

**IN THE COURT OF MS. KIRAN GUPTA, ADDITIONAL  
SESSIONS JUDGE-03, NORTH WEST DISTRICT, ROHINI  
COURTS, DELHI**

**Criminal Revision No. 63/19 & 81/19**

**IN THE MATTER OF:**

**1. Ms. Aruna Chadha**

**D/o Amrit Prakash**

**R/o C-48, South City-I,**

**Ground Floor, Gurugram-122001**

**2. Gopal Goyal Kanda**

**S/o Late Sh. Murlidhar**

**R/o 436/16, Civil Lines,**

**Gurugram , Harayana**

**.....Petitioners**

**Vs.**

**1. The State**  
**(Govt. of NCT of Delhi)**

**2. Sh. Dinesh Kumar Sharma**

**S/o Sh. K.C. Sharma**

**R/o 1/4, C Pocket B, Ashok Vihar,**

**Phase III, New Delhi-52**

**.....Respondents**

**Date of conclusion of arguments : 14.10.2020**

**Date of order : 26.10.2020**

### **ORDER**

- 1.** Vide this order, I shall decide two revision petitions arising out of the same order dated 18.03.2019 (hereinafter referred as

impugned order) passed by the Ld.ACMM-NW, Rohini Courts, Delhi. Vide said order, the ld. ACMM, while exercising her powers u/s. 190 (1) (b) Cr.P.C. has taken cognizance of the offence u/s. 306/34 IPC against both the revisionists/ accused persons, after rejecting the cancellation report of the IO. She had further directed the Ministry of Home Affairs, Govt. of India, New Delhi for taking necessary action against IO Jawahar Singh for deliberately not attaching on record certain documents i.e. the statements of the witnesses u/s. 161 Cr.P.C. alongwith the cancellation report.

### **BRIEF FACTS**

2. Brief facts of the case are that on 15.02.2013, at around 5.50 p.m., an information was received vide DD no. 27 A at PS Bharat Nagar that the wife of the caller has committed suicide by hanging. When the police officials reached at the spot they found that Smt. Anuradha was hanging with the ceiling fan. One suicide note was found on the bed and the other suicide note was found

near the photo of her deceased daughter Geetika, who had earlier committed suicide on 05.08.2012.

3. In one of the suicide note, which was addressed to her son by deceased Smt. Anuradha Sharma, it was written “mere PM key baad, meri dead body ghar par mat lana, bahar hi se cremation kar dena. Ankit mujhe marna hi thaa, aaj nahin to kal. Maine socha hua thaa . Tum dono se bahut pyar karti thi, tum dono meri jaan they. Aaj main Geetu ke sath so jaungi.”
4. In the other suicide note, it was written that “meri maut ki jimewar meri beti ki maut hai aur meri beti ki maut ke jimewar \*\*\*\*\* Kanda aur Aruna Chadha hain. In dono ne hamare ghar ko toda hai, in dono ko itni saja miley, ye dono til til kar jail main hi marein. Mere marne ke baad, meri family se kuch na pucha jaye wo already itne dukhi hain aur nirdosh hain.”
5. Both the suicide notes were taken into possession and FIR U/s. 306/34 IPC was lodged.

6. During investigation, the concerned IO recorded the statement of material witnesses i.e. Sh. Dinesh Kumar (husband), Ankit Sharma ( son) and Smt. Jyoti Sharma (jethani). The police on the basis of the statement of the material witnesses U/s.161 Cr.PC and after analyzing the call detail record of the mobile phone of deceased Smt. Anuradha, were of the opinion that nothing suspicious was found therein against the petitioners as both of them were in judicial custody on the date of the incident i.e. 15.02.2013 in FIR NO.178/12 u/s. 306/506/120B /34 IPC PS Bharat Nagar since 18.08.2012.
7. The IO filed the cancellation report in the present FIR. The ld ACMM, on the basis of the oral submissions of the husband of the deceased, while rejecting the cancellation report, took cognizance of the offence against both the petitioners and summoned them in the present FIR vide impugned order. The said order has been challenged by the petitioners.

