

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.11745 OF 2023 (GM – RES)



BETWEEN:

1 . MALATHY S.B.,

2 . KUMAR SURAJ

3 . NITISH KUMAR

... PETITIONERS

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI MRINAL SHANKAR, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY SHO
WHITEFIELD POLICE STATION,
WHITEFIELD SUB-DIVISION,
BESIDES PRESTIGE WHITE MEADOWS,
SATYA SAI LAYOUT,
BENGALURU - 560 066.

- 2 . MR. RAJKUMAR

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R-1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C.,
PRAYING TO QUASH THE FIR IN CRIME NO. 151/2023 DTD

04.06.2023 REGISTERED BY THE R-1 FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 306 AND 34 OF THE INDIAN PENAL CODE, 1860 (AT ANNEX-A); QUASH THE COMPLAINT DTD 04.06.2023, LODGED BY THE-2 BEFORE THE RESPONDENT NO.1 POLICE (AT ANNEX-B).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question the FIR registered in Crime No.151 of 2023 for offences punishable under Sections 306 and 34 of the IPC.

2. *Shorn* of unnecessary details, facts in brief, germane are as follows:

The 1st petitioner is employed as Deputy General Manager in Marketing; the 2nd petitioner as Vice-President in Human Resources and the 3rd petitioner as Assistant Manager in Marketing at the Lifestyle International Private Limited ('the Company' for short). One Vivek Raj (now deceased) joins the services of the Company and works there between 2014 and 2016. This was the first stint of

employment of the deceased at the Company. It is averred that the deceased was employed in multiple organizations in the same field. Later it appears that the deceased comes back to the Company in the year 2022 and he was offered the position of Manager, Visual Merchandising at the Company. He accepts the employment in September 2022. In the light of organizational structure of functioning, the deceased was directed to report to petitioner No.1. Petitioner No.3 was his teammate and petitioner No.2 was in-charge of Human Resources of the team. Therefore, the petitioners were all involved directly with the deceased. Around the month of February 2023, it appears that the deceased raised concerns to the Human Resource Department regarding functioning of the 1st petitioner. The allegations were manifold as the concern of the deceased was that the 1st petitioner was demanding and asking him to micromanage the work and it was affecting his efficiency. It is further alleged that the 1st petitioner has spoken to the deceased in a raised voice in every meeting and was putting him down by cracking unsavory jokes. All the team members are said to have teased the deceased on his sexual orientation. On 17-02-2023 the Human Resources Department held discussions

with the 1st petitioner and some suggestions were made to the deceased as well. The deceased was always complaining about the usage of remarks against him on his sexual orientation.

3. On 28-02-2023 the deceased submits his resignation in the online portal. It appears that the resignation comes to be accepted on 16-03-2023 and was notified by e-mail to the deceased. It appears that the resignation submitted by the deceased was withdrawn by him and sought to re-enter the Company. On his re-entry he was not accommodated in the place in which he was earlier working. However, given his work experience, the Human Resources Department initiated internal process towards evaluating the position that the petitioner would get and sought to give him position in a team based out of New Delhi. The deceased participates in that interview and seek that he may be given any position other than what was proposed. Subsequently, the 2nd petitioner conducts another round of interview on 19-05-2023 and at the request of the deceased the discussions about placement moved on to 22-05-2023. It is said that on 22-05-2023 and

23-03-2023 the deceased declines to attend the interview online. Therefore, the employment of the deceased remained in limbo.

4. Certain events happened between the date of resignation of the deceased and his re-entry. Consequent on his resignation, the deceased complains to the Internal Complaints Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 contending that he has been harassed by the petitioners. The 1st petitioner was issued with a show cause notice and called upon her to reply to the complaint within 10 working days. It appears that the 1st petitioner did reply alleging that the contents of the complaint were all baseless. The Internal Complaints Committee then reprimands the 1st petitioner on consideration of the reply. It appears that the 1st petitioner has sought re-consideration of the findings and the same is pending consideration at the hands of the Committee. After conclusion of proceedings of the Committee, the deceased for the first time by way of his mail, urged certain actions on the part of the petitioners including hurling of abuses and castigations comments. The deliberations by way of e-mails continued between

the petitioners and the deceased. The deceased then registers a complaint against the petitioners for offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short '1989 Act') and on the basis of the complaint, the petitioners were summoned to the Police Station where they said to have narrated all the instances that had happened in the organization concerning the deceased. It is then the complaint becomes a crime for the offences punishable under the 1989 Act. The subject petition does not concern the said crime.

