(ii) The Judgment and Order dated 17th December 1997 passed in Sessions Case No. 6 of 1993 is hereby quashed and set aside and the appellant is acquitted from all charges framed against him by extending benefit of doubt;

(iii) Fine, if any, paid by the appellant be refunded to him after following due procedure.

***Result*:-** Appeal allowed.

ABC 2016 (II) 513 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(S.B. Shukre, J.)
Criminal Writ Petition No.146 of 2015
Decided on 19 September, 2016
Nagpur Bench

DR. DASHRATH BHANDE ***- Petitioner(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Section 227 — Discharge of accused — Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Threat by accused — to remove the victim from service — No execution of threat — Redressal remedies like filing a complaint before the appropriate authority available but not availed by victim — Nothing mentioned regarding alleged threats in leave application, put up subsequently —No material of intentional aiding to commit suicide — Prosecution not based on the theory of intentional aiding — Essential ingredient of 'instigation' not fulfilled —no sufficient grounds for proceeding further— Discharged. (Para 11 & 12)

(B) Indian Penal Code, 1860 — Section 107 — Abetment — Mode of proof —requirement under — there has to be instigation given by one person to the another for doing the thing —or engagement with one or more other persons in any conspiracy for doing of an illegal thing —or illegal omission —or intentional aiding by any act —or illegal omission —or willfully misrepresenting —or concealing the material fact which is bound to be disclosed. (Para 6)

(C) Indian Penal Code, 1860 — Sections 107 & 306 — Abetment of suicide — Instigation — ingredients of —Held, for an instigation to

be completed — there must be some incitement or urging to do some drastic or inadvisable action —or in other words presence of mens rea is the necessary ingredient of the instigation. (Para 6)

(D) Code of Criminal Procedure, 1973 — Section 227 — Discharge of accused — Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Charge framed — Evidence of witnesses — they were told by the deceased that he was removed from service on the say of the accused —the deceased was very much in service — nothing to show any apprehension or apprehension of such degree which led to commit suicide— petitioner discharged. (Para 9 & 10)

(E) Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Threat by accused — to remove the victim from service — No step was taken towards execution of the threat— the apprehension would not be reasonable. (Para 10)

(F) Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Threat by abettor — to remove the victim from service — Held, would not by itself be amounting to instigation to commit suicide— as the person threatened has several options available in law to remedy his grievance— Acquittal. (Para 10)

(G) Indian Penal Code, 1860 — Section 306 — Abetment of suicide — Standard of proof — Utterances by accused — Held, would not be enough — & there must some circumstances which would make one prima facie believe that the petitioner meant by what he said — & his such words created a situation of desperation for the deceased leaving him no other option than to commit suicide. (Para 11)

Facts:- *Police registered an offence punishable u/s 306 IPC and 3 (2)(v) SC ST Act against the petitioner and the Head-Master of the school run by the society of which the applicant was the President. After investigation Police filed the charge-sheet. The present applicant was implicated only for an offence punishable u/s 306, IPC. When the application for discharge was rejected by the Court below the petitioner approached the High Court in the present petition. Honourable Bombay High Court observed that no material of intentional aiding to commit suicide was available and moreover, prosecution case was not based on the theory of intentional aiding. Essential ingredients of 'instigation' were found unfulfilled. The Court did not find sufficient grounds for proceeding further, the petitioner was discharged.*

Law of relief:- To prove the offence of abetment mens rea is essential.

Held:- The offence which has been sought to be charged against the applicant is the one which is punishable under Section 306 of the Indian Penal Code. This offence is of abetment to commit suicide. For abeting a thing, as required under Section 107 of the Indian Penal Code, there has to be instigation given by one person to the another for doing the thing or engagement with one or more other persons in any conspiracy for doing of an illegal thing or illegal omission or intentional aiding by any act or illegal omission or willfully misrepresenting or concealing the material fact which is bound to be disclosed. Having regard to the facts of this case, we shall be concerned in this case only with those aspects of abetment of a thing which are in the nature of instigation or intentional aiding. In the case of Sanju alias Sanjay Singh Sengar vs. State of M.P., reported in (2002) 5 SCC 371, referred to me by the learned counsel for the petitioner, the Hon'ble Apex Court has explained the requirement of offence of abetment to commit suicide from this view point. The Hon'ble Supreme Court has held that for an instigation to be completed, as contemplated under the law, there must be some incitement or urging to do some drastic or inadvisable action or in other words presence of mens rea is the necessary ingredient of the instigation. (Para 6)

