

IN THE HIGH COURT OF DELHI AT NEW DELHI

**WP (CRL) 2152-53 of 2005 & Crl M A 12445/05, 13016/07,
3710/08, 8133/08**

DR. B.P. SINGH & ANR Petitioners
Through: Mr. Sidharth Luthra, Senior Advocate
with Mr. Rajesh Yadav, Advocate.

versus

STATE & ORS Respondents
Through: Ms. Mukta Gupta, Sr.Standing counsel
with Mr.Pawan K. Behl, APP and Mr. Rajat
Katyal, Advocate.
Respondent No.2 in person.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER
06.04.2009

1. This petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks the quashing of FIR No. 332 of 2005 registered at Police Station Farsh Bazar under Sections 306/34 IPC and all proceedings consequent thereto.

2. During the pendency of the present petition, the Respondent No.1 State filed a charge sheet and cognizance was taken of the offence under Sections 306/34 IPC on 11th May 2007 by the learned Metropolitan Magistrate ('MM') Delhi. The case has been since committed to the court of the learned Additional Sessions Judge. The Petitioners filed an application Crl M A Nos.

13015-17 of 2007 on 14th November 2007 seeking to amend the writ petition to incorporate the subsequent developments. The said application was allowed by an order dated 20th November 2007 and the writ petition was permitted to be amended. Therefore, further prayer in this petition is for quashing of the charge sheet as well.

3. The Petitioner No.1 Dr. B.P. Singh is the Director of Amity School of Engineering and Technology ('ASET') and Petitioner No.2 V.V. Krishna Sastry is a Lecturer in ASET. The deceased Harsh Khatri enrolled as a student at ASET in Mechanics and Automation Engineering ('MAT') course in 2003. In the first semester exam he scored 77.1% marks. Thereafter the second semester exams were held in May-June 2004. Harsh Khatri attended all the papers and his roll number was 0671043103. The results announced for the said exams some time in September/October 2004 showed Harsh Khatri marked absent in the Communication Skills-II paper for which he was awarded '0' marks. This came as a great shock to Harsh, particularly since Rohit Sachdeva who was the immediate previous roll number (0671043103), had despite remaining absent, been shown present and awarded 66% marks.

4. The facts narrated hereafter are from the suicide note left behind by Harsh Khatri. On the day the results were declared, Harsh Khatri met the Director (Petitioner No.1) who advised him to meet Mr. Sastry (Petitioner No.2). That day Mr. Sastry was absent and so, the Director advised him to

“do as Mr. Sastry told you, when you meet him tomorrow, don’t worry it is not your mistake, you won’t be penalized.” On the next day Harsh met Mr. Sastry who told him that he would ascertain where the problem lay. When the deceased got back, to Mr. Sastry later Mr. Sastry is supposed to have admitted his mistake and advised Harsh that he (Harsh) should give a back paper in which Mr. Sastry would award him the “rightful” marks. Harsh declined to do so. Mr. Sastry told Harsh that he would go to the University and request that since the mistake was Mr. Sastry’s, the rightful marks should be awarded to Harsh. Later, Mr. Sastry again held out to Harsh that the University had assured him that the marks would be corrected when Harsh received the statement of marks for the second semester exams.

5. Harsh received his mark sheet for the second semester exam on 28th/29th April 2005. He found that he had still been given ‘0’ marks in Communication Skills-II. Since there was only one week remaining for his end term exam, Harsh did not feel it correct to devote his attention to this issue since that would affect his preparation for the exam. Mr. Sastry, when he again approached, assured Harsh him that the necessary correction would be carried out if the Director (Petitioner No.1) made a reference.

6. Thereafter when on 27th September 2005 Harsh met the Petitioner No.1 the latter “burst out on him and told him either to give a back paper or forget the credits of Communication Skill II.” Harsh was not willing to do

so. He sought the advice of other faculty members. They did find fault with the Petitioners but suggested that Harsh should nevertheless give a back paper. According to Harsh, instead of correcting the injustice done to him, the Petitioners in fact became abusive when they realized that Harsh was not going to give a back paper.