5. The deceased then approaches the Assistant Commissioner of Police complaining that he has been harassed by the petitioners. The petitioners are again summoned to the Police Station on 01-06-2023 and 02-06-2023 and again they explained the background with regard to the allegations. But, no crime was registered this time. The deceased then commits suicide on the next day i.e., on 03-06-2023. The commission of suicide of the deceased forms the issue in the case at hand. On commission of suicide, the father of the deceased registers the complaint on 04-06-2023 which becomes a crime in Crime No.151 of 2023 for offences punishable

under Section 306 of the IPC. The moment the crime is registered, the petitioners are before this Court calling in question the crime so registered against them.

6. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for petitioners and Smt. K.P. Yashodha, learned High Court Government Pleader appearing for respondent No.1.

7. The learned senior counsel appearing for the petitioners would contend with vehemence that the deceased worked with the Company for two years between 2014 and 2016 and again comes back in the year 2022. The deceased vents out several grievances and one such grievance was that he was being commented upon his sexual orientation. He would submit that there is neither instigation, goading nor proximity to the death of the deceased as is necessary for the offence punishable under Section 306 of the IPC. He would seek to place reliance upon plethora of judgments of the Apex Court as well as of this Court to contend that the crime has to be nipped in the bud itself as there are no instances that would become ingredients of offence under Section 306 of the IPC.

8. The learned High Court Government, on the other hand, would seek to refute the submissions of the petitioners to contend that the crime is registered on 04-06-2023 and the writ petition is filed on 07-06-2023 barely three days after registration of the crime. The issue requires investigation in the least as there is a loss of life. Proximity or otherwise would emerge only after the investigation. She would contend that repeated comments of the petitioners on sexual orientation only have led to the commission of suicide by the deceased. She would, therefore, seek dismissal of the petition.

9. The learned senior counsel joining the issue would seek to contend that all other employees of the organization are issued notices under Section 41A of the Cr.P.C., directing them to appear before the Investigating Officer in the said crime. The offences under Section 3(1)(r) and (s) of the 1989 Act are challenged in a writ petition and the same is stayed by this Court. In the teeth of the said order no such notice could be issued by the Investigating Officer. He would submit that this is an added issue which cropped

up during the pendency of the writ petition and, therefore, certain orders on that aspect also are required to be passed.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

11. The genesis of the problem has a little history which requires to be noticed. The deceased initially joined employment with the landmark group, the Company on its layout Lifestyle. The first stint was between 2014 and 2016. There was no problem. He finished his first stint and resigned. Next time he goes to the Company in the year 2022. It is the second stint of the deceased in the Company that forms the entire fulcrum of the *lis*. Organizational relationship between the petitioners and the deceased is required to be noticed. The 1st petitioner was the person to whom the deceased was to report and the 2nd petitioner was a teammate along with the deceased. The 3rd petitioner was the Manager. Therefore, all the petitioners have something to do with the deceased in the organization in his day to-day functioning. The functioning and the

aforesaid organizational structure form the fulcrum of the allegations against the petitioners by the deceased. On 17-02-2023 the deceased flagged certain concerns. This forms the first of the communications to one Nidhi Sood about the manner in which the teammates are treating the deceased. The communication reads as follows:

*"From: Vivek Raj <Vivek.Raj@landmarkgroup.in>
Sent: Friday, February 17, 2023 3:44PM
To: Nidhi Sood <Nidhi.Sood@landmarkgroup.in>;
Prakriti Batra <Prakriti.Batra@landmarkgroup.in>
Subject: Misrepresentation Concerns at workplace*

Dear Nidhi,

Thanks a lot for hearing me out.

Writing this mail as today's incident with my team lead had put me in a difficult situation.