**GROUNDS OF REVISION**

8. The Revisionist Gopal Goyal Kanda and Aruna Chadha have challenged the impugned order on the following grounds:

A. The Ld. MM has without considering the fact that there was nothing on record to support the allegation of abetment to suicide against both the petitioners either in the suicide note or in the statement of the witnesses, has wrongly rejected the closure report and had taken the cognizance of the offence on the mere oral statement of the husband of the deceased.

B. The Ld. MM has failed to appreciate that as per the suicide notes and statements of witnesses, there is no nexus with the death of Smt. Anuradha. In the entire suicide note, the deceased has not stated that the petitioners are responsible for her suicide/ death. It is merely mentioned that it is death of her daughter which is responsible for her death.

C. The Ld. MM has failed to appreciate that deceased Smt. Anuradha Sharma committed suicide on 15.02.2013 i.e. after

about more than six months from the date when her daughter Geetika had committed suicide on 05.08.2012. There is no proximate link between the two suicides and the period of six months has elapsed in between the two suicides.

- D. The Ld. MM failed to consider that Smt. Anuradha was a hypersensitive woman and there is suicidal tendency in the family which can be inferred from the said two incidents.
- E. The Ld. MM failed to consider that the petitioners had no occasion or opportunity to harass and torture Smt. Anuradha so as to drive her to commit suicide as both of them were in Jail at the time of her death in FIR no.178/2012 since 18.08.2012. Both the petitioners were admitted on bail in the said FIR on 04.03.2014 whereas the deceased had committed suicide on 15.02.2013.
- F. The Ld. MM failed to appreciate that the husband and son of deceased Anuradha have already been examined in FIR no.178/2012, however, during their testimony they had not uttered a single word against the petitioners being responsible for the death of Smt. Anuradha. However, on 11.12.2018, when the cancellation report was filed in the

present case, then in March 2019, the husband of deceased made oral statement before the Court that his wife had died due to the petitioners and they are responsible for her death. The Ld. MM without appreciating the material on record jumped to the conclusion and summoned the petitioners in the present matter.

- G. The Ld. MM has failed to appreciate that there is not even a single piece of evidence on record to suggest that the petitioners themselves or someone else on their behest had contacted, threatened, harassed or tortured the deceased Anuradha or her husband or son. There is no evidence regarding abetment by the petitioners.
- H. The Id.MM failed to appreciate that none of the family members of the deceased had stated during investigation that petitioners had extended any threats whatsoever to the deceased nor there is any documentary evidence to the said effect.



- I. From the perusal of the FIR as well as the closure report, it is evident that there was no contact between the petitioners and the deceased, hence, there was no occasion for the petitioners to instigate the deceased to commit suicide. Even the suicide notes reveal and establish the depressed state of mind of the deceased after the death of her daughter who had committed suicide on 05.08.2012. The statement made by the family members of the deceased to the police during course of investigation shows that the deceased was the victim of her own conduct and mental state.
  - J. The Ld. MM has failed to appreciate that petitioners had no active engagement to either encourage or incite the deceased to commit suicide.
9. It is prayed that the order dated 18.03.2019 passed by the Ld.MM whereby both the petitioners have been summoned be set aside and quashed.

**ARGUMENTS**

10. It has been argued by the Counsels for the petitioners that the Ld.MM had taken cognizance on the mere oral statement of husband of the deceased that too which was given after six years of the incident. Both the petitioners were in JC for the last six months before the date of incident and even on the date of incident and were released on bail in 2014. The date of incident is 15.02.2013 and they were in JC since August 2012 and were admitted to bail in February 2014. It is further argued that there is not even a single allegation from any quarter that there was any inducement / abetment by the petitioners since their date of arrest in August 2012 till 15.02.2013 i.e. the date of incident. There is not even a single complaint either by the deceased or any of her family members against any of the accused persons in this regard. Further, there is no legal evidence to show that accused instigated or abetted the suicide of Smt. Anuradha. Even in the statement of the family members u/161 Cr.P.C, they have not leveled any allegation of inducement /abetment against any of the petitioners.