In these circumstances, one has to see if there were any other circumstances which, according to the prosecution, made the apprehension of the deceased that he would be terminated from service by the petitioner as reasonable and that this apprehension created a situation of desperation for him or not. On going through the statements of all other witnesses with the help of learned counsel for the petitioner as well as learned A.P.P. for the respondent/State, I could find no such material which would show that basically there was an apprehension and even if it was there it led to such a situation as to result in the deceased being in a state of disturbed mind so much so that he felt that there was no other option left to him than to commit suicide. I must say, if a person only says that the deceased be removed from service and takes no step towards execution of the threat, the apprehension would not be reasonable and even if it is presumed to be so, just for the sake of argument, it would not by itself be amounting to instigation to commit suicide, as the person threatened has several options available in law to remedy his grievance and so there would be no question of such apprehension driving that person to a point of no return or extreme desperation. (Para 10)

There are some witnesses like Samadhan Nagdive, Raju Wankhade and Dnyaneshwar Kirde, who say that they heard on 25.1.2010 this petitioner say that the deceased ought to have been removed from service by the accused No.1. But, as stated earlier, merely making some utterances in this fashion would not be enough and there must be available on record some circumstances which would make one prima facie believe that the petitioner meant by what he said and his such words created a situation of desperation for the deceased leaving him no other option than to commit suicide. If somebody says that a person should be removed from service, it is not that it marks the end of everything for the person against whom those words are used. Other remedies are available to him and one of such remedies could have been in the nature of filing a complaint before the appropriate authority. (Para 11)

Counsel:- ***For Petitioner(s):*** *Shri P.V. Navlani, Advocate.*

For Respondent(s): *Shri V.P. Gangane, APP.*

JUDGMENT

S.B. SHUKRE, J.: - 1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. By this writ petition, the petitioner has challenged the legality and correctness of the order dated 8th January, 2015 passed by the learned Ad-hoc Additional District Judge, Achalpur, in Sessions Trial No.3/2011, thereby rejecting his application for his discharge from the case. On the basis of the complaint lodged by Anandwardhan Vishwanath Adikne on 28th January, 2010, Police registered an offence punishable under Section 306 of the Indian Penal Code and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against this petitioner and one Subhash Dayaram Shriwas, the Head-Master of the School run by the Society of which the applicant is the President. The Head-Master is the accused No.1 and this applicant is the accused No.2. The report was investigated and after collecting the evidence against both these accused, Police filed the charge-sheet. So far as present applicant is concerned, the charge-sheet implicates him only for an offence punishable underSection 306 of the Indian Penal Code. This is also clear from the impugned order. However, the charge is yet to be framed. Before framing of the charge, the applicant moved an application (Exh.-12) seeking his discharge under Section 227 of the Code of Criminal Procedure from the case.

3. After hearing learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent/State and considering the material available on record the learned Ad-hoc Additional Sessions Judge, Achalpur rejected the application by his order passed on 8th January, 2015. Not being satisfied with the same, the petitioner is before this Court in this writ petition.

4. Shri P.V. Navlani, learned counsel for the petitioner submits that even if the prosecution evidence is accepted at its face value, still it does not disclose any commission of offence and that whatever it shows is not sufficient to proceed against the petitioner. In support of his argument, he has taken me through the statements of all the witnesses recorded by the Police.

5. Learned Additional Public Prosecutor for the respondent/ State opposing the petition submits that the learned Ad-hoc Additional Sessions Judge has rightly rejected the application as this is not the stage to appreciate the evidence available on record and that if the statements of all the witnesses are taken together and read as they are, they would indicate that there are sufficient grounds for proceeding against the present petitioner.

6. The offence which has been sought to be charged against the applicant is the one which is punishable under Section 306 of the Indian Penal Code. This offence is of abetment to commit suicide. For abeting a thing, as required under Section 107 of the Indian Penal Code, there has to be instigation given by one person to the another for doing the thing or engagement with one or more other persons in any conspiracy for doing of an illegal thing or illegal omission or intentional aiding by any act or illegal omission or willfully misrepresenting or concealing the material fact which is bound to be disclosed. Having regard to the facts of this case, we shall be concerned in this case only with those aspects of abetment of a thing which are in the nature of instigation or intentional aiding. In the case of Sanju alias Sanjay Singh Sengar vs. State of M.P., reported in (2002) 5 SCC 371, referred to me by the learned counsel for the petitioner, the Hon'ble Apex Court has explained the requirement of offence of abetment to commit suicide from this view point. The Hon'ble Supreme Court has held that for an instigation to be completed, as contemplated under the law, there must be some incitement or urging to do some drastic or inadvisable action or in other words presence of mens rea is the necessary ingredient of the instigation. Relevant

observations of the Hon'ble Apex Court as they appear in paragraph 12 are re-produced as under :

> "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 inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation."