As we are working on February changeover planograms, a review was aligned with the team lead today. We have been working and reviewing the WIP daily, during the discussion today there was a situation while discussing, the lead started screaming without even listening to the point that after my queries on the feedback I was aligned with her pointers. I did mix two stories and created a color highlight, discussed with the design, and then presented to her. The option to her was presented with the same understanding if this can be done and I have mixed the story. With the overall anger and screaming and waiting for few minutes I requested her to not put me in an uncomfortable situation as I wasn't able to understand where the screaming and anger is coming from when I am aligned and ready to work the way she wanted. To which I was told that I am the only person

who is difficult to work with and have behavioral issue. Considering this statement and the overall yelling I requested her to not be emotionally volatile and scream at me when I am already aligned to what she is saying. She kept on screaming and calling it behavior concern, to which I had to interfere in between which lead to an argument on why she was screaming. I proposed my resignation in the same discussion today with her.

Further to which I discussed the same with you. Also had a conference call with Malathy and Akash later the same.

The reason why I wrote the above incident in detail is because this is not for the first time I have been put in such situations; I was screamed at earlier where after a point of time I had to raise the concern with Akash.

Repeated screaming, misrepresentation, shunned in front of the team, asked to stop questions even if important to the point being discussed or share my insights has been regular. I understand on these pointers I might be wrong and need to work upon and agree to the team lead all the time and not question. But as a team member I cannot open my mouth for anything this way ! I have worked a lot on working with the lead at highest level of micromanagement I have ever worked without visibility on key pointers, have added a process of daily work updates to align better in terms of work, feedbacks, and avoid miscommunication.

Work related concerns would have been fine but there are things which one should never face at workplace. As there are team members from other department who get lunches for me, or I get lunch for them, does not give one the liberty to ask inappropriate questions and crack joke in front of people. I was asked many times in a day as a joke that who is the special one who gets lunches for me, is there someone special- is it a he or she (In hindi-Koi toh Hogi, ya hoga special life mein jo itna lunch lata ho, aisa kya special hai batao !!), this raises a question on my sexuality. After facing so

may misrepresentations this was something beyond work related concern. The entire question puts me in an uncomfortable situation to talk to any guy now on the floor. Informed the same to Prakriti on 13th Monday.

I can certainly work on the feedback whenever given in any are to work upon, but my overall concern has been that **I am repeatedly misrepresented, shunned, and canceled. I can work on any feedback but putting a doubt on my sexuality as a Joke is not funny at all when on a regular basis I am being put in different ways of uncomfortable shoes and manipulated misrepresentation. Even avoiding these situations to work responsibly on a regular basis. But screaming and yelling without listening that the other side is aligned with and just wants to understand a point, puts me in an uncomfortable situation to even understand at that time why am I being yelled.**

Requesting you to kindly help me find a solution for the same, help me find another opportunity within the organization.

*Best Regards,
Vivek Raj"*

(Emphasis added)

The communication narrates that he was being treated inappropriately as he was belonging to LGBT community. The communication apart from other things emphasizes on the fact that he was repeatedly questioned on his sexuality. This is the beginning of the problem. Again on 27-02-2023 the deceased flags the concern, though most of it is work related, but again narrates

about sexual orientation treatment. On 28-02-2023 he again narrates the same treatment. The communication reads as follows:

"Dear Prakriti,

It's been two days since I am back from Delhi store visit and have been coming to office. Since then, I have been passed comments by a colleague on the floor- 'Arrey sir aapse kaun kya bolega, kise apni Naukri nahi pyari hai !'/ 'Arrey sir lijiye kursi lijiye warna meri naukri chali jayegi'. The same person, and few others have been giving me sarcastic smile, smirking and cracking jokes whenever I was having conversation with a colleague on the floor. The sarcastic smile was something which Malathy used to do whenever I discussed work with this colleague, I didn't know what was so funny to share sarcastic smile by Malathy and involve a few others in it as well. Whenever I took that person's name, discussed work with him, or returned after talking to him, the same gesture was repeated, comments were passed with sarcastic gestures like-'ohh!!! so you discussed with him!! Achaa!! Nice!!'. Something that Malathy started is now being done by a few others as well, which I found weird but did not focus much as there have been many incidences of her putting me in uncomfortable situations. Yesterday I came to know that this colleague identifies as a proud member of the LGBT community. And now after all these incidents and question on my sexuality, I find this derogatory not only for me but for him as well.