**10.1** It is further argued that on careful perusal of both the suicide notes, it is evident that deceased was under distress and disturbed due to death of her daughter and she committed suicide due to her own inner guilt as she in her suicide note has stated that “ mujhe marna hi thaa, aaj nahin to kal”. Further, in the other suicide note, she has not leveled any allegations against the petitioners and has categorically stated that “meri maut ki jimewar meri beti ki maut hai aur meri beti ki maut ke jimewar \*\*\*\*\* Kanda aur Aruna Chadha hain” . From the said lines also, it is evident that the reason for the death of the deceased Smt Anuradha is the death of her daughter Geetika and the reason for death of Geetika are petitioners. It is submitted that petitioners are already facing trial in the suicide case of Geetika. It is argued that there is no direct imputation against the petitioners in the entire suicide note. Further, the deceased had committed suicide almost after six months from the date when her daughter Geetika committed suicide. Both the counsels have relied upon various judgments in support of their contentions.

**11.** Per contra, it is argued by the Ld. APP for the State that the revision petition is not maintainable as there is no perversity or

irregularity in the impugned order. The Ld. ACMM after perusing the contents of the report and on the basis of the submissions of the husband of the deceased has passed the order dated 18.03.2019. It is further argued that the petitioner can only challenge the correctness, legality or the propriety of the order in the revision petition. The Court cannot appreciate as to whether the evidence is adequate or not. The Court has to see the prima-facie evidence. The suicide note of the deceased clearly finds mention name of both the petitioners and further statement of son of deceased u/s. 161 Cr.P.C. is also clear and points towards the accused persons. He in support of his arguments has relied upon few judgments.

12. It is argued by the Counsel for respondent no.2 that the Ld. Magistrate has exercised her power in pursuance of sound judicial discretion and passed the order on the basis of material available with her. She is justified in finding prima-facie reasons for issuing the process against the petitioners. The deceased Anuradha Sharma committed suicide due to the harassment at the hands of both the petitioners, hence, prima facie case is made out against both the petitioners and they have been rightly summoned by the Ld. ACMM.

It is prayed that there is no infirmity in the impugned order and the petitions being without any merits be dismissed accordingly.

### **FINDINGS**

13. Heard Ld. APP for the State, Ld. Counsel for both the petitioners and perused the complete revision files as well as the Trial Court record. The provisions of Section 397 Cr.P.C. confers power on the High Court or Sessions Court to call for and examine the record of any proceeding before any inferior criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order accorded or passed, and as to the regularity of any proceeding of such inferior Court. It is now settled position of law that the order passed by the Ld. Magistrate deciding to issue process or summons to an accused in exercise of his/ her powers u/s. 200 to 204 of Cr.P.C. being an order of intermediary or quasi final in nature, the revisionary jurisdiction provided u/s. 397 Cr.P.C. lies either with the District Court or with the High Court by the aggrieved party (**Reliance placed on Om Kumar Dhankar Vs. State of Haryana and Anr. (2012) ) 11 SCC 252, Madhu Limaye Vs. State of Maharashtra (1997) 4 SCC**

**551)** . Thus, in view of the settled legal position, the petitioners can challenge the order of the Magistrate directing issuance of summons u/s. 397 Cr.P.C. Hence, both the petitions are maintainable.

**14.** In the present matter, the IO had filed the cancellation report. The IO in his cancellation report has reproduced both the suicide notes written by deceased Anuradha and the statement of witnesses recorded U/s.161 Cr.P.C.

**15.** Before discussing the merits of the report, it would be pertinent to discuss in brief the powers of Magistrate when he receives the cancellation report. It is no more res-integra that when the police submits a final report of investigation of the case which in colloquial term is called closure report, the Magistrate cannot direct the police to submit the charge-sheet. However, on the basis of the material in the charge-sheet, he may take cognizance or direct further investigation. In fact, this position is clearly laid down under Section 190 read with Section 156 of the Cr.P.C. itself and the legal position has been time and again

clarified through various judicial pronouncements. The position is summarised as follows:-

"1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;

2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps :

"i. If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.

ii. He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section (iii). Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203.

