

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

% *Judgment Reserved on: 19th November, 2009*
Judgment Delivered on: 24th November, 2009

+ **CRL.M.C. 1969/2009**

AJIT SINGH Petitioner

Through: Mr.R.S.Malik & Mr.Neeraj
Chaudhary, Advts.

versus

STATE (GOVT. OF N.C.T. OF DELHI) Respondent

Through: Ms.Fizani Husain, APP for State
with SI Praveen Kumar, PS
Sultanpuri.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. Petitioner Ajit Singh is seeking quashing for FIR no. 690/2008 registered under Section 306/34 of the IPC at Police Station Sultanpuri on the complaint of Satyavant Singh who is the son of the deceased Raj Singh.

2. The facts as detailed in the complaint of Satyavant Singh revealed that the parties i.e. the family of the complainant and the family of the petitioner had a dispute over a plot of land measuring about 80 square yards in Khasra No.55/20 in Village Rithala in Budh Vihar, Phase-II. Deceased Raj Singh is the real brother of

the petitioner Ajit Singh. About 25 years ago, the deceased had constructed a boundary wall on the said plot which was stated to be in his possession. In order to grab the land, the petitioner and his sons Anil, Ashish and Ajay started threatening the petitioner and his family. Two months prior to the date of incident i.e. two months prior to 23.11.2008 threats by the petitioner and his family started and continued thereafter. On 22.11.2008 Ajit and his sons came to the plot and started digging a foundation. Raj Singh the deceased, his son Satyavant the complainant, his another son Bharat and his daughter Sunita intervened. Matter was reported to the police. However, threats did not abate and continued. This caused mental strain to deceased Raj Singh. On the same night Ajit Singh and his sons came to the house of Raj Singh and banged his door with dandas. Raj Singh was perturbed; this constrained to him to commit suicide.

3. The body of the deceased Raj Singh was found on the following morning at 7.30 AM hanging from a rope around a tree in the disputed plot. This was first noticed by his son Satyavant Singh. Matter was reported to the police. From the personal search of the deceased a suicide note in the handwriting of the deceased was recovered.

4. English translation of the suicide note reads as follows:

Suicide note recovered from the possession of deceased Raj Singh S/o Late Sh.Bhim Singh R/o H. NO.176, Vill.Pooth Kalan, Delhi.

Dated 23.11.08, I Raj Singh, S/o Bhim Singh, my family which include

Ajit Singh S/o Deep Chand and his three sons have made my life and the lives of my children miserable. They have made our lives difficult. Therefore, considering myself unfortunate, I am taking this step. My children should be able to live peacefully so I am taking this step. Moreover, my children are not responsible for it. Yours's Raj Singh
Pooth Kalan, House No.176.

5. FIR was accordingly registered under Section 306/34 of the IPC against petitioner Ajit Singh. His sons namely Anil, Ashish and Ajay were arrayed in column no.2 of the charge-sheet. They had not been summoned to face trial.

6. Learned counsel for the petitioner states that there is not an iota of evidence with the prosecution to establish the ingredients of the offence under which the charge-sheet has been filed. Admittedly, the suicide note pursuant to the report of the CFSL had opined that this note was in the handwriting of the deceased Raj Singh yet this circumstance by itself cannot establish the ingredients of the offence under Section 306 of the IPC. It is submitted that there is no abetment by the petitioner qua the alleged suicide committed by Raj Singh; to attract the ingredients of abetment which is the essential pre-requisite of this Section, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary which ingredients are clearly lacking in this case. Admittedly, the parties had a dispute over a plot of land; this dispute is relegated to a period of 25 years from the date of the offence. Even as per the allegations in the complaint since the last two months the deceased and his family were facing threats at the hands of the petitioner; the incident of the morning

of 22.11.2008 and the evening of 22.11.2008 has not been recited by the deceased in his suicide note. Neither a goading or a provocation, or an incitement, or an urging or encouraging the deceased to have committed this act are made out qua Ajit Singh. In the absence of any such evidence this trial would be a trial in futility and no useful purpose would be served in continuing with the same. Learned defence counsel has drawn the attention of this court to the order dated 19.5.2009 which was passed while disposing of the bail application of the petitioner. It is submitted that prima facie findings of the court while disposing of that application had clearly enunciated the submissions now propounded by the counsel for the petitioner.