From the past two days the conversation in office and the conversation with Malathy post second half when she is working from home and discussing work on teams call is contradictory. She will tell me one thing and make an opposite statement while on teams call. She will re-iterate certain point which I would have suggested and say that's how we should do it or will go to basics and start making statements about basic of VM and that's how the basics of VM should be done or the basic process to be followed. Really don't know what the purpose of it is, is it being

recorded on a separate device to put forward a point that I do not understand planograms and its working, or to lead into another argument.

Given the current circumstances and the events from the past two days I will request to work from home till given a solution, if available. Also, going forward will refrain from any verbal, or teams connect with Malathy, will only be able to connect in official text mode of communication - email. I am requesting to take a stand for myself here as I am alone, unsupported, targeted, and unsafe right now. I really don't know where this could lead when she has started involving other people and who all she can involve in this, my teammates, parallel functions, really don't know. If this is a power play of the position, I know I am at the weaker end of it and that is why I am giving up. It is difficult for me to come to office, face Malathy, and then get surprised to see colleagues getting involved in this as well. Requesting your help in the same and help me with a solution, if available.

Best Regards,

Vivek Raj."

(Emphasis added)

The deceased being fed up of these things appears to have submitted his resignation on 28-02-2023 and his last date of work was depicted to be 26-05-2023. Certain events between the date of submission of resignation and the last depicted service of the deceased in the organization bear another set of allegations. After submission of resignation the deceased complains to the Committee

constituted for sexual harassment of women at work place in terms of the Act. The complaint reads as follows:

"From: Vivek Raj Vivek.Raj@landmarkgroup.in
Sent: 02 March 2023 17:36
To: posh.india@landmarkgroup.in
Cc: Nidhi Sood <Nidhi.Sood@landmarkgroup.in>; Kumar Suraj <Kumar.Suraj@andmarkeroun.in> Prakriti Batra Prakriti.Batra@landmarkgroup.in; Akash Kumar <akash.kumar@landmarkgroup.in>
Subject: RE: Re: Work from Home From 01/03/23 & Restricted communication with Malathy: RE: Misrepresentation Concerns at workplace

Dear Team,

Seeking your help as I have been through some tough time at the workplace, a question has been put up around my sexuality and has been made a joke and I have been made uncomfortable multiple times at the workplace now. Post raising the concern we had one meeting in which my team lead quickly apologised and said it was not intended, but later made me question my own existence and life by involving others and now I am getting comments passed on and unfair treatment by colleagues.

I have even proposed my resignation after this as I cannot go through this torture anymore considering there is no solution for me and the person involved here is my team lead and has show only vengeful behaviour in the past with her anger issues. I am sharing all the trail mail with you all to understand the order of events.

Request you to kindly help me with the same."

....

"Nature of incident/ harassment to be explained in detail.

My team lead had cracked jokes on my sexuality, the joke which started with one question 'who brings food for you?, acha koi special hogi.... ya fir koi special hoga, who is this special someone? The same got stretched for a while and next question was aisa kya special hai tum log ke beech mein jo lunch laa raha hai !! --Shyma was present till here. The same joke is trickled down with team and I have been pointed out by team member at one time that a guy is hitting on me in a restaurant.

*I was earlier taunted whenever I spoke to a colleague after most of the discussions, these were mostly sarcastic comments and questions. I have closely worked on a collaborative basis with this person and have discussed work whenever required. Post most of the discussions I was asked sarcastically by **manager about the discussions between me and him. There was always a joke around whenever I came from having discussion with him. Lately I came to know that the colleague is from the LGBT community and all the sarcastic questions seems more like a re-iteration of the same fact-question on my sexuality.***

There are other colleagues involved right now, after I raised the issue and discussions were done, when I came back to office, there were colleagues involved in passing comments on me – 'arrey sir apse koi kya bolega, kise apni Naukri nahi pyari hai' and arrey sikursi lijiye warna meri kursi chali jayegi'. The same day when I was discussing work with the earlier colleague who I work on collaborative basis, my team member was peeping and laughing.

Not only this but there has been contradictory behavior by my manager in terms of work post all this. She has already so many time made me realize that I am not a part of this team, humiliated me and has mostly tried to put me in uncomfortable situations with people and colleagues as well.

I certify that the above facts are true to the best of my knowledge. I will cooperate fully in the investigation process and provide relevant details.

