

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

% Reserved on : 06.01.2009
Date of decision : 19.01.2009

+ Crl.Rev.P. 725/2007

ASHISH CHAUDHARY Petitioner
*Through:*Mr. Nitin Ahlawat, Adv for petitioner.

Versus

STATE Respondent
Through: Mr. Navin Sharma, APP for the State

+ Crl.Rev.P. 66/2008

DALIP CHAUDHARY & ANR. Petitioners
*Through:*Mr. M.K.Sharma, Adv. for petitioner.

Versus

STATE GOVT. of NCT of DELHI Respondent
Through: Mr. Navin Sharma, APP for the State

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. These two petitions filed by the petitioners seeks quashing of the charges framed against them under Section 306/34 IPC in case FIR No. 382/2005 registered at P.S. Sadar Bazar, on the basis of a complaint lodged by Smt. Anju Jain the mother of deceased Amit Jain, who committed suicide on 24.11.2005, after leaving a suicide note alleging that the petitioners are

responsible for his death because some of them compelled him to return the loan taken by him even though they had been charging exorbitant rate of interest paid by the deceased. Regarding Ashish Chaudhary he alleged that Ashish took a loan from the deceased but failed to return the same.

2. The Learned Additional Session Judge vide his orders dated 21.08.2007, ordered framing of charges against the petitioners under Section 306/34 IPC and vide his order dated 22.10.2007 directed framing of the charges. Both these orders are subject matter of challenge in the aforesaid review petitions.

3. It is the case of the petitioners, that neither in the statement made by the witnesses recorded by the Investigating Officer under Section 161 Cr.P.C, nor in the complaint made by the mother of the deceased or the suicide note left by deceased Amit Jain, there is any allegation against them either of abetting or instigating the accused to commit suicide. Thus, it is submitted that the charge framed against them is groundless and deserves to be set aside in the exercise of the powers of revision vested in this Court.

4. According to the respondents the charges have been rightly framed as there was material available on record against the petitioners in the form of complaint made by the mother of the deceased, statement of the witness recorded during the course of investigation and the suicide note left by the deceased. It is submitted that at the stage of framing of charge, only a prima

facie view has to be taken by the Learned Judge and the defence of accused is not to be seen. Even if the allegations made may not result into conviction finally, it is not justified to discharge the accused at the stage of framing of the charge. As such, it is prayed that the revision petition by the petitioners are dismissed.

5. I have heard both the sides and have gone through the allegations made against the petitioners in the complaint, statements recorded under Section 161 Cr.P.C, as well as the suicide note left by the deceased. I have also perused the order directing framing of the charges and the charges framed against the petitioners.

6. At this juncture, it will be appropriate to take note of the provisions of Section 306 Cr.P.C. which reads as under:

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.

7. It will also be appropriate to refer to Section 107 IPC, which defines Abetment as under:

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.

8. Section 306 has been interpreted by number of Courts

including the Apex Court, where it has been explained as to in what circumstances and on what facts a charge under Section 306 IPC can be made out. Some observations in this regard made by various Courts are referred hereinafter:

- I. In the case of Pradeep Kumar Vs. State of Punjab 2003 (1) Cr.CC 117 it has been held that there must be a direct or reasonable nexus between the act and consequences in committing suicide.
- II. In Rikhee Ram Vs. State of Chattisgarh (2006) 4 Cr.CC 604 it has been said that a charge under Section 306 IPC cannot be framed merely because the applicants as accused were searching for the deceased for making good their loss to their tractor. It was held that in the absence of any evidence to show that the accused persons instigated the abetment of suicide the charges framed against appellant/accused persons were not sustained.
- III. In the case of Mahesh Vs. State of Madhya Pradesh 2002 (3) Cr.CC 432 (M.P. High Court) it was held that even if the death note (suicide note) mentions about taking a loan by the accused from deceased for getting a plot allotted by the development authority and deceased was harassed when accused refused to give the plot dishonestly where after the deceased committed suicide, would not fulfill ingredients of abetment as no other positive act attributed to the accused was alleged to justify framing of the charge under Section