7. Bearing in mind the above referred principles of law that we have to consider if there are sufficient grounds for proceeding against the accused or not, which is the basic requirement ofSection 227 of the Code of Criminal Procedure. Sufficiency of the material for proceeding further against the accused would depend upon what is disclosed by the witnesses, when their statements are accepted as they are. If it is found that if the statements of the witnesses taken at their face value, do not disclose any material sufficient to fulfill the necessary ingredients of the offence of abetment to commit suicide, it would have to be held that there is no sufficient ground for proceeding further against the accused.

8. In the instant case, the F.I.R. dated 28.1.2010, when considered without anything adding thereto or substracting there from, shows that all the allegations have been directed against the accused No.1 the Head-Master of the school run by the Society of the President. So far as this applicant is concerned, it is only stated that the Head-Master used to tell the deceased that he was harassing the deceased at the instance of the President. It is also stated that the deceased Anil committed suicide because he apprehended that he would be terminated from service by the Head-Master on the say of the petitioner. Interestingly on 27.1.2010, when suicide was committed, the deceased was very much in service and that admittedly on that day, he was also granted one day's leave by the Head-Master. This would only show that there could not be any basis in the apprehension allegedly nurtured by the deceased about his being terminated from service or otherwise, his leave application would not have been granted.

9. As against these allegations made in the F.I.R., there is a set of witnesses consisting of three persons, namely, Anil Ingle, Uttam Raut and Ravindra Nagdive, all of whom are stating that they were told by the deceased at about 2.00 p.m of 27.1.2010 that he was

removed from service on the say of the President. The evidence collected by the prosecution and the admissions given by the brother as well as sister of the deceased, however, show the position to be otherwise. It shows that the deceased was very much in service and that is also the case of the prosecution.

10. In these circumstances, one has to see if there were any other circumstances which, according to the prosecution, made the apprehension of the deceased that he would be terminated from service by the petitioner as reasonable and that this apprehension created a situation of desperation for him or not. On going through the statements of all other witnesses with the help of learned counsel for the petitioner as well as learned A.P.P. for the respondent/State, I could find no such material which would show that basically there was an apprehension and even if it was there it led to such a situation as to result in the deceased being in a state of disturbed mind so much so that he felt that there was no other option left to him than to commit suicide. I must say, if a person only says that the deceased be removed from service and takes no step towards execution of the threat, the apprehension would not be reasonable and even if it is presumed to be so, just for the sake of argument, it would not by itself be amounting to instigation to commit suicide, as the person threatened has several options available in law to remedy his grievance and so there would be no question of such apprehension driving that person to a point of no return or extreme desperation.

11. There are some witnesses like Samadhan Nagdive, Raju Wankhade and Dnyaneshwar Kirde, who say that they heard on 25.1.2010 this petitioner say that the deceased ought to have been removed from service by the accused No.1. But, as stated earlier, merely making some utterances in this fashion would not be enough and there must be available on record some circumstances which would make one prima facie believe that the petitioner meant by what he said and his such words created a situation of desperation for the deceased leaving him no other option than to commit suicide. If somebody says that a person should be removed from service, it is not that it marks the end of everything for the person against whom those words are used. Other remedies are available to him and one of such remedies could have been in the nature of filing a complaint before the appropriate authority. Admittedly, this has not been done by the deceased in this case. In his leave application filed on 27.1.2010 also the deceased has not said anything about the alleged threats

issued to him. He also did not state any reason in the application filed by him on 27.1.2010 for seeking leave except for one that he was not keeping good health. But, he did not explain the circumstances which led to his ill-health or the nature of his not keeping good health.

12. In these facts and circumstances of the case, I find that there is nothing available on record from which one could say that the essential ingredient of 'instigation' is fulfilled. There is also no material on record showing that this petitioner intentionally aided the deceased in committing suicide rather now it appears that the prosecution case is also not based on the theory of intentional aiding. Therefore, it has to be said that there are no sufficient grounds available in this case for proceeding further against this applicant. The petition deserves to be discharged and the impugned order needs to be quashed and set aside.

13. The writ petition is allowed.

14. The impugned order dated 8th January, 2015, passed by the Ad-hoc Additional Sessions Judge, Achalpur, is hereby quashed and set aside.

15. The application vide Exh.-12 is granted.

16. The petitioner is discharged.

17. Rule is made absolute in above terms.

Result:- Writ Petition allowed.

ABC 2016 (II) 520 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(V.K. Jadhav, J.)
Criminal Application No. 1904 of 2003
Decided on 28 September, 2016
Aurangabad Bench

D R SALGAOCAR ***- Applicant(s).***

Versus

STATE OF MAHARASHTRA & ANR. ***- Respondent(s).***

Law Covered:- ***(A) Code of Criminal Procedure, 1973 — Section 204 —Issue of process — Managing Director of a company — Prosecution of —No averments in the complaint that the accused is***