Signature of Complainant

Vivek Raj.”

(Emphasis added)

It was the allegation that the deceased belonged to LGBT community and was facing sarcastic questions and remarks every time he meets the petitioners. On 08-05-2023 the deceased again communicates by way of mail to all the seniors of the Company. This requires to be noticed for the purpose of ready reference and accordingly certain paragraphs thereof read as follows:

“....

By 13th of February the mental harassment reached to one of its peak levels, when I was questioned on my sexuality and later, I also realised they openly and ferociously linked my name to a male employee, declaring me of homosexual origin, thereby not only hurting my sentiments but also tarnishing my image and reputation in and out of this organisation. I informed all this to one Prakriti Batra. I went through mental trauma and shock, but the incidents continued to take place as they were well orchestrated. On 17th February Malathy deliberately had an argument without any concrete basis and kept on screaming at me. It was only then when I proposed my resignation as the mental pressure and the question on sexuality were already disturbing me.

On 20th February we had a discussion between Akash, Prakriti and Malathy. Knowing that the question on sexuality and the ongoing mental harassment has done severe damage, I was also told that Malathy's mother had a heart attack two days back. With all empathy I tried to be calm in the meeting apart I couldn't stop crying throughout. The most uncomfortable part of the meeting was when I was asked to open up about my sexuality and

if I am gay, I should feel proud and celebrate about it. This statement made me more hopeless in the meeting. Though Malathy apologised immediately, I asked her for feedback to work upon which she did not share, major communication was done by Akash and Malathy was silent throughout the meeting.

....

There are other incidents, details of which is attached with this mail. But the incidents on 27th and 28th made me lose all my hope. I went to talk to Malathy about the resignation which she avoided by saying I have to go home.

Nidhi Sood on the same day told me that she is waiting for someone's reply and will get back to me. I was feeling like an existential crisis and had no hopes from life on that day. I left from office came back home and then requested HR to not have and call or direct communication with Malathy and help me with feedbacks on mail and work from home.

I wrote a mail to Malathy to provide feedback for going forward to which she did not reply, I mentioned it to Prakriti and told her that as I was not feeling well will not be able to continue for now and will take leave. Also mailed about the leave. I could not sleep from 28th to 2nd of February for which I went to a physician, understanding my condition she referred me to psychiatrist because as per her the ongoing events have influenced my mental health.

As per consulted by the psychiatrist he informed me it has happened due the events happening at my workplace and the later events have affected and triggered me in certain ways, I was put on medicine and was advise not get into any event which might trigger my emotions and the medicines were strong which made me feel drowsy throughout the day as I had to take SOS medicine due to the palpitations/ panic.

....

Let me put two incidents to light – I went my father's surgery – with all approval from HR and Malathy with the commitment of working from home post his discharge from hospital. On the 3rd

day I got a call from Akash that why do I need 10 days holiday to which I explained about the WFH and taking care of my father. Second – I was having fever and took leave for 3 days again. On 3rd day I got a call from Malathy and HR saying that I have given my anxious consideration to the submissions made by the learned Senior Counsel and other respective learned counsel and have perused the material on record. Not been keeping well for long and do I need any help.

So, when I took leave while going through such a disastrous phase no one tried to reach to check on me when I had mentioned in mail and on teams as well that I am not keeping well. When everyone was aware about my mental health at that time was this communication gap and ignorance was to take a decision to put it as a reason for my resignation acceptance.

Forced by the prevailing critical situation, which could have turned my life into any disastrous form, I reached out to POSH committee on 2nd of March and till date my problems, my complaints have not been addressed apart from a few inquiries. The combined ignorance has brought me here to this mental health level.

I would like to inform you that I come from a scheduled caste background. I had never imagined and expected even in my second thought that I would have to face caste-based discrimination at a place which claims to station well educated staffs with all moral and ethical responsibilities. Calling me Neech and using other derogatory remarks against me certainly do not belong to a reputed institution and it has been on its peak recently.

As I believe the Indian Constitution and Law of this land give all of us the Right to live with dignity and without any discrimination at workplace. No law in this country would encourage such type of activities to exist and prosper. I have faced enough of harassment, which was not only against my existence, but also against Law of this country. I believe the senior management will properly investigate and come to something substantial which discourages these inhumane activities within this institution/organisation.