306 IPC.

- IV. In the case of Jugal Kishore Vs. State of Madhya Pradesh 2002 (2) Cr. CC 161 not returning the loan amount, which the accused had taken from the deceased and taking away the ornaments from the deceased to ensure payment of dues with a threat that if such payment is not made, Police action will be taken against him was not found to be an act of abetment for commission of suicide by the deceased who committed suicide thereafter and the charge framed against the accused under Section 306 IPC was set aside.
- V. In the case of Manish Kumar Sharma Vs. State of Rajasthan 1995 CRI. L.J. 3066 where persistent demand for the refund of an amount advanced by the accused to the deceased was not taken as sufficient to bring the instance/demand of the accused in the realm of abetment so as to frame a charge under Section 306 IPC.
- VI. In the case of Colonel G.C. Ghura Vs. State of Rajasthan 1996 CRI. L.J. 2158 where also a suicide note was found near the dead body of the deceased alleging that accused had demanded sum from the deceased and on his refusal to pay the same the accused declared him unfit for recruitment to the Army which resulted in suicide. It was held that the refusal of the accused in recruiting the deceased in the Army being not a member of the Selection Board was not an act of abetment as per the provision of

Section 107 of the IPC and, therefore, the petition under Section 482 Cr.P.C. was allowed.

VII. In the case of Cyriac Vs. S.I. Police 2005 (4) Crl.CC 78 (Kerala) it was held that insulting statements in public that the deceased was not even having Rs. 200 should go and die was not found sufficient to constitute abetment. It was also held that such statement was not enough to cause persuasion to the deceased to commit suicide and, therefore, the accused could not have been held guilty of offence under Section 306 IPC and accordingly charges framed were quashed.

9. The matter has also been examined by the Apex Court. In the case of Sanju Vs. State of Madhya Pradesh reported in AIR 2002 SC 1998 where a quarrel had taken place between the deceased, and the appellant used abusive language and told the accused to go and die and the deceased committed suicide by hanging himself after two days of the quarrel, it was held that the conduct of the appellant could not have been construed an act of either instigation or abetment as the suicide by the deceased was not proximate to the abusive language uttered by the appellant. In that case, The Court also made an observation that in the relevant period the deceased was without any work or vocation and used to indulge in drinking as a frustrated man and, therefore, the act of committing suicide on his part could not have been the direct result of quarrel under the provisions of

Section 306 IPC and accordingly, ***it was held that the conduct of the accused in telling the deceased to go and die would not tantamount to instigation and the accused was acquitted of the charge framed against him under Section 306 IPC.***

10. In another Judgment delivered by Apex Court in Netai Dutta Vs. State of West Bengal AIR 2005 SC 1775 where a suicide note was recovered from the dead body of the deceased making some reference to the appellant without any averment that the appellant caused any harm to the deceased and also taking into consideration that the deceased at the relevant time was dissatisfied with the working conditions in the office where he was doing work, in the absence of any evidence that the appellant played any part or role in any conspiracy which might have instigated or resulted in the commission of suicide by the deceased, the order of the High Court dismissing the petition filed for quashing of the petition was reversed.

11. The Apex Court in the case of Bhagwan Das Vs. Kartar Singh and Ors. 2007 (3) JCC 1738 also considered the scope of Section 306 read with 107 of the IPC where a wife after 7 years of her marriage committed suicide alleging harassment by husband due to differences between them & held that it was not an act of abetment for which charges under Section 306 IPC could be framed against the husband. The relevant observation were:

“15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and

discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself, and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide. Vide *Kans Raj vs. State of Punjab & Ors.* 2000 (2) JCC (SC) 657; 2000 (5) SCC 207, *Satvir Singh & Ors. vs. State of Punjab & Anr.* 2001 (2) JCC 274 : 2001 (8) SCC 633, *Smt. Shanti & Anr. Vs. State of Haryana* AIR 1991 SC 1261."