**16.** Thus, it is undoubtedly true that even after the police report indicates that no case is made out against the accused, the Magistrate can ignore the same and can take cognizance on applying his mind independently to the case. There is also no

doubt that in a case based on Police report, the Court while taking cognizance will straightaway examine whether a prima facie case is made out or not and will not enter into the correctness of the allegations leveled in the F.I.R. Thus, the MM has the power to take cognizance even on the closure report but he is cast upon the duty to examine whether a prima facie case is made out or not. The order of summoning an accused to stand trial, has serious consequences for the accused that is to say that the accused shall have to appear as accused and face accusations and criminal proceedings. So far as the accused is concerned, the order of summoning substantially affects his rights. If remedy of revision is not available to the accused against an order of summoning, he would have to face the proceedings, even though such an order of summoning might be incorrect, illegal or improper. The accused would have to face the criminal proceedings as after passing the order of summoning, the proceedings enter the next phase.

17. The question for consideration is whether prima facie case is made out for summoning the accused persons/petitioners for the alleged offence. In the present case,



the incident is dated 15.02.2013. Admittedly, both the petitioners were in Judicial custody since August 2012 till February 2014 in FIR No.178/12 PS Bharat Nagar. Both the petitioners have been summoned for the offence u/s 306/34 IPC. Now, what is to be considered is whether the petitioners instigated, abetted or aided in the commission of suicide by deceased Smt Anuradha.

**18.** In order to bring a case within the purview of Section 306 of IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in three clauses of Section 107 IPC.

**19.** The term "Abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:

- (i) he instigates any person to do that thing; or

- (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or
- (iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

**20.** These three ingredients are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107.

**21.** As per clause firstly in the above Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered in **Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618**. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

**22.** Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goading" or "urging forward". In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to

make the deceased move forward more quickly in a forward direction; and

- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

**23. In Sanju alias Sanjay Singh Sengar Vs. State of M.P.** reported in 2002 Supreme Court Cases (Cri) 1141, the relevant portion of the judgment reads as under:

**"8. In Swamy Prahaladdas v. State of M.P. &Anr., 1995 Supp. (3) SCC 438**, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima-facie enough to instigate the deceased to commit suicide.

**9. In Mahendra Singh v. State of M.P., 1995 Supp.(3) SCC 731**, the appellant was charged for an offence under Section

306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

**11. In Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618**, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate , in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th

July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

24. Thus, in cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. The question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court has to look for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or

not, can only be gathered from the facts and circumstances of each case.

25. In the present matter, the IO had filed the cancellation report stating that neither the family members of the deceased nor any other witness had leveled any allegations of threat or instigation against the accused persons. Further, there is no documentary evidence, hence no case is made out against the accused persons. It has been argued by the Ld Counsels for the petitioners that the Ld ACMM has taken cognizance of the offence on the basis of oral submissions of the husband of the deceased. There is no allegation of instigation, abetment or persuasion in the entire record file, by the petitioners, who admittedly, were in custody at the time of incident. It has been further submitted that even, if, it is assumed for the sake of argument that the petitioners have abetted the suicide of daughter of deceased, they are already facing trial in the said FIR. The statement of the family members of the deceased have been recorded in the said FIR for around 2 years from 2014 to 2016, however none of them have alleged any



threat or abetment-direct or indirect against the accused persons after 2012 when Geetika committed suicide. The husband of deceased or any of the family members never challenged the cancellation report. They neither filed any protest petition nor any application seeking re-investigation. It is argued that the Ld ACMM has passed the impugned order on the basis of oral submissions made by the husband of the deceased, that too for the first time after 6 years from the date of incident.

**26.** I have carefully perused the statement of the husband of deceased u/s 161 Cr.P.C. He in his entire statement has not levelled even a single allegation of abetment / instigation against the petitioners/accused persons. Even Sh. Ankit Sharma, the son of deceased, in his statement u/s 161 Cr.P.C has not levelled any allegations of abetment or instigation by the accused persons. He has stated that on the date of incident, his mother had asked him to take leave. Since he had some important work, he went to his office after assuring her that they would take leave some other day. He also stated that his mother (deceased) used to tell him to take care of him while coming and going from the house and whenever he felt anything , he should write her an

SMS as his mother was afraid that, if, Kanda would get bail, he could attack them. His mother has told him this four days prior to the incident. As per the statement of Ms. Jyoti Sharma, Bhabhi of deceased, she while describing the incident in the end stated “ Geetika ki maut ke baad, Anuradha bahut pareshan rahti thi, aur Geetu ko awaaze lagati rahti thi. Geetika ki maut ka Kanda jimedat hai aur Anu ki maut ke liye bhi Kanda jimedat hai.”

