Hon'ble Supreme Court vide order dated 01.10.2020 in the case of **Gurcharan Singh. Vs. The State of Punjab (Criminal Appeal No.40 of 2011)** while dealing with the issue related to section 306 IPC has held that:

13. Section 107 IPC defines "abetment" and in this case, the following part of the section will bear consideration: -

"107. Abetment of a thing – A person abets the doing of a thing, who – First-Instigates any person to do that thing; or **** **** ****

***** **** Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing."*

14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

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.

16. The necessary ingredients for the offence under section 306 IPC was considered in the case SS Chheena Vs. Vijay Kumar Mahajan1 where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a 1 (2010) 12 SCC 190 person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

17. While dealing with a case of abetment of suicide in Amalendu Pal alias Jhantu vs. State of West Bengal2, Dr. Justice M.K. Sharma writing for the Division Bench explained the parameters of Section 306 IPC in the following terms:

"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."

39. That Allahabad High Court at Lucknow Bench in the case of **Dr. J.P. Bhargava and anr. Vs. State of U.P. (Application u/s 482 No.6195 of 2016)** vide order dated 06.07.2022, while dealing with the abetment to suicide under Section 306 IPC has held that:

"18. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. There has to be a positive act on the part of the accused to instigate or aid in committing suicide. If there is no positive act on behalf of the accused to instigate or aid in committing suicide, offence under Section 306 cannot be said to be made out. In order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence. There should be an active act or direct act, which led the deceased to commit suicide. The overt act must be such a nature that the deceased must find himself having no option but to an end to his life. That act must have been intended to push the deceased into such a position that he/she commit suicide. In the suicide-note, only allegation is that the deceased was being frequently transferred and he was being harassed by the applicants. For demanding bribe, the deceased never made any complaint to any authority and the same could not be believed. The facts disclose that the deceased himself was not handing over the charge despite numerous reminders and he was not joining the place of his transfer. The deceased himself was guilty of dereliction of duty. For performing official acts, without there being any intention to push the deceased to commit suicide, the offence under Section 306 IPC against the applicants cannot be said to be attracted. On a plain reading of the suicide-note itself reflects that there was no abetment on the part of the applicants for committing suicide by the deceased.

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23. From the aforesaid discussions, it is evident that the deceased perceived harassment by the applicants as he was transferred in frequent successions on administrative grounds. There is nothing on record to suggest any mens-rea for instigating or abetting the suicide by the applicants. The suicide-note, as has been extracted herein above even does not remotely suggest that the accused-applicants had any intention to aid, instigate or abet the deceased to commit suicide.

Transferring the deceased, asking him to handover the charge and not sanctioning earned leave by itself would not constitute the offence of abetment to commit suicide. There is no evidence collected by the CBI to suggest that the applicants intended by such act to instigate the deceased to commit suicide. This Court is of the view that all ingredients of instigation of abetment to commit suicide are completely absent in the material collected during the course of investigation and, therefore, it cannot be said that the accused-applicants have committed any offence under Section 306 IPC. There is no offending action proximate to the time of occurrence on the part of the applicants, which would have led or compelled the deceased to commit suicide. Perceived of harassment by the deceased in the hands of the accused-applicants cannot be a ground for invoking the offence under Section 306 IPC as it cannot be said that the accused-applicants have abetted the commission of suicide by playing any active role or by an act of instigation or doing certain acts to facilitate commission of suicide."

40. That Hon'ble Supreme Court in the case of **Kanchan Kumar. Vs. State of Bihar in Criminal Appeal No.1562 of 2022** vide order dated 14.09.2022 has held that:

"13. The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal (supra), it was noted that: (1) That the Judge while considering the question of framing the charges under Section 227 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 mouthpiece 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."

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(emphasis supplied)

14. In Sajan Kumar v. Central Bureau of Investigation, the Court cautioned against accepting every document produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that:

i. At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

ii. At the stage of Section 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case..."

"21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(emphasis supplied)

15. Summarising the principles on discharge underSection 227 of the Cr.P.C, in Dipakbhai Jagdishchandra Patel v. State of Gujarat, this Court recapitulated:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a fullfledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion

cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

(emphasis supplied)

16.……..

17.……..

18. The conclusions that we have drawn are based on materials placed before us, which are part of the case record. This is the same record that was available with the Special Judge (Vigilance) when the application under Section 227 of the Cr.P.C. was taken up. Despite that, the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge (Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a prima facie case is made out for the Appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge (Vigilance)."

41. That the parameters that govern the exercise of this jurisdiction (Discharge Application) have found expression in several decisions of the Supreme Court. The Hon'ble Supreme Court in **State of Karnataka Lokayukta Vs. M.R. Hiremath, 2019 (7) SCC 515,** have observed that at the state of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the provision should be true and the Court should evaluate the material in order to determine whether the facts emerging from the material taken on its face value discloses the existence of the ingredients necessary to constitute the offence.