7. The deceased committed suicide on the intervening night of 5th/6th October 2005 leaving behind a very detailed suicide note. On that basis the FIR in question was registered.

8. A charge sheet was filed after the investigation was taken up on the basis of the suicide note. During the course of investigation the relevant documents including the original suicide note, the original mark sheets, the answer sheets of the deceased in the Communication Skills II paper and other such documents were taken into possession. The statements of the classmates of the deceased, the Assistant Registrar of the Guru Gobind Singh Indraprastha University ('GGSIU'), Delhi and certain other persons were recorded. The FSL report confirmed that the suicide note had been written in the handwriting of the deceased Harsh Khatri.

9. Mr. Sidharth Luthra, learned Senior counsel appearing for the Petitioners submits that there is no allegation in either the charge sheet or in any material on record that either of the Petitioners abetted the deceased in the

commission of suicide. It is submitted that none of the ingredients of either Section 306 IPC or of Section 107 IPC are made out against the Petitioners. According to Mr. Luthra, even if the case of the prosecution is taken to be true, it only showed that Harsh had committed suicide as he was highly stressed and upset by the alleged failure of the Petitioners to rectify his marks and on account of their alleged suggestion that the deceased give a back paper. It is submitted that these allegations do not make out a case against the Petitioners for the offence under Sections 306/107 IPC. Reference is made to a large number of judgments of the Supreme Court and the High Courts including *Sanju @ Sanjay Singh Sengal v. State of Madhya Pradesh* (2002) 5 SCC 371, *Netai Dutta v. State of West Bengal* (2005) 2 SCC 659, *Kishori Lal v. State of Madhya Pradesh* (2007) 10 SCC 797, *Bhagwandas v. Kartar Singh & Anr* (2007) 11 SCC 205, *Sohan Raj Sharma v. State of Haryana* 2008 (2) JCC 1167, *Rajbabu & Anr v. State of Madhya Pradesh* AIR 2008 SC 3212, *Neeraj Gupta v. State* 132 (2006) DLT 137, *Prashant Manchanda v. Lt. Governor of Delhi & Anr* 2007 (2) JCC 1227, *Sonti Rama Krishna v. Sonti Shanti Sree & Anr* (2009) 1 SCC 554, *Kishangiri Mangalgiri Goswami v. State of Gujarat* [SLP (crl) No. 2227 of 2008 decided on 28.1.2009], *Sashi Prabha Devi v. State of Assam* 2006 Crl L J 1762 and judgments of this Court in *K. Ravi Kumar v. State* (Crl O.P. No. 22507 of 2006 decided on 16th May 2007), *Ashish Chaudhary v. State* (Crl Rev P 725/2007 decided on 19th January 2009).

10. It is further submitted that the admitted facts are that the letter written by Harsh was duly forwarded to GGSIU since the mark sheet in question could not be altered by either of the Petitioners. A reference was made to the statements made by mother and father of the deceased to show that the deceased was a highly emotional and sensitive person. It is submitted that unless there is any overt physical act which would show that the Petitioner instigated the deceased to commit suicide, it cannot be presumed that there was such instigation of the deceased driving him to commit suicide at the instance of the Petitioner Nos. 1 and 2.

11. Ms. Mukta Gupta, learned Senior standing counsel appearing for the State on the other hand submits that the said suicide note itself gives a very detailed description of the precise roles played by the Petitioners and that in the circumstances there was sufficient material to proceed against each of the Petitioners for the offence under Sections 306/107 IPC.

12. This Court has carefully perused the suicide note of the deceased. Therein the deceased has made specific allegations against each of the Petitioners. From a reading of the suicide note it is not possible to conclude that the deceased was a highly emotional person or that his decision to commit suicide was an impulsive one driven by any incident immediately previous to the date of suicide. It in fact shows that the Petitioner had invain

fought a long and hard battle. The suicide note shows that this in fact had made him cynical.