I believe as I have withdrawn my resignation, as per the policy, the portal has allowed me. Shall I consider myself as much of an employee of this organisation as others and contribute with the best of my strength and abilities? or Should I consider any bullying mail of unacceptance of withdrawal without any proper reasoning. I am ok to leave the organisation if found guilty.

After so many persistent requests even after the reluctance, ignorance, and reckless behaviour with different set of people for an opportunity from management somehow have managed to schedule an interview for cluster marketing role in north.

Furthermore, the criticality and sensitivity should be to help me with the findings of POSH and the other discriminations. Moreover, the unhindered support and encouragement provided to Malathy to keep harassing me shall be stopped."

(Emphasis added)

Based upon the said complaint, it appears that the 1st petitioner was issued a show cause notice with regard to the behaviour towards the deceased and then reprimanded the 1st petitioner. Against the reprimand, the 1st petitioner has preferred a review to the Committee and the review is pending consideration.

12. Due to the harassment meted out to the deceased, the deceased registers a complaint against the petitioners alleging that

he has been harassed and being made castigatious remarks which would become an offence under the provisions of the 1989 Act as he belonged to Scheduled Caste. The complaint was taken on 03.06.2023 and a crime was registered for offences punishable under Section 3(1)(r) and (s) of the 1989 Act under Crime No.141 of 2023. The issue in the case at hand does not concern the said crime. On the same day of venting his grievance with regard to the aforesaid circumstance, the deceased commits suicide and on his commission of suicide, a complaint comes to be registered by his father on 04-06-2023 before the jurisdictional police against the petitioners. The complaint reads as follows:

Date: 04/06/2023

To,

*The Police Inspector,
Whitefield Police Station,
Bengaluru City*

From:

*Rajkumar s/o Late Shri Ramavadh (Age-67)
Village Rakhiya, PA-Captanganj,
Dist-Basti (Uttar Pradesh)
Present Address: Mohalla Chayawari, Thana Kotwali,
Post-Purani Basti (UP) Mob - +91-9307802145*

Subject - Regarding suicide of my son Vivek Raj (Age-35), harrasment by company colleagues and reporting manager which led to his suicide

My son, Vivek Raj, age 35, residing at K1259B Divyasree Republic of Whitefield, Bengaluru Karnataka - 560 066, graduated in Bachelors of Design from NIFT, Bengaluru, working from 10+ years in industry was working with Landmark group (Lifestyle International Pvt. Ltd.) as VM-Manager Yemlur, Bengaluru City.

He has taken extreme step of committing suicide because of constant harassment being done by his reporting manager (Malathy) and other colleagues (Kumar Suraj & Nitesh Kumar).

He used to share with me over telephonic call that he is being constantly harassed by the manager, even his day to day work was rejected without providing any feedback. He used to send mails, but still was not receiving proper work feedback

Lately from past few months even caste based remarks were being made to him in office. He seeked solutions/reached out to his super seniors and human resource team, but was not getting any solution to that.

The harassment went to that level where he had to consult a doctor for his mental well being. Company forcefully made 28th May as his last working day to which he eventually registered a police case against them at Marathahalli Police Station. The accused mentioned were Malathy, Kumar Suraj and Nitesh Kumar. The organisation used power with in and outside to support them

After not being listened and continuous harassment he ended his life in lieu of justice.

Yesterday i.e., 03/06/2023 (07:40PM), I received call from Whitefield Police Station and his friends to inform me that he has hanged himself. Because of the harassment, he has committed suicide. I request you to

***kindly take immediate actions against the culprits i.e.,
Malathy, Kumar Suraj & Nitesh.***

Thanking You

Yours Faithfully

Raj Kumar"

(Emphasis added)

It is barely three days after registration of the FIR, the present petition is filed and today, it is barely 49 days of registration of the FIR. The investigation is still in progress. It is not a case where there is no *prima facie* material or the allegations are made in thin air. Cases which involve death of a person and the accused are guilty of abetment to suicide of the said victim will have to be considered owing to the facts of each case. There cannot be any particular parameter; yardstick; or a theorem for interference, particularly, in cases of abetment to suicide. If the accused by their alleged acts have played an active role in tarnishing or destroying the self esteem of a hypersensitive person or even their self respect, would definitely become guilty of commission of abetment to suicide; if the accused have kept on irritating or annoying the deceased by words or deeds, provoking them and driving them to

the wall, would also become circumstances that would be ingredients of abetment, all *prima facie*. Delicate analysis of human behavior that shrouds each case will have to be analysed, on a case to case basis. The human mind could be affected and would react in myriad ways, one such way could be ending of one's life. Therefore, all these would be in the realm of disputed questions of fact and would require investigation in the least.