42. That the Hon'ble Supreme Court in the case of **Ajay Singh Vs. State of Chhattisgarh** in **Criminal Appeal no.32-33 of 2017** vide **order dated 06.01.2017** has held that:

"9. Chapter XVIII of CrPC provides for trial before a court of session. Section 227 empowers the trial judge to discharge the accused after hearing the submissions of the accused and the prosecution and on being satisfied that there is no sufficient ground

for proceeding against the accused. The key words of the Section are "not sufficient ground for proceeding against the accused". Interpreting the said provision, the Court in P Vijayan v. State of Kerala and another has held that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

43. Sri Anurag Shukla, learned counsel for the revisionists has further relied on the judgment in the case of **Harish Dahiya @ Harish & anr. Vs. The State of Punjab & others, (2019 18 SCC 69**; **Criminal Appeal No.472 of 2021 (Sanjay Kumar Rai.Vs. State of Uttar Pradesh & anr.**; **Prasanta Kumar Dey. Vs. State of W.B. and another, (2002) 9 SCC 630**; and judgment dated 16.3.2022 passed by this Court in **Application U/S 482 No.16386 of 2021 (Smt. Shila Devi. Vs. State of U.P. and another.)**.

44. Learned counsel for the revisionists has submitted that while deciding the discharge application, the Court below has not applied its mind and the question of abetment has not been dealt with because in the present case, the revisionists have not committed any offence and in any manner, they have not abetted or instigated the deceased to commit suicide. As a Principal and Teacher, after the incident, they had taken the necessary measures to send Lalit Yadav to his house but he committed suicide for which they were not responsible in any manner.

45. Learned counsel for the respondent No.2 Sri Sarvjeet Dubey has submitted that this Court has limited scope in revisional jurisdiction and once the material evidence has been collected against the

revisionists, the Court cannot do mini-trial and, the pros and cons cannot be looked into, therefore, the revision is liable to be dismissed.

46. It has been further submitted by Sri D.D. Chopra, learned Senior Advocate for the revisionists that the application for discharge under section 227 CrPC was submitted before the Court with several decisions of Supreme Court but while taking the decisions of the case, the Court below did not consider the various aspects and pronouncements of Supreme Court and the order has been passed mechanically. It is argued that the impugned order indicates that the Court has noted the facts of the chargesheet, the arguments of the revisionists and the arguments of the opposite parties but while passing the impugned order, the Court below has not discussed the issues in facts in light of judgments of Supreme Court.

47. Learned counsel for the revisionists has relied on the judgment in the case of Geo Varghese (supra). In the said judgment Supreme Court has postulated that if a student is simply reprimanded by a teacher in the act of indiscipline and the student in emotional state, commits suicide, a teacher cannot be held responsible for abeting the charge. The relevant paragraph-31, 32 and 33 of the said judgment is reproduced hereinbelow:-

> "30. Thus, the appellant having found the deceased boy regularly bunking classes, first reprimanded him but on account of repeated acts, brought this fact to the knowledge of the Principal, who called the parents on telephone to come to the school. No further overt act has been attributed to the appellant either in the First Information Report or in the statement of the complainant, nor anything in this regard has been stated in the alleged suicide note. The alleged suicide note only records insofar as, the appellant is concerned, 'THANKS GEO (PTI) OF MY SCHOOL'. Thus, even the suicide note does not attribute any act or instigation on the part of the appellant to connect him with the offence for which he is being charged.
>
> 31. If, a student is simply reprimanded by a teacher for an act of indiscipline and bringing the continued act of indiscipline to the notice of Principal of the institution who conveyed to the parents of the student for the purposes of school discipline and correcting a child, any student who is very emotional or sentimental commits

suicide, can the said teacher be held liable for the same and charged and tried for the offence of abetment of suicide under Section 306 IPC.

31. Our answer to the said question is 'No'.”

48. Learned counsel for the revisionists has further relied on the judgment of Madhya Pradesh High Court at Jabalpur in Writ PetitionNo.11763 of 2018 decided on 20.6.2018. Paragraph-8 of the said judgment is quoted below:-

“8. Nowhere in this petition, has it been alleged, either directly or by necessary implication, that the Respondent No. 4 ever asked the deceased to commit suicide. It has also not been alleged that the Respondent No.4 has such knowledge, that his act would in all probability than not, compel the deceased to commit suicide. The allegation that the Respondent No.4 slapped the deceased, if at all true, only constitutes an offence Section 323 of IPC, which is a non-cognizable offence, where cognizance can only a taken on the basis of a complaint made under Section 200 Cr.P.C.”

49. Learned counsel for revisionists has further relied o the judgment of Madras High Court, Madurai Bench, **P. Rajmohan. Vs. State, 2018 0 Supreme (Mad) 3697,** and paragraph-15 of the said judgment clearly points out that father of the deceased girl was summoned by the teacher and he was asked to give apology for the conduct of his daughter; thus, for the abetment of girl deceased, teacher could not be held responsible. For convenience, paragraph-15 of the said judgment is reproduced hereinbelow:-

“15. One important thing to be noted in this case is that the Petitioners being the Teachers of the Government School in the interest of the Institution correct any mistake done by the student in order to cultivate good habits and get rid of bad habits, such as stealing money. In fact, the father of the deceased girl had been summoned and it is stated that he gave a letter of apology for the conduct of his daughter and also undertook that the same would not recur again. In such view of the matter, the act of the petitioners cannot be said that it would amount to abetment of suicide.”