12. In the case of *Hiralal Jain Vs. State* 2000 (2) JCC 478(Delhi)

the deceased left a suicide note which read as under:

"I, Rajesh Kumar S/o Ram Chand R/o AgG-240, Shalimar Bagh, Ph:7135502 and I work In R.P. Wool Co. Pvt. Ltd. at C-4, SMA. I on my own will wanted to leave my job to work on my own. My employer Mr. H.L. Jain had got me involved in a false case and forcibly got a note executed for misappropriation by me of around Rs.37,621/- and had threatened me to get my family killed by Sudama Pehalwan who works for them if I did anything against them. I have no evidence to prove my innocence. H.L. Jain (Hira Lal Jain) is responsible for my situation. He has forced me to take wrong steps. His phone Nos. 7244163, 7133517, 7525250, 2525983"

13. Taking note of the aforesaid suicide note and the provisions contained under Section 107 of the IPC the Learned Single Judge observed:

4. From a reading of the Clause 'Firstly' of Section 107 of the Indian Penal Code, it is clear that a person who instigates another to do a thing, abets him to do that thing. A person is said to instigate another when he goads, provokes, incites, urges forward or encourage another to commit a crime. A serious question that has arisen in this case is whether there is any material suggesting that the petitioner had incited the deceased to commit suicide? The fact that a suicide note was recovered and from the contents thereof it certainly cannot be said that the petitioner had goaded, provoked, incited, urged or encouraged the deceased to commit suicide. There being no material on record to show that the ingredients of the offence of abetment have been satisfied the framing of charge under Section 306 of the Indian Penal Code against the petitioner was bad in law.

14. The issue as to what constitutes abetment also came for

consideration before another Learned Single Judge of this Court in the case of Laxmi & Anr. Vs. State 2001 (2) JCC Delhi 297 . In the aforesaid case it was observed:

“14. Abetment involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence and it is of the essence of the crime of abetment that the abettor should substantially assist towards the commission of the offence. In other words, in order to convict a person of abetting the commission of a crime, it is necessary to connect him with those steps in the transaction which are criminal. It is not the case of the prosecution that when the deceased had committed suicide, the accused were present at the place of incident. There is no material, direct or indirect, to show that the accused had either instigated or conspired or aided the deceased in committing the suicide at that time. And it could not be said that the accused persons had abetted the suicide. On the material available no offence punishable under Section 306/34 I.P.C. is made out against either of the accused.”

15. Thus, the law is crystal clear; that to frame a charge under Section 306 IPC the suicide should have been caused by the deceased either because it was abetted by the accused or it was instigated by him but for that purpose there must be some clear act or omission on the part of the accused within the parameters of Section 107 of the Indian Penal Code. Unless and until such proximity is available the accused cannot be said to be an abettor merely because the deceased got frustrated because he could not discharge his debt or the loan was not returned to him by the creditor. He would also not come in the category of an abettor merely because in a scuffle heated discussion took place between the accused and the deceased few days back where some utterance were made that the deceased may commit suicide. Thus, even

if in a suicide note left by the deceased there was some reference that some loan paid by him to one of the co-accused was not returned to him by repeated demand or that he could not pay back the loan to the other accused persons who had been charging interest but were demanding their money persistently, the accused persons cannot be said to have committed an act of omission or commission which may make them either an abettor or an instigator so as to face a charge under Section 306 IPC.

16. In the present case the FIR has been registered against the petitioners on the basis of a complaint lodged by Smt. Pushpa Jain the mother of the deceased who also informed the Police about the commission of the suicide by the deceased on 24.11.2005 and alleged:

“Today on dated 24.11.05 at about 12.30 a.m. my son Amit Jain came to my house and had a talk with me till 1.30 a.m. and thereafter laid down in his room and I was also slept in front of his room on my cot. My son told me during our conversation that Dilip, Ashu Chaudhary, Shakuntla Chaudhary and Neelam Chaudhary had been harassing him for money for the last two three days and charged interest and demanded back their money and otherwise they want to occupy the house and they made my life hell for their money. They gave threats to me and abused me. When I awake at 5.30 a.m., I on seeing the room of my son I found my son wrapped with the Saree knot around his neck was hanging with the fan on the roof. His eyes was wide open and tongue was coming out from his mouth and the upper portion of the neck was found hanging and he was dead thereon. I was stunned on seeing the same. I made a call to my son Arun and other relatives on phone. I called on 100 number then you came along with the staff at the spot and they took two suicide notes from the pocket of my son hanging from the roof. I was under the shock due to the death of my son, so I give the statement today I have read the same and is correct.”

