

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

+ **CRL.REV.P. 414/2007 & CrI.M.A. 7117/2007 (stay)**

% Reserved on: 19th August, 2011

Decided on: 18th October, 2011

VIJAY SAKHIJA & ANR Petitioners

Through: Mr. R.P. Luthra, Adv.

versus

STATE Respondent

Through: Mr. Mukesh Gupta, APP for State with
Mr. Vikas Kumar, SI, P.S. Mandawali.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. This is a petition seeking quashing of the order dated 2nd April, 2007 directing framing of charge against the petitioners for offence punishable under Sections 306 IPC. Learned counsel for the Petitioners contends that in the FIR the only allegation against the Petitioners is that they abused the deceased Sanjay Srivastava. There is no proximity between the alleged

accusations and cause of death. The accusations leveled do not lead to abetment of committing suicide. Merely abusing a person in front of other people cannot lead to an inference that he abetted suicide. This is a reaction of a person who is hyper sensitive, which will not fall within the ambit of offence under Section 306 IPC. Reliance is placed on *M. Mohan vs. State* 2011 (3) SCC 626, *Madan Mohan Singh vs. State of Gujarat* 2010 (4) RCR (Crl.) 207, *Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh* AIR 2002 SC 1998.

2. The case of the prosecution in nut-shell is that the deceased Sanjay Srivastava was employed with Vijay Sukhija, in whose concern one Uttam Duggal was also working as Accountant. While Sanjay Srivastav was at his native place, a case was filed in the labour court wherein the name of Sanjay Srivastava figured as one of the workmen. When he returned from his home town he was summoned to the office and abused in filthy language by the Petitioners before a number of other persons. He was made to sign 42 blank papers and was intimidated of his instant death. Since he could not bear the said pressure and humility, Sanjay Srivastava committed suicide.

3. A suicide note was recovered on which the expert opinion has already been received wherein it is opined that