50. Similarly, the judgment of Chhattisgarh High Court in the case of **Raj Shekhar Paliwal and another. Vs. State of Chhattisgarh and another, 2020 SCC OnLine Chh 37,** has been relied on by the learned counsel for the revisionists wherein, it has been held that the

deceased student was sensitive and she committed suicide. The relevant paragraph-14 of the said judgment is quoted below for convenience:-

"14. On perusal of the statement of witnesses under Section 161 of Cr.P.C., it is found that there had been occasions and reasons for which the deceased was taken to task by the applicants, it does not appear that the applicants had acted on any false pretext, there had been reasons for their acting or reacting with respect to the activity or any failure on the part of the deceased which is mentioned in the statements of the witnesses- Karambir Shashtri and Sukanti Shashtri. It appears that the deceased was very much sensitive and she used to become upset after such occasions when she taken to task by the applicants. By taking into consideration, the whole circumstances that occurred before the deceased committed suicide, it can be said that the applicants have acted when they found some kind of fault on the part of the deceased. Being Principal and teacher of the school, the applicants have authority to keep their students under discipline. Imparting education is a serious business and the Principal and the teachers cannot overlook the mistakes or lapses committed by any student and they have to be straight forward and show strictness so that the students takes care to remain in discipline and obey the command of the Principal and teacher. I am of this view that the applicants have not done anything otherwise than what was required to be done."

51. Learned counsel for the revisionists has further relied on the judgment in the case of **Gurcharan Singh. Vs. State of Punjab, (2020) 10 SCC 200,** and in paragraph-15 thereof, Supreme Court has dealt with the issue of *mens rea* and held that there was no evidence regarding persistent guilt or harassment from the husband. Therefore, the requirement of Section 107 IPC for abetment is not fulfilled. For convenience, paragraph-15 of the said judgment is quoted below:-

"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."

52. Learned counsel for revisionists has further relied on the judgment in the case of **Sanju @ Sanjay Singh Sengar. Vs. State of Madhya Pradesh, (2002) 5 SCC 371, paragraph-13**, which is quoted below:-

"A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handy work of a man with sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 Cr.P.C. before the Investigation Officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26th July, 1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken pace on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C. It is in the statement of the wife that the deceased always remained in a drunkened condition. It is a common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25th July, 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death."

53. He further relied on the judgment Delhi High Court in the case of **Roop Kishore Madan. Vs. State,** reported in **2001 CriLJ 1219**, paragraph-17 of which reads as under:-

"17. The law on the subject has been discussed at length in various judgments of the High Courts and the Supreme Court in Hira Lal Jain. v. State, 2000 III AD (Crl.) DHC 121. It was held that on

reading of clause 'First' of Section 107 IPC, it is clear that a person who instigates other to do a thing, abets him to do that thing. A person is said to instigate another when he incites or otherwise encourages another to commit a crime. In the present case, a reading of the so-called, suicide note does not remotely suggest that the petitioner had incited the deceased to commit suicide. There is no material on record to show that the ingredients of offence of abetment had been satisfied and, therefore the offence under Section 306 IPC cannot be said to have been committed. In Taposi Chakervarti v. State, 2000 III AD (Cr.) DHC 233, this Court has elaborately gone into what are the ingredients necessary to satisfy an offence under Section 304 IPC."

54. Learned counsel for the revisionists has further relied on the Allahabad High Court Lucknow Bench judgment in the case of **Dr. J.P. Bhargav and another. Vs. State of U.P. (Application U/S 482 No.6195 of 2016)** with other connected matters, decided on 6.7.2022, paragraph-18 and 23. He has submitted that abetment involves a mental process in which it has come out that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. There has to be a clear *mens rea* to commit the offence and it has been held that all ingredients of instigation of abetment to commit suicide are completely absent in the material collected during investigation and thus, no offence under Section 306 IPC was made out.

55. Learned counsel for the revisionists further relied upon the judgment in the case of **Kanchan Kumar. Vs. The State of Bihar, 2022 LiveLaw (SC) 763**, wherein Supreme Court has laid down thelaw that roving inquiry is not permitted at the stage of discharge. What has to be seen is that a simple and necessary inquiry for proper adjudication of application for discharge is required. The relevantn paragraph-18 of the said judgment is quoted below:-

"18. The conclusions that we have drawn are based on materials placed before us, which are part of the case record. This is the same record that was available with the Special Judge (Vigilance) when the application under Section 227 of the Cr.P.C. was taken up. Despite that, the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge

(Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a prima facie case is made out for the Appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge (Vigilance)."

56. Similarly, another judgment on the post of discharge, has been cited by the learned counsel for the revisionists in the case of **State of Karnataka Lokayukta, Police Station, Bengaluru. Vs. M.R. Hiremath, (2019) 7 SCC 515,** where Supreme Court has given dictum that while taking decision in discharge proceedings, the Court must proceed on the assumption that material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on the face value, discloses the existence of ingredients necessary to commit the offence. Relevant paragraph-24 and 25 of the said judgment are quoted below:-

"24. The High Court has in the present case erred on all the above counts. The High Court has erred in coming to the conclusion that in the absence of a certificate under Section 65B when the charge sheet was submitted, the prosecution was liable to fail and that the proceeding was required to be quashed at that stage. The High Court has evidently lost sight of the other material on which the prosecution sought to place reliance. Finally, no investigation as such commenced before the lodging of the first information report. The investigating officer had taken recourse to a preliminary inquiry. This was consistent with the decision in Lalita Kumari.