17. The aforesaid statement reveals that the petitioners are charged with the offence of Sec.306 IPC merely because they

demanded money from the deceased towards return of loan 2/3 days before the commission of suicide and in this regard in the alternative they asked the deceased to vacate the house. The only other allegation was demanding exorbitant rate of interest, which was allegedly paid by the deceased.

18. The complainant also referred to a suicide note left by the deceased and produced by the mother of the deceased, it is also the case of the prosecution that allegation made in the suicide note also constitutes the offence under Section 306 IPC. It may be appropriate to take note of the relevant portion of the suicide note, which is reproduced here under:

"I Amit Jain being harassed from my creditors going to do suicide, I will not do this sin but these people made me to do the same. These people are forcefully tried to occupy my house despite paying them the interest. Therefore, they are responsible for my death and they will be teach a lesson so that they will not do the same to any one. These are as follows:-

1.Dilip Chaudhary – 9313629998, House No. 4671, Gali Mohar Singh.

2.Ashu Chaudhary – 9811196890, 23521040, House-Gali Tej Singh.

3.Shakuntla Chaudhary- 9818546021, House No. 4652, Gali Mohar Singh.

4.Neelam Chaudhary – 9312638532, House No.55/5, Old Rajender Nagar."

19. From the reading of the complaint and the suicide note it is apparent that the deceased has committed suicide because he was unable to pay the debts received by him from the Dilip, Shakuntala and Neelam Chaudhary who had been charging interest at the rate of 10% from him and that on account of non-payment of the loan amount there was a threat to grab the house

of the petitioner forcibly by those persons. Regarding Neelam Chaudhary additional allegation made are that the deceased also handed over few copies of the documents of the house, one blank stamp paper and two blank cheques to her in lieu of Rs. 75,000/- only. As far as Ashu Chaudhary allegation against him are that he took Rs. 1,10,000/- from the deceased and thereafter he took him at Sahara Mall threatened and tried to kill him as he has not returned a single rupee despite passing of three months and for that reason he took money from Dilip otherwise he would not have taken the money from Dilip.

20. Thus, the crux of the allegation made by the deceased in the suicide note against the petitioners are two- fold.

- i) Dilip, Shakuntala Chaudhary and Neelam Tiwari lent out some money to him though at different rates of interest starting from 10% to 30% which he could not repay. These persons threatened him to take possession of the house.
- ii) He paid Rs. 1,10,000/- to Ashu Chaudhary which he failed to return after passage of three months.

21. In this entire note there is no whisper that any overt act was committed by either of the petitioners which may either come within the definition of the abetment or as a part of conspiracy to compel the deceased to commit suicide or to instigate him to commit suicide.

22. The learned counsel for the petitioner submitted that

neither the aspect of abetment nor the instigation on the part of the petitioners has even been discussed by the Learned Additional Sessions Judge while ordering framing of charges or framing the charges, this argument of the learned counsel for the petitioner is borne out on the records. A perusal of the order dated 21.08.2007 shows that except for taking note of the allegations which forms part of the suicide note and the statements made by the mother and the brother of the deceased which only reiterates what has been stated in the suicide note of the deceased, there is no mention as to how the petitioners can either be called abettors or instigators for compelling the deceased to commit suicide.

23. Taking into consideration all the aforesaid facts and the settled law on the subject as discussed above I am in agreement with the arguments of the learned counsel for the petitioner that in this case in the absence of any abetment on the part of the petitioners or any act/omission on their part which can be treated as instigation on their part for compelling the deceased to commit suicide or persuade him to commit suicide merely because some loan was taken by the deceased which he could not pay or some loan advanced by the deceased to Ashish chaudhary which he did not pay. The petitioners could not have been charged under Section 306/34 IPC is not made out against the petitioners. Consequently, I set aside the orders dated 21.08.2007 and 22.10.2007 framing charges against the

petitioners and discharge the accused persons, as any further prosecution of the accused persons would be an abuse of the process of the Court.

24. The charges framed against both the petitioners framed by the Learned Additional Sessions Judge under Sections 306/34 IPC on the basis of FIR 382/2005, P.S. Sadar Bazar, are quashed accordingly. Their bail bonds also stands discharged.

25. The trial court record be sent back immediately.

MOOL CHAND GARG, J.

JANUARY 19, 2009
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