13. In the aforesaid circumstances, it becomes apposite to refer to the judgment of the Apex Court in the case of **MAHENDRA K.C. v. STATE OF KARANTAKA**¹ wherein it is held as follows:

"... .."

18. In this backdrop, it is impossible on a judicious purview of the contents of the complaint and the suicide note for a judicial mind to arrive at a conclusion that a case for quashing the FIR had been established. In arriving at that conclusion, the Single Judge has transgressed the well-settled limitations on the exercise of the powers under Section 482 CrPC and has encroached into a territory which is reserved for a criminal trial.

.... ..

22. Based on the above precedent, the High Court while exercising its power under Section 482 CrPC to quash the FIR instituted against the second respondent-

¹ (2022) 2 SCC 129

accused should have applied the following two tests : (i) whether the allegations made in the complaint, prima facie constitute an offence; and (ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint. Before proceeding further, it is imperative to briefly discuss the law on the abetment of suicide to determine if a prima facie case under Section 306 IPC has been made out against the respondent-accused.

23. Section 306 IPC provides for punishment of the abetment of suicide:

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

Section 107 IPC defines the expression "abetment":

"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."

24. *The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , a three-Judge Bench of this Court, speaking through R.C. Lahoti, J. (as the learned Chief Justice then was), observed : (SCC p. 629, para 20)*

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

.... ..

27. While adjudicating on an application under Section 482 CrPC, the High Court in the present case travelled far away from the parameters for the exercise of the jurisdiction. Essentially, the task before the High Court was to determine whether the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety did or did not prima facie constitute an offence or make out a case against the accused.

28. Instead of applying this settled principle, the High Court has proceeded to analyse from its own perspective the veracity of the allegations. It must be emphasised that this is not a case where the High Court has arrived at a conclusion that the allegations in the FIR or the complaint are so absurd and inherently improbable

on the basis of which no prudent person could ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Nor is this a case where the criminal proceeding is manifestly mala fide or has been instituted with an ulterior motive of taking vengeance on the accused. On the contrary, the specific allegations in the FIR and in the complaint find due reflection in the suicide note and establish a prima facie case for abetment of suicide within the meaning of Sections 306 and 107 IPC. The entire judgment [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] of the High Court consists of a litany of surmises and conjectures and such an exercise is beyond the domain of proceeding under Section 482 CrPC. The High Court has proceeded to scrutinise what has been disclosed during the investigation, ignoring that the investigation had been stayed by an interim order of the High Court, during the pendency of the proceedings under Section 482.

29. The High Court observed that a prima facie case for the commission of offence under Section 306 IPC is not made out since : (i) the suicide note does not describe the specific threats; (ii) details of the alleged demand of Rs 8 lakhs from the deceased by the respondent-accused are not set out in the suicide note; and (iii) no material to corroborate the allegations detailed in the suicide note has been unearthed by the investigating agency. The High Court observed that since the deceased took considerable time to write a twelve page suicide note, "it would have been but natural for the author to set out the details". The High Court has evidently travelled far beyond the limits of its inherent power under Section 482 CrPC since instead of determining whether on a perusal of the complaint, a prima facie case is made out, it has analysed the sufficiency of the evidence with reference to the suicide note and has commented upon and made strong observations on the suicide note itself.

.... ..
31. The Single Judge, other than deciding on the merits of the case while exercising the power under

Section 482 CrPC, has also made observations diminishing the importance of mental health. The mental health of a person cannot be compressed into a one-size-fits-all approach. In para 37 of the impugned judgment [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395], the Single Judge observed: (L. Bheema Naik case [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395], SCC OnLine Kar)

"37. It is not the case of the deceased that the accused had deprived him of his wealth or have committed acts that have shattered his hopes in life or separated him from his family and friends."