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In the *State of Tamil Nadu v N Suresh Rajan*, *(2014) 11 SCC 709* adverting to the earlier decisions on the subject; this Court held : (SCC pp 721-22, para 29)

> "29…At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground

for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

57. Similarly, to support his arguments, learned counsel for revisionists has relied on the judgment in the case of **Ajay Singh and another. Etc. Vs. State of Chhattisgarh and another, (2017) 3 SCC 330**, paragraph-9 which reads as under:-

"9. Chapter XVIII of CrPC provides for trial before a court of session. Section 227 empowers the trial judge to discharge the accused after hearing the submissions of the accused and the prosecution and on being satisfied that there is no sufficient ground for proceeding against the accused. The key words of the Section are "not sufficient ground for proceeding against the accused". Interpreting the said provision, the Court in **P. Vijayan Vs.State of Kerala and another (2010) 2 SCC 398** has held that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

58. Learned counsel for revisionists has also cited various judgments to make his submissions that while considering the question of framing charge under Section 227 CrPC, the Judge has any doubt due to sift and waive evidence for limited purpose of finding out whether or a prima facie case against the accused has been made out, whether, material placed before the Court discloses grave suspicion against the accused which has not been properly explained.

He has also relied judgment in the case of **Union of India. Vs. Prafulla Kumar Samal and another, (1979) 3 SCC 4**; S**aranya. Vs. Bharathi and another, (2921) 8 SCC 583**; **K. Kala Vs. Secretary, Educational Department, 2022 LiveLaw (Mad) 452**; **M. E. Shivalingamurthy. Vs. Central Bureau of Investigation, Bengaluru, (2020) 2 SCC 768**.

59. He has further relied upon various judgments and has submitted that this Court in exercise of its inherent jurisdiction, can prevent the abuse of process to secure the ends of justice. The discharge application of the revisionists should be decided with compliance of mandatory statutory provisions of Section 226, 227 and 228 CrPC. He referred to the judgments of *Harish Dahiya* (supra) and *Sanjay Kumar Rai* (supra), *Prashanta Kumar Dey* (supra) and *Smt. Shila Devi* (supra) whicih have been annexed with the application for taking rejoinder affidavit on record dated 16.11.2022.

Submissions of learned counsel for the O.P. No.2 Complainant.

60. That the revisionists upon coming to know about lodging of FIR, approached the High Court by filing Writ Petition No.5269 (M/B) of 2018, which was dismissed on 20.2.2018 on the basis of the statement given by AGA that the investigation has been completed. Later on the revisionists came to know that the investigation was still going on. They preferred another Writ Petition No.1150 (M/B) of 2018 invoking their fundamental right of fair investigation, upon which notice was issued to the I.O.

61. That the revisionists also prayed for quashing of the charge sheet on the extraneous ground that the opposite party No.2 who is the father of the deceased, manipulated the police investigation and using his influence, got the investigation transferred to crime branch since opposite party No.2 is serving in the police department and is posted in the office of S.P. Lakhimpur Kheri thereby insinuating that the investigation was conducted under the influence of opposite party No.2.

62. That on the date of incident i.e., on 3.12.2016 when the deceased went to the school, he was mercilessly and unreasonably, physically assaulted by the revisionists and was also threatened to be ousted from the school for a mere accident which neither resulted in any injury nor was substantial enough for any complaint to be made as verified by the eye-witnesses yet the revisionists made it grave enough to justify their ill-treatment towards the deceased child. Thereafter, the child was forcibly sent to his home alongwith the revisionist No.2 despite knowing that the former's mother is coming to fetch him. Moreover, in spite of the child's mother requesting the revisionist No.2 to stay with the child until she returns home, the revisionist No.2 left him unaccompanied and went back. When Lalit's mother returned home, she found that he had shot himself with the licensed revolver of his father, putting an end to his life.

63. The fact that the revisionists have harassed the deceased in the name of disciplinary action is well-settled by their harsh conduct and hasty steps taken and it was the consequence of their actions which ultimately culminated into the suicide of the child, a plot cleverly crafted on the ground of a mishap, to induce an innocent child to the ill-thought of suicide and commit so, unfailingly. Moreover, it is pertinent to reiterate the statements made by the classmates of deceased Lalit Yadav, duly filed in the chargesheet, that the revisionists have always had an insensitive attitude towards the children, reprimanding the students frequently and unnecessarily. It is undisputable that in order to regulate a child, rebukes by teacher, parents or any elder are must, for instead of being a harsh word to the child, they are strict moral instructions which psychologically leaves a better mark on the child's mind and in turn, encourages the child to be obedient and upright. But, if such a rebuke is made with an intention to lower the self-esteem of a child, to frighten him/her so as not to go against the person chastising, the same rebuke can mentally paralyze a child thereby making him/her oblivion of rationality.

64. That after the unfortunate incident of Lalit's suicide, around 100-150 students of the said school protested against the revisionists, demanding justice for Lalit and strict action against revisionist No.2. However, the students were suppressed by bouncers and police deployed by revisionist No.1. Such steps indicate and make it undeniable that the revisionists were ruthless and merciless and it was this conduct which created such a mental condition that was enough to abet the suicide of an innocent child that day.