27. During arguments, it was specifically asked from the Ld. Counsel for Respondent no.2 and son of the deceased as to whether they have any objection to the statement recorded by the police u/s. 161 Cr.P.C. They admitted that they had no objection with respect to their statements recorded u/s. 161 Cr.P.C. Admittedly, the respondent no.2 has not filed any protest petition against the cancellation report which was filed way back on 05.08.2017. The husband of deceased appeared for the first time before the Id. ACMM on 23.02.2018. Even then, he did not file any protest petition against the cancellation report.

**28.** It seems that the Ld. ACMM has taken cognizance of the offence on the basis of the oral submissions made for the first time by the husband of the complainant in the Court and that too after lapse of significant period of time from the date of incident. Ld counsels for petitioners have correctly pointed to the testimony of the family members of deceased (including the husband and son) recorded in the FIR no. 178/12, which has been recorded in detail after the present incident. It is true that the court while exercising the power of Revision cannot go deep into the merits of the case, but at the same time the court cannot close its eyes to the material placed before it.

**29.** It has been argued by the Ld APP and Ld Counsel for Respondent no.2 that in a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide, therefore, in such a case, an inference has to be drawn from the circumstances and the Ld ACMM has rightly inferred so. A very valid argument has been raised by Ld APP and Ld Counsel for Respondent no.2. True, in such a case, the court is cast upon duty to draw inference from the circumstances and it is to be determined whether circumstances had been such which in fact

had created the situation that a person felt totally frustrated and committed suicide. It is relevant to note herein the judgment in **Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)** reported in AIR 2010 SC 1446. The relevant portion of the judgment reads as under:

"12. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

**30.** As discussed above, the presence of mens rea is the necessary concomitant of instigation. The question of mens rea on the part of the accused in such cases has to be examined with

reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased. If the person who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide.

- 31.** Now coming to the suicide notes left by the deceased. In one of the suicide note, she has stated that “mere PM ke baad, meri dead body ghar par mat lana, bahar hi se cremation kar dena. Ankit mujhe marna hi thaa, aaj nahin to kal. Maine socha hua thaa. Tum dono se bahut pyar karti thi, tum dono meri jaan

they. Aaj main Geetu ke sath so jaungi.” In the other suicide note, it was written that “meri maut ki jimewar meri beti ki maut hai aur meri beti ki maut ke jimewar \*\*\*\*\* Kanda aur Aruna Chadha hain. In dono ne hamare ghar ko toda hai, in dono ko itni saja miley, ye dono til til kar jail main hi marein. Mere marne ke baad, meri family se kuch na pucha jaye wo already itne dukhi hain aur nirdosh hain.”

**32.** The picture which emerges from a cumulative reading and assessment of these two suicide notes is this. Presumably because of death of her daughter who allegedly committed suicide due to certain acts of the petitioners, caused distress and the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcoming which she attributed to herself. She was overcome by a forceful feeling generating within her that her death would only bring justice to the death by suicide of her daughter Geetika.

**33.** As discussed above, 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. Admittedly, both the petitioners were in custody prior to six months from the date and time of incident and were released on bail after around one year of the present incident. In the entire record file there is not even a single complaint or report regarding any threats extended by the petitioners or any person on their behalf. Even from the CDR of the deceased, nothing has been found that she was receiving calls or was threatened by the petitioners or any person on their behalf. The present one is not a case where the accused/petitioners had by their 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.

**34.** Hence, on the basis of above discussion, it is evident that the negative final report was filed by the police after

investigation and after examining the family members. The impugned order whereby both the accused persons have been summoned for the offence u/s 306/34 IPC is set aside. Both the revision petitions are allowed. The order dated 18.03.2019 is set aside.

**TCRs be sent back with copy of this order. Trial Court be accordingly intimated.**

**Both the Revision files be consigned to Record Room after necessary compliance.**

**Announced through VC  
(Cisco Webex) on 26.10.2020**

**(KIRAN GUPTA)  
ADDITIONAL SESSIONS JUDGE-03  
NORTH – WEST DISTRICT  
ROHINI COURTS,  
DELHI/26.10.2020**