The Single Judge then makes the following observation in paras 41 and 43: (L. Bheema Naik case [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] , SCC OnLine Kar)

"41. ... It is not the case of the prosecution that the deceased was running away from or escaping the petitioner or his henchmen, but as is his habit, to visit his parents and to spend time with his friends. If the deceased had really felt threatened, he would have definitely approached the police. It is not that he was naive or not worldly-wise. If his employment with the petitioner was true, then the Police Commissionerate was only a stone's throw away. It is not that the deceased was a weakling. The deceased by profession, is a driver. A profession where, accidents causing loss of life and limb are a daily occurrence and every driver is aware that he could be involved in an accident at any time.

43. His act of attending a relatives marriage in a different town and his interacting with friends and relatives are all actions of a normal person and not of a person under severe duress. The contention that this criminal case would jeopardise his career progression also

cannot be brushed aside. It is also not forthcoming as to how he sourced the poison."

32. The Single Judge has termed a person who decided to commit suicide a "weakling" and has also made observations on how the behaviour of the deceased before he committed suicide was not that of a person who is depressed and suffering from mental health issues. Behavioural scientists have initiated the discourse on the heterogeneity of every individual and have challenged the traditional notion of "all humans behave alike". Individual personality differences manifest as a variation in the behaviour of people. Therefore, how an individual copes up with a threat—both physical and emotional, expressing (or refraining to express) love, loss, sorrow and happiness, varies greatly in view of the multi-faceted nature of the human mind and emotions. Thus, the observations describing the manner in which a depressed person ought to have behaved deeply diminishes the gravity of mental health issues.

33. The High Court by its order [L. Bheema Naik v. State of Karnataka, 2020 SCC OnLine Kar 3395] has prevented the completion of the investigation in the complaint registered as Crime No. 565 of 2016 pending on the file of the IInd Additional Civil Judge (Junior Division) and JMFC Court, Maddur, Mandya District. The alleged suicide is of a person who was working as a driver of a Special Land Acquisition Officer, who is a public servant and against whom serious and grave allegations of amassing wealth disproportionate to the known sources of income were made by the deceased. The suicide note contains a detailed account of the role of the accused in the events which led to the deceased committing suicide. These are matters of investigation and possibly trial. The High Court stalled the investigation by granting an interim order of stay. If the investigation

had been allowed to proceed, there would have been a revelation of material facts which would aid in the trial, for the alleged offence against the second respondent.”

(Emphasis supplied)

The Apex Court, in the afore-quoted judgment, also recognizes that a person who is depressed and suffering from mental health issues could be hypersensitive. Every individual is different and different individual personality would manifest as a variation in the behavior of people and has held that quashment of the proceedings, at the stage of crime, is not a course of action that can be undertaken while exercising its jurisdiction under Section 482 of the Cr.P.C.

14. Insofar as the submission of the learned senior counsel for the petitioners that Section 41A Cr.P.C. notices are issued despite an interim order operating in Crime No.141 of 2023 is again unacceptable. All the notices under Section 41A of the Cr.P.C., issued to other employees need not be the concern of the petitioners, as those employees are not before this Court in the present proceedings. Even otherwise, the learned High Court Government Pleader, on instructions, would submit that permission

of the learned Magistrate is sought to include the offences under the 1989 Act and then only notices are issued. Therefore, the said submission also fails.

15. The deceased, in the case at hand, is the one belonging to LGBT community. The sensitivity of them being ostracized pervades in the their psyche. Therefore, such people must be treated with all love and affection and not point at the infirmity that they have no control of. If every citizen would treat such citizens with all love and care, as is done to a normal human, precious lives would not be lost. Unfortunately, the precious life of a youth is lost in the case at hand, all for the *prima facie* allegations of pointing at sexual orientation of the deceased. Therefore, it is for every citizen to bear this in mind while interacting with sensitive people. It is necessary that every one of us introspect on this issue, ***after all, everyone of them are human beings and all are worthy of equality.***

16. In the light of the judgment of the Apex Court and the facts narrated hereinabove, there is no warrant of interference with the registration of crime at this stage

17. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected.

**Sd/-
JUDGE**

Bkp
CT: MJ