65. That the counsel for revisionists have relied on the judgment of Supreme Court in **Geo Varghese. Vs. State of Rajasthan** (supra in paragraph-4.11) where the appellant Geo Varghese was a PT Teacher I n St. Xavier's School, Nevta, Jaipur. He was also a member of the Disciplinary Committee for maintaining overall discipline by the students of the School. One student of Class 9th of the institution, unfortunately, committed suicide in the morning at about 04.00 a.m. on 26.2.2018. The mother of the deceased-student lodged the FIR on 02.05.2018 before the concerned Police Station under Section 306 IPC after about 7 days of the suicide, alleging that her son committed suicide due to mental harassment meted out by the appellant. The Hon'ble Court in the aforesaid judgment pronounced the acquittal of the appellant. The counsel for revisionists have tried to equate both the cases although there are significant dissimilarities. The respondent in the case cited was habitually disobedient towards the rules and code of conduct of the school, bunking classes frequently and disregarding the warnings given by the appellant. The son of opposite party No.2 in this case had never shown any instance of defiance or disrespect for the code of conduct prescribed by the school and was rather a child of calm and obedient demeanour as affirmed by revisionist No.1 himself. The reprimand given to the child in the case cited was verbal and more of a moralizing nature against the wrongs done unlike the corporal punishment and mental trauma meted out to the child Lalit Yadav I n this case for a mere accident which took place outside the premises of the school and for which no formal

complaint, of any kind, was ever made by anybody. The child in the case cited was at home along with his parents when the unfortunate incident of suicide took place while Lalit Yadav was left alone by the revisionist No.2 totally ignoring the request of Lalit's mother to stay with him. The school authorities in the case cited had informed the parents to meet the Principal afraid of which the child committed suicide. In the present case, the revisionists despite calling Lalit's mother to the school had refused to meet her. Moverover, Lalit Yadav had himself informed about the accident to his father before the revisionist No.2 called and re-apprised about the same. Thus the case of Geo Varghese Vs. State of Rajasthan is in no way parallel to the case in hand.

66. That besides the case of Geo Verghese Vs. State of Rajasthan, the counsel for revisionists have cited a whole array of cases equating them with the present case. However, there are marked dissimilarities which do not set a precedent for the case in hand.

i. That in the case of **Sunil Kumar Sen. Vs. State of Madhya Pradesh,** for instance, the deceased violated the rule of school by sneaking out of the premises before school hours for which she was justifiably admonished.

ii. That in the case of **N. Anjali Devi Vs. The Superintendent of Police,** the deceased was scolded by the Anganwadi teacher who in a fit of rage uttered "go and die" after discovering the stolen money from the bag of deceased; here the Hon'ble Court has highlighted that words uttered in a fit of rage do not amount nto abetment of suicide. Moreover, the deceased was reprimanded for her conduct which itself was immoral. However, in the present case the reprimand meted out to the deceased Lalit Yadav was unnecessary in the light of a minor accident for which the revisionists, in particular, had no authority to admonish since the accident neither took place in the premises nor was it formally reported by anyone.

iii. That in the case of **Sashi Prabha Devi.Vs. State of Assam,** the accused was alleged of having wrongfully struck down the name of the deceased from the student register of Class Xth, owing to which the deceased committed suicide. However, the action was justified against the deceased since

she hadn't passed her class Ixth examination and so no case of abetment to suicide could be established.

iv That in the case of **P.Rajamohan Vs. State of Madras,** the deceased was asked to stand outside the class for not bringing the maths testbook and later meet the Headmaster regarding that. There was no evidence of physical assault or mental agony meted out to the deceased, which, it must be reaffirmed, is quite perceptible in the case in hand.

v. That in the case of **Gurucharan Singh Vs. State of Punjab,** it is to be noted that the Apex Court has strongly mentioned that "contignuity, continuity, culpability and complicity of the indictable acts or omissions are the concomitant indices of abetment", and all the key elements are overtly present in this case. The child was neither hypersensitive to get perturbed enough to commit suicide on the spur of the moment nor was dealing with any past distress which could have moved him to such a drastic step. On the day of the unfortunate incident, the child was constantly in the custody of either of the revisionists, who mistreated him firstly in the school premises and later took him back home and left him adequately alarmed about the future damage. Thus the proximity, connection, liability and involvement of the revisionists cannot be repudiated.

67. That the essential ingredient of *mens rea* which the counsel for revisionists argue to be absent, is very well present and is starkly evident from the misconduct of the revisionists towards the deceased Lalit Yadav. The eye-witnesses of the said mishap outside the school has confirmed the maltreatment of revisionist No.2 with the deceased Lalit Yadav and his fried Anshul Gupta, on the road itself. Further, instead of bringing the said matter before the disciplinary committee to decide the further course of action, the revisionists chose to punish the deceased and his fried on their own accord. After sufficiently harassing the students. Anshul was sent back home with a lab assistant whereas the deceased, Lality Yadav was taken home by revisionist No.2 who did not wait back either to inform Lalit's mother as instructed by revisionist No.1 or to consider the request of Lalit's mother to stay with him till she returns. It is therefore clear that the revisionists actively instigated the deceased to commit suicide by instilling a feat of spoiling his career through 'disciplinary actions' and 'future harm'. And the argument of the revisionists that the child

committed suicide under the apprehension of his father, is thus absolutely baseless and a mere attempt to shift the blame for had it been so the deceased would not have informed about the said accident to his father himself, in the first place.