7. Counsel for the petitioner has placed reliance upon Neeraj Gupta vs. State 2006 (3) JCC 1221. It is submitted that in the absence of any active encouragement on the part of petitioner to encourage or incite the deceased to commit suicide, crucial element of mens rea for an offence under Section 306 of the IPC was not made out; it is submitted that this was a case where the petitioner had been discharged at the stage of framing of charge itself.

8. Reliance has also been placed upon Netai Dutta v. State of West Bengal JT 2005 (3) SC 46. It is submitted that where the suicide note, except referring to the name of the appellant at two places, there being no reference to any act or incident whereby

the appellant is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased in committing the act of suicide; it was a fit case for quashing of the FIR under Section 306 of the IPC.

9. It is submitted that in Bhagwan Das v. Kartar Singh and Ors. AIR 2007 SC 2045 where the wife had committed suicide in the matrimonial home the Supreme Court had acquitted the petitioner/husband of the offence under Section 306 IPC, ingredients of abetment not having been satisfied.

10. So also in Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh 2002 CrL.L.J. 2796, it is submitted that in this case also the suicide note of the deceased showed that he was in a state of stress and depression and merely because the accused had told him "to go and die", itself would not constitute the ingredients of an instigation as contained in Section 107 of the IPC.

11. Reliance has also been placed upon Taposhi Chakervarti Vs. State 2000 VII AD (Delhi) 629. It is submitted that a Coordinate Bench of this court had held that in the absence of evidence of the abettor shown to have intentionally aided the commissioning of the crime and mere proof that the crime could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107 of the IPC; active complicity is the gist of the offence of abetment.

12. Lastly reliance has been placed upon Hira Lal Jain vs. State 2000 VI AD (Delhi) 902. It is submitted that this was a case where the accused had been discharged at the threshold i.e. at the time of framing of charge itself; in this case as well the contents of the suicide note did not depict that the accused has urged or encouraged the deceased to commit suicide.

13. Arguments had been rebutted by the counsel for the State.

14. This court while releasing the petitioner on bail vide its order dated 19.5.2009 had inter alia held as follows:

7. First, a look at Section 107 of the Code. The said section define abetment to mean that a person abets the doing of 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. Explanations 1 and 2 of Section 107, which are apposite read as under:-

“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.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

8. From a reading of aforesaid provisions, it is clear that a person, who instigates or aids another to do a thing, abets him to do that thing. In order to attract the offence of abetment of commission of suicide, thus, an overt act or some act or omission, which instigates/aids the victim to commit suicide is a *sine qua non*. Not only this, the said act or omission must be the immediate cause of the suicide. In other words, it is in the essence of things that the abettor substantially assists towards the commission of the offence. This is evident from the whole tone and tenor of the Section which uses doing words (verbs) such as “*instigates*”, “*engages*”, “*aids by any act or illegal omission*”, “*misrepresents*”, “*conceals*”, “*causes or procures*”, “*attempts*”, “*facilitates*” and the like. That the presence of mensrea is a necessary concomitant of the offence of abetment is also crystal clear from the legislature's use of the words/phrases “*intentionally*”, “*voluntarily*” and “*by wilful misrepresentation or by wilful concealment*”. These then are the parameters laid down by Section 107 of the Code.

