

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Rev. P. No.61/2008**

Reserved on : 17.07.2009
Date of Decision : 21.7.2009

Ashok Kumar & Anr.

..... Petitioners
Through : Ajay Burman with
Mr. R.K. Sinha, Adv.

Versus

The State (NCT of Delhi)

..... Respondent
Through : Mr. Pawan Bahl, Adv.

CORAM :
HON'BLE MR. JUSTICE V.K. SHALI

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

1. This is a criminal revision petition under Section 397 read with section 401 of the Code of Criminal Procedure against the order dated 1st November, 2007 passed by Sh. V.P. Vaish, the learned ASJ, Rohini, Delhi directing the framing of charges against the petitioners Ashok Kumar and Narender Kumar Yadav under Section 306/34 IPC in case FIR No. 625 registered by S.P. Badli police station.

2. Briefly stated facts leading to the filing of the present petition are that on 14th December, 2003, on the basis of information received from PCR, local police of Badli police station went to S-41, Badli Industrial Area, Delhi where they a dead body was found hanging from a ceiling fan. On

investigation, a suicide note was recovered from the dead body.

The said suicide note read as under:

“I have to take Rs.4,000/- from Kashi, who was gone to his native place. His brother is Virender Bisht (at some places it is shown “Birender”. I have no complaint against Virender Bisht. I have not hanged myself of my own will. This has been done in the last moment, because foreman, Narender Yadav of S-41 and owner, Ashok Nagpal of S-41 used to harass me daily saying that they will oust me from the job, while after being unemployed, I have no other alternative (mere pas aur koi chara nahi hai.)”

3. The police investigated the matter and recorded the statement of various witnesses including one of Agvir Singh Bisht who is the cousin of the deceased Bir Bahadur. After investigation a charge sheet under Section 306/34 IPC was filed against both the petitioners. The petitioners feeling aggrieved by the said order have chosen to file the present revision petition.

4. I have heard the learned counsel for the petitioners as well as the learned counsel for the State.

5. The main contention of the learned counsel for the petitioners is that even if the evidence, as it is, including the suicide note, is taken on its face value, no prima facie case under Section 306 IPC is made out as there is no incitement, goading, cajoling, instigation or any other act or omission by way of any overt act attributed to the petitioners which could be treated to be an abetment to suicide of the deceased. Therefore, learned Additional Sessions Judge has grossly erred in directing the framing of charge against the petitioners. The learned counsel

for the petitioners has placed reliance on the following judgments:

- (i) ***Neeraj Gupta Vs. State***
132 (2006) Delhi Law Times
- (ii) ***Roop Kishore Madan Vs. State***
89(2001) DLT 265
- (iii) ***Hira Lal Jain Vs. State***
87 (2000) DLT 265
- (iv) ***Sanju Alias Sanjay Singh Sengar Vs. State of M.P.***
2002 SCC (Cri.) 1141
- (v) ***Smt. Mamta Sahu Vs. The State (NCT of Delhi)***
2005 (3) JCC 1749
- (vi) ***Brij Lal & Anr. Vs. State (Delhi Administration)***
1985 C.C. Cases HC 130
- (vii) ***Sia Ram & Anr. Vs. State of U.P.***
1975 CrLJ 240
- (viii) ***Ms. Taposhi Chakervarti Vs. State***
86(2000) Delhi Law Times 436

6. Out of the aforesaid judgments, the learned counsel has especially referred to judgment of ***Neeraj Gupta's*** case (supra) where in somewhat similar circumstances the learned Single Judge of this court came to the conclusion that there was no mens-rea attributable to the persons charged of the offence of abetment of suicide and there was no act or omission attributable to the petitioners which could be construed as an instigation under Section 107 of the IPC.

7. As against this, the learned counsel for the State has drawn my attention to the case titled ***Didigam Bikshapathi & Anr. Vs. State of A.P.*** AIR 2008 SC 527 where the Hon'ble Supreme

Court had rejected the contention of a petitioner for quashing of an FIR on the basis of the suicide note on the ground that the suicide note gave the background of the case.

8. I have carefully considered the submissions made by the respective sides and perused the judgments.

9. So far as the judgment which has been relied upon by the learned APP is concerned, this is a case which is totally distinguishable from the facts of the present case. In this particular ***Didigam Bikshapathi's case*** (supra) the prayer was for quashing of the FIR and the consequent proceedings initiated against the petitioner on the ground that no offence under Section 306 IPC is made out, however, in the instant case there is no prayer for quashing and secondly the Court had specifically noted that in the suicide note a background of the reasons for committing the suicide was given while as in the case in hand no such thing is given.

10. The learned counsel for the petitioners has drawn my attention to the various judgments cited by him where there is one common thread, which is to the effect that in a case of abetment there must be some overt act attributed to the accused to show that he had instigated, goaded, persuaded, incited or in any manner driven the deceased to commit suicide. Admittedly, in the instant case there is no such prima facie evidence. On the contrary what has been stated in the suicide note of the deceased, is that as the deceased was being harassed by two persons one of whom was foreman and the owner of the factory,

that he would be shunted out from the job, therefore, the deceased in order to save himself from the ignominy of being turned out from the job was committing suicide.

11. The petitioners were not aware about the suicidal tendency of the deceased. No doubt unfortunately the life of the young person had been lost but without there being any overt or covert act on the part of the petitioners. In my view the petitioners could not be charged for an offence under Sections 306/34 IPC as the basic ingredients of section in the light of judicial pronouncements are not made out. There has to be some overt act or omission on the part of the accused because of which the deceased is activated to take action to end his life. There is no such fact or statement or a circumstance available on record to assume so against the petitioner merely because the deceased had nurtured suicidal tendency or was eccentric or had actually felt or had apprehended that if he is turned out from the job he will lose his standing in the society and therefore ended his life. The prosecution must prima facie establish the ingredients of the offence under Section 306 IPC which I feel the respondent has miserably failed to do so.

12. For the foregoing reasons mentioned above, I am of the considered opinion that there is no prima facie evidence to warrant the framing of charges against the petitioners under Section 306/34 IPC in as much as there is no prima facie evidence to show that the petitioners had instigated, goaded, cajoled, compelled, persuaded the deceased to commit suicide,

and accordingly, the present revision petition is allowed. The charges under Section 306/34 IPC against the the petitioners are set aside and they are discharged of the aforesaid offences.

JULY 21, 2009
KP

V.K. SHALI, J.