68. That the revisionists' plea for discharge under Section 227 CrPC is wholly irrelevant in the light of the presence of strong evidence of abetment on their part.

69. That there is the presence of ample evidence against the revisionists which has been duly considered by the learned Court below and thus, the revisionists are liable to be tried.

70. That since the outset, the revisionists have shrewdly concealed the facts and have abused the due process of law seemingly to their advantage. The case has been maliciously prolonged by the revisionists as an attempt to evade from the proceedings by approaching the Hon'ble Supreme Court seeking EX-PARTE STAY on arrest, dated 19.06.2018 and later a stay on trial, dated 06.01.2020, instead of complying with the order dated 22.05.2018 which explicitly mentioned filing of a discharge application, if decisions, within two weeks. The present criminal revision was also filed only with a prospect to extent the case furthermore.

71. Taking into account the arbitrary handling of the accident done by the revisionists, by unreasonably admonishing and physically assaulting the deceased Lality Yadav and giving an added mental pressure of rusticating from the school, and haphazard series of actions from calling the child's mother to school to sending him home with revisionist No.2 without informing the mother beforehand and thereafter leaving him alone, all without any just and fair reason, not to mention the tactics employed by the revisionists since the initiation of this case to protract it for 6 long years simply to deny justice to opposite party, unambiguously sum up the mala fide intent of the revisionists which should be heavily dealt with. Besides, the charges having been framed against the revisionists at this stage call for a fair

trial without any further ado since there is prima facie enough evidence to proceed against them and interference of any nature, which defers the proceedings any longer, must not be entertained.

72. That Hon'ble Supreme Court in the case of **State of Bihar Vs. Ramesh Singh** (**1977 AIR 2018**) which explaining the scope of the sections 227 and 228 CrPC observed:

"Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to 'see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

73. That the essential principles of Section 227 CrPC were duly summarized by the Hon'ble Supreme Court in the case of **Union of India Vs. Prafulla Kumar Samal & another, 1979 AIR 366,**:

"(1) That the Judge while considering the question of framing the charges under Section 227 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."

74. That the Hon'ble Supreme Court has elaborated the scope of enquiry under Section 227 CrPC in the case of **Stree Atyachar Virodhi Parishad.Vs. Dilip Nathumal Chordia & anr., 1989 SCC (1) 715,** which says:-

"Sec. 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor it is necessary to delve deep into various aspects. All that the Court has to consider is whether the evidenciary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

75. That the Hon'ble Supreme Court in the aforementioned case further says:

"We wish to add a word regarding interference by the High court against a charge framed by the Sessions Court. Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Be- sides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self restraint on the part of the High Court should be the rule unless there is a glaring injustice stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed."

76. On the other hand, Sri Sarvajeet Dubey, learned counsel for respondent No.2 has relied on the judgment of Supreme Court in the

case of **Mahendra Prasad Tiwari. Vs. Amit Kumar Tiwari and another, Criminal Appeal No.1216 of 2022**. According to his submission in application under Section 482 CrPC or revision under Section 397 CrPC while passing the order on the application for discharge, the correctness and sufficiency of evidence cannot be gone into by this Court and this Court should apply the principle if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. Relevant paragraph-21, 22, 24, 25 and 26 of the said judgment are reproduced hereinbelow:-

"21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [see State of Delhi Vs. Gyan Devi, (2000) 8 SCC 239].

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an

offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

24. It is useful to refer to judgment of this Court in Amit Kapoor and Ramesh Chander, (2012) 9 SCC 460, where the scope of Section 397 CrPC has been succinctly considered and explained. Para 12 and 13 resply are as follows:

> "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> “13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

25. The Court in para 27 has recorded its conclusion and laid down the principles to be considered for the exercise of jurisdiction under Section 397 particularly in the context of quashing of charge framed under Section 228 CrPC. Paras 27, 27(1), (2), (3), (9), (13) resply are extracted as follows:

> "27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for

us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

X X X 27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

X X X 27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie….”

26. This Court in the case of Chitresh Kumar Chopra v. State (Government of NCT of Delhi), reported in (2009) 16 SCC 605, observed in para 25 as under:-

“25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a

view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See: Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors, (1990) 4 SCC 76).”

77. Learned counsel for respondent No.2 has further relied on the judgment of Supreme Court in the case of **State of Rajasthan. Vs. Ashok Kumar Kashyap, Criminal appeal No.407 of 2021, para 9.1, 9.2 and 13**. He has submitted that probative value of evidence cannot be waived by the Court and once, the material has been collected, it should be presumed that the offence has been committed and the Court cannot become trial Court while exercising the power under Section 227 CrPC. Paragraph 9.1, 9.2 and 11 of the said judgment are quoted below:-

“9.1 In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

9.2 In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

> “25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. Vs. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)
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> > “29. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

“11. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of

the PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."

78. He has also relied on the judgment of Rajasthan High Court at Jabalpur Bench in the case of **Mohan Ram. Vs. State of Rajasthan and another. Criminal Revision Petition No.229 of 2022, dated on 1.4.2022**. The issue of framing of charge is mentioned in para 11.8 of the judgment, the relevant portion of which is quoted below:-

"11.8 …. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section (27 of 32) [CRLR-229/2022] exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Section 227 and 228 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual

appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases."