9. In this backdrop, it is deemed expedient to highlight a few relevant facts set out in the charge-sheet and the status report filed in the instant case. It is expressly stated in the chargesheet that the land of Khasra No.55/20 Village Rithala, Delhi was in the joint names of the petitioner Ajit Singh, deceased Raj Singh and his elder brother Karan Singh, and this was the genesis of the dispute between the respective families of the deceased Raj Singh and the petitioner Ajit Singh. During investigation, the involvement of the sons of the petitioner, namely Anil, Ashish and Ajay, however, was ruled out as no evidence could be garnered against them and, as already stated, their names were shown in Column 2 of the charge-sheet. In the status report filed by the SHO Mohinder Singh, P.S. Sultan Puri too, it is mentioned that preventive action under Sections 107/150 Cr.P.C. against both the parties, i.e., Raj Singh (now deceased) and his sons Satwant Singh and Bharat Singh (party No.1) and Ajit Singh (the petitioner herein) and his son Anil Kumar (party No.2), was initiated on 22.11.2008, vide DD No.7 dated 22.11.2008, Police Post Budh Vihar, Police Station Vijay Vihar, Delhi.

10. A bare perusal of the Kalandra in the said case further shows that it has been recorded therein that the dispute between the parties pertained to a plot of land viz., D-1/57, Sharma Colony, Budh Vihar Phase-II, in respect of which both the parties claimed proprietary rights, and that both the parties had family relations and belonged to the same village, but instead of sorting out their disputes in a court of law, both the parties frequently quarrelled about the apportionment/partition of the plot and filed complaints, written and verbal against each other. Thus, despite the fact that the dispute was civil in nature and should have been sorted out by the parties in a court of law, both the parties refused to approach a court of law, preferring instead to bicker and squabble.

11. The fact that there was a dispute regarding the demarcation of the plot of land in question between the family of the deceased and the family of the petitioner, assuming the prosecution story to be correct in its entirety, by itself, in my opinion, cannot lead to the conclusion that the petitioner abetted the deceased in the commission of suicide. Even if the suicide note (in respect of which the FSL report is still awaited), is conclusively proved to be in the hand of the deceased, the same, in my view, in no manner substantiates the statement of the complainant that the deceased died on account of incitement/abetment on the part of the petitioner. Words uttered in rage or anger or in the course of a quarrel, or abuses, taunts and threats traded in the course of a dispute, without intending the consequences to actually follow, it is well settled, do not amount to instigation. In the instant case, the parties are stated to be warring against each other for a considerable period of time over the demarcation of the plot of land, in which both have half share each. Threats meted out to the deceased, assuming that they were meted out, cannot be said to amount to instigation and may, at best, amount to harassment. Even otherwise, the incident, which is alleged to have occurred on 22.11.2008 during the daytime finds no mention in the suicide note, nor the incident of the same night finds any reference in the last missive of the deceased nor the deceased has even alleged that he was threatened or intimidated in any manner. No MLC of Sunita, who is alleged to be injured in the said incident, has been placed on record to substantiate the occurrence of the incident. Not only this, investigations have revealed that the sons of Ajit Singh had no role to play and a clean chit has been doled out to them by the prosecution, thereby falsifying the version of Satwant Singh (both with regard to the incident which

allegedly took place in the morning and at night), and leading to the inference that the entire story with regard to the extending of threats on 22.11.2008 has been concocted by the complainant, possibly for the purpose of arm twisting the petitioner. This apart, the story is not corroborated by any neighbour or any other public witness. Then again, the dispute was admittedly an old one. When and why the mind of the deceased started harbouring suicidal thoughts can only be a matter of conjecture and surmise. Impulsiveness, desperation, frustration, anger or even undue or hyper sensitivity could have actuated the thought of suicide. Whatever be it, it cannot be lost sight of that the prosecution's own case is that the suicide was the result of a petty civil dispute blown out of all proportion. If it led to the deceased extinguishing his own life, the blame cannot be thrown at someone else's door, even if he is an adversary or an enemy. There is, therefore, considerable merit in the contention of the petitioner's counsel that the petitioner in no manner spurred or assisted the strangulation of the deceased, which was self-inflicted in every sense of the word.

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13. Needless to state that any observations made in the present order shall have no bearing on the merits of the case as and when the same are considered by the learned trial court and that the same have been made for the sole purpose of consideration of the bail plea of the petitioner.

15. While disposing of this application, the Court had recorded that the observations made in this bail order will not have a bearing on the merits of this case.

16. Nevertheless the merits of the case have to be deciphered from the contents of the FIR and subsequent investigation which had then become the basis of the charge-sheet.