13. What appears to have traumatised the deceased the most was that he was asked to give a back paper when in fact he had appeared in exam and answered all the papers rather well. Apart from other portions of the lengthy suicide note, the following two paragraphs indicate the roles of the Petitioners in driving the deceased to commit suicide:

“Sastry Sir (Lecturer)

Communication Skills

You always say that I am your favourite student but this is what you done to your favourite student. For your mere prestige you create problems for me and instead of helping me out you tried to save yourself. People do make mistakes but it is no harm to commit and correct them. Only god don't make mistakes and you are not god. If you correct your mistakes, there is no harm to your prestige.

B.P. Singh (Director)

Sir,

I can only say that what you suggest me that give a back paper or forget yours credits for the prestige of Mr. Sastry and the college. Will you do the same, if that happens to your grandson studying in same college in Electronics III year. Will you say him “KIS MUH SE SASTRY SE KAHUN KI APNI GALT MAAN LE” and what you told me about American culture that you

should be self-dependent and do not rely on our parents when my parents show up. You know what American students do when a teacher tortures him/her, they shoot the teacher with a gun and then kills themselves. But I am an Indian, I cannot shoot you but I can take my life and that what I am doing.”

14. It is correctly pointed out by learned Senior standing counsel for the State that the definition of ‘instigation’ under Section 107 IPC also includes the making of a false representation. The deceased had done obviously nothing wrong and yet he was asked by the Petitioners to connive in a fraudulent act of giving a back paper for which he would be awarded the “rightful” marks. When he declined to do so, he was assured that the University would be persuaded to rectify the mistake. After a prolonged wait and after repeatedly being given take assurances by the Petitioners that the necessary correction would be effected, the deceased took the extreme step of committing suicide.

15. The scope of interference by the Court in a petition praying for quashing of the criminal proceedings, it is extremely limited. The Court cannot at this stage sift the evidence. All it is required to examine at this stage is to see whether the material gathered by the prosecution justifies the Petitioners being proceeded against for the offence in question.

16. This Court does not wish to discuss in detail each of the judgments cited at the bar since the facts in each case is distinguishable. What tantamounts to instigation will differ from case to case. Most cases have arisen out of the matrimonial disputes, in which one of the spouses asks the other to “go and die” immediately following a quarrel. In the said cases it has been held by the Supreme Court that such oral statement by itself will not amount to abetment to commit suicide in terms of Section 306 IPC read with 107 thereof. There has to be some overt act which really drives the deceased to commit suicide. In one case the deceased was disappointed over the inadequate marks awarded to him in the exams. However, in the instant case, the Petitioner was awarded ‘0’ marks after being shown to be absent for an exam when in fact he was not. Therefore, no similarity exists between the facts of those cases and the present one.

17. It is not possible, on reading of the suicide note as a whole to hold that the conduct of the Petitioners could not have constituted “instigation”. It is not necessary that should be some verbal exchange which alone leads to suicide. It could be in any other manner which offends the dignity of the victim. The refrain of the Petitioners is that it was always possible for the deceased to have given the back paper without his overall result being affected. This, however, fails to account for the trauma the deceased must have had to face in being asked to commit an obviously fraudulent act by giving a back paper when in fact he had done no wrong. What appears to have been the last straw on the camel’s back as far as the deceased was

concerned was the fact that despite waiting patiently for months on end, his grievance remained to be redressed by both the Petitioners representing the institute in question as well as the University.

18. Keeping in view the facts and circumstances this Court is unable to conclude not even a prima facie is made out from the material to proceed against the Petitioners for the offence under Sections 306/34 IPC.

19. It is clarified that no observation made in this order is intended to influence the opinion to be formed by the trial court at any of the subsequent stages on an independent assessment of the evidence.

20. The Petitioners will be exempted from personal appearance only for the next date in the trial court subject to being represented by counsel. Thereafter, if they seek exemption from their personal appearance by making an appropriate application before the trial court, such application will be decided by the trial court on its merits. The interim order stands vacated.

21. The petition and the pending applications are dismissed.

S. MURALIDHAR, J.

APRIL 6, 2009

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