To support his argument, learned counsel for respondent No.2 has further relied on the judgment of Allahabad High Court, Lucknow Bench in **Criminal Revision No.1116 of 2019, Rakesh Kumar Pandey and another. Vs. State of U.P. and another**, decided on 15.2.2022. In the said judgment, the cases of Sanjay Kumar Rai (supra) and Ashok Kumar Kashyap (supra) have been dealt with which have already been discussed in the foregoing paragraphs of this judgment.

Facts and Evidence for consideration:-

79. After lodging FIR, the Investigating Officer has recorded statement of witnesses under Section 161 CrPC. Statement of revisionist No.1 was recorded under Section 161 CrPC by the Investigating Officer and he stated before the Investigating Officer that he had instructed PT Teacher revisionist No.2 to inform the occurrence to the parents and he also asked him to call his parents so that the deceased Lalit Yadav could have been given handed over to parents. He was informed by the PT Teacher about the incident which had taken place. The Principal revisionist No.1 had stated that he did not make any physical assault against the deceased Lalit Yadav. The friend of deceased Lalit Yadav was slapped by him because he became rash when he was asked to come inside the Office. It was further stated by the revisionist No.1 under Section 161 CrPC that the motorcycle of Anshul andn Lalit Yadav was collided with rickshaw and people were beating Lalit; therefore, he was called by him in the School. He further informed the parents after prayer assembly was over. He asked certain questions from Anshul Gupta who was talking in an exciting manner, therefore, he slapped him. On the same time he told both of them i.e., Anshul Gupta and Lalit Yadav that he would call their parents. He further instructed PT Teacher James John to send Lalit

Yadav to his house and Anshul Gupta along with Teacher Luis James. He further told they they would inform their parents that they would be suspended. They were suspended till Monday.

80. Similarly, revisionist No.2 James John also got recorded his statement under Section 161 CrPC and he admitted that Lalit Yadav was dropped by him to his house and parents of Lalit Yadav were informed regarding the occurrence which had taken place. He narrated the facts that how the motorcycle driven by Anshul Gupta and Lalit Yadav collided with rickshaw and he had also come to the place of occurrence and took them inside the School.

81. Statement of Amar Nath Yadav father of deceased Lalit Yadav was recorded under Section 161 CrPC He stated that his son Lalit Yadav was studying in Class-XII-A in Cathedral School, Hazratganj, Lucknow. He had gone to school on 3.12.2016 at about 7.45 a.m. He received call on 7.58 in the morning from PT Teacher that the revisionist No.2 who told him that the motorcycle of his son was collided with rickshaw due to which the wheel of the rickshaw was damaged. The PT Teacher told him that he would present his son to the Father (Principal). He told the PT Teacher that he was posted in Lakhimpur Kheri, therefore, he was unable to come and asked him not to harass him. His son Lalit Yadav informed him that his motorcycle had collided with rickshaw and he provided Rs.150/- to the rickshaw puller. In the meantime, the PT Teacher revisionist No.2 snatched his phone and he could not talk further. He informed his wife on her cell phone and asked her to bring her son to home. His wife asked him to send his cousin brother along with vehicle so that Lalit Yadav could be brought to home. The wife proceeded to school and she was told that motorcycle and mobile of his son were deposited in the school and after rustication, his son was sent to home along with PT Teacher revisionist No.2. His wife was returning to the house from the school and in the meantime, she was informed by the PT Teacher that his son was brought to her home by himself (PT Teacher). His wife asked him not to leave his son alone but the PT

Teacher after dropping his son, came back to the school. His wife reached the house and also contacted the PT Teacher on phone as to where her son was and he told her that he had already dropped him on the gate. His wife knocked the door but no one replied. Ajay Yadav the cousin brother anyhow came inside the house through balcony and when his wife went in the upper room of the son, she saw that he had committed suicide by licensed revolver. The deceased son was brought to the trauma centre where he died during medical treatment. It has been further stated by the father of the deceased that PT Teacher and Father the revisionist No.1 and 2 had beaten and harassed mentally and physically and had threatened to rusticate him that is why, his son committed suicide.

82. Smt. Shiv Devi wife of Amar Nath Yadav mother of the deceased was also examined by the Police and her statement was recorded under Section 161 CrPC. She narrated almost the same facts as stated by her husband Amar Nath Yadav. She stated that when the motorcycle of Lalit Yadav was collided with rickshaw his son was called by the Father of the School and the PT Teacher, and he was asked not to leave the school unless his parents could come to the School. She was informed that she should take away her son from the School and she reached the School but she was told that her son was taken away by the PT Teacher to her house and he was rusticated. The Father of the School revisionist No.1 refused to meet her; therefore, she returned back to her home and when she was coming to house, the PT Teacher revisionist No.2 informed her that he had brought her son to her house. She asked him not to leave his son. When she reached the house, the house was locked and anyhow, Ajay Yadav cousin brother of her husband went inside the house through window and the gate was opened and she saw that her son had shot fire by licensed revolver. Her son was breathing, therefore, he was brought to trauma centre along with help of neighbours but lastly her son succumbed during treatment.

83. Anshul Gupta, friend of deceased Lalit Yadav, who was present with the deceased at the time of occurrence in the school, was also examined by Police. He stated before the Investigating Officer that on 2.1.2016, he was called by the deceased Lalit Yadav in the night and asked him that they would take tea tomorrow. ON the next day, they met in front of the parking of the school. Deceased Lalit Yadav asked him to park his vehicle inside the school and asked him to come along with his motorcycle and he desired to take tea. After taking tea, they were coming back to School. It was delay, therefore, the prayer assembly could not be attended by them and they were standing outside the gate. While coming towards the gate, his motorcycle was collided with rickshaw due to which an old lady passenger sitting in the rickshaw, fell down. Many parents/guardians already standing there and passersby came to the place of incident and they had scolded Lalit and Anshul Gupta. Some one slapped him. In the meantime, the PT Teacher revisionist No.2 came to the place of incident. He asked about the incident which was told by him. Rs.150/0 was given to the rickshaw puller. PT Teacher brought them inside the School and the prayer was already over. In the meantime, deceased Lalit Yadav had taken out his cell phone and told entire incident to his father but the PT Teacher, revisionist No.2 snatched the phone and switched it off and it was handed over to the Father. The PT Teacher narrated all the facts to the Father which took place outside the School. Father asked him to control the crowd outside the School and they were taken to School. The Father stated that they will be suspended and their parents will be informed. They also expressed their sorry before the Father. The Father had slapped Anshul Gupta. Again Anshul Gupta stated before the Father that it was not so big incident; therefore, they should be pardoned. Again, the Father slapped Anshul Gupta. He further stated that Lalit Yadav was very much perturbed and he was saying that his career was finished. He will not be allowed to attend the examination and his parents would definitely scold him. On such statement made by Lalit Yadav, Anshul

Gupta told him that everything will be alright. Lalit Yadav was sent to his house by the PT Teacher.

Finding of the Court

84. The argument advanced by the learned counsel for the respondent o.2 is that at the stage of framing of charge, the Court has to consider the material only with a view to find out if there is a ground for presuming that the accused has committed the offence. The Court has to evaluate the material and documents on record with a view to find out the facts emerging therefrom at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. If the Court finds that the order passed by the Court below is without application of mind and the issue in fact and law is not decided, certainly the Court has power under Section 397/401 CrPC to interfere in the matter. The Court has to exercise its power to prevent the abuse of process or to secure the ends of justice. The argument of learned counsel for the respondent NO.2 has no force so far as the power to secure the ends of justice and power of interference of this Court under Section 397 CrPC is concerned. I have to see the legality in the order passed by the Court below. In case it is found that the order passed by the Magistrate is not within the parameters of Section 227 CrPC, then certainly this Court can direct the Court concerned to take decision or set aside the order to mete out the ends of justice.

85. The impugned order has to be seen and a decision is required to be taken in consonance with the scheme of Section 107 and 305 IPC read with scope of Section 227 CrPC. The Court below has recorded the facts of the case under Section 161 CrPC of mother and father of deceased and thereafter, statement of Anshul Guupta who is companion of deceased. Many judgments of Supreme Court has been mentioned, but no discussion of the judgment has been done. In the last portion of the impugned order, the Court has recorded the finding by giving reason that the revisionists have not adopted the procedure for disciplinary proceedings against the deceased student and since no

disciplinary proceedings were adopted against the deceased by competent authority, therefore, the suicide committed by the deceased goes to show that the revisionists are responsible in abetment. The Court has not examined the facts of the case coupled with the requirement of Section 107, 305 IPC and Section 227 CrPC. The Court has to look into whether the entire material collected against the revisionists discloses the offence. The Court has not discussed the material and no finding has been recorded, even various judgments cited by the learned counsel for the revisionists have been mentioned but what law has been pronounced and how those cases are applicable or not applicable, has not been considered and decided. Once the Court has stated the facts of the case, then while passing the judgment, it has to discuss the evidence on record and open its mind whether the evidence and material discloses offence against the revisionists but I find that no such exercise has been done by the Court. The operative portion of the Court is non-speaking and no reason has been assigned. The ratio of the judgments have also not been discussed and the decision is taken in mechanical manner.

86. The Court has to see in the present matter as to how the offence for abetment of suicide under Section 305 IPC is made out and how direct and indirect evidence are there for incitement to commission of offence. Whether the accused had instigated the deceased to commit suicide and whether they are involved in any manner so that the deceased committed suicide. The Court has to see that if any indiscipline had taken place by the deceased, whether the revisionists being Principal and Teacher, were under the duty to take appropriate action to maintain the discipline in the School.

87. In view of aforesaid discussion, the factual aspect of the case as well as various pronouncements of Supreme Court, I am of the view that the matter requires reconsideration.

88. Accordingly, the matter is remanded back to the Court below with direction to take a fresh decision in the light of observations made

above in accordance with law within a period of three months from today. The Court below will not be influenced by the observations made by this Court hereinabove and will take decision after applying its mind in accordance with law.

89. The revision is allowed. The order dated 14.3.2019 passed by the Additional Sessions Judge-1st, Lucknow in S.T. No.34 of 2019 (State. Vs. Father Melvin Saldanha and another.) is set aside.

Order Date :- 6.1.2023
Rajneesh JR-PS)