17. Statement of the complainant Satyavant Singh reveals that there was a dispute between his father the deceased Raj Singh and the petitioner Ajit Singh both of whom was real brothers. They were quarreling over a plot of land measuring about 80 square yards in Khasra No.55/20 in Village Rithala. This plot of land was as per the version of the complainant in their possession since the last 25 years, a boundary wall had been built around it. Disputes

over this land were prevailing since the last two years. One day prior to the incident i.e. in the morning of 22.11.2008, the petitioner and his sons came to the plot and started digging a foundation. This led to an altercation which caused injuries to the daughter of the deceased. On the same day in the evening Ajit Singh and his sons again threatened the deceased and his family by banging on the door of his house. All these cumulative factors had led the deceased to commit suicide. Suicide note recovered from the personal search of the deceased has also been perused. This note does not make reference to any dispute over this plot of land or about the threats meted out by the petitioner and his family to the deceased and his family which as per the complaint were prevailing since the last two months. This suicide note also does not make any reference to either of the two incidents i.e. the incident of the morning of 22.11.2008 or of the incident of late night of 22.11.2008.

18. Record further reveals that proceedings under Section 107/150 of the Cr.P.C. had been initiated against both the parties i.e. the family of the petitioner and the family of the deceased pursuant to the morning incident of 22.11.2008. Kalandra depicts that the dispute between both the families was in respect of this plot of land and there often used to be complaints both verbal and written between the parties pursuant to their quarrels.

19. Question is whether these acts of Ajit Singh had abetted the suicide by Raj Singh. Answer is clearly in the negative.

20. Section 306 of the IPC of the reads as follows:

Section 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.

21. Essential ingredient of Section 306 of the IPC is abetment which has been defined under Section 107 of the IPC which reads as follows:

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.

22. The judgments relied upon by the learned counsel for the petitioner have enunciated the law of abetment. In Randhir Singh & Anr. vs. State of Punjab 2004 (13) SCC 129 it was observed by the Supreme Court that a more active role which can be described as instigating or aiding the doing of a thing is required before a

person can be said to be abetting the commission of an offence under Section 306 IPC.

23. In State of West Bengal v. Orilal Jaiswal 1994 (1) SCC 73 the Supreme Court had cautioned that the courts should be extremely careful in assessing the facts and circumstances of each case for the purpose of finding out whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. It has further been observed that:

“..... 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 of abetting the offence of suicide should be found guilty.”

24. In the instant case it appears that there was a long drawn out acrimony between the families which had culminated in written complaints inter se between the parties; so much so that on 22.11.2008 a kalandra had been registered at the concerned police station. Disputes were over a plot of land. Petitioner and the deceased were real brothers. The suicide note does not make any reference to the two incidents of 22.11.2008 described by the complainant. Even assuming that these incidents did take place in the morning and the evening of 22.11.2008 as described by the complainant, they could at best be described as threats or a war of words between the parties. In no manner could it be said that the petitioner was aware that the deceased was harbouring suicidal

thoughts; element of mens rea has even not been alleged in the version of the complaint. The acts attributed to the petitioner cannot amount to an incitement under Section 107 of the IPC. It cannot be said that the petitioner has played any role either or by an act or by an omission which had resulted in this offence. Except for the reference of the name of the petitioner and his three sons (who have not been charge-sheeted) that they had made the life of the petitioner and his family miserable and difficult, there is no other reference of any act or incident whereby the petitioner is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased for committing this act. The suicide note in fact recites that the deceased considering himself unfortunate is taking this step. Contents of the suicide note do not make out the offence against the petitioner.

25. Prosecution initiated against the petitioner would only result in harassment and strife to the petitioner with no fruitful result. This appears to be a fit case where the inherent powers of this court under Section 482 of the Cr.P.C. are to be invoked.

26. Accordingly, FIR No.690/2008 registered at P.S. Sultan Puri under Section 306/34 of the IPC and the all the proceedings emanating therefrom stand quashed.

(INDERMEET KAUR)
JUDGE

24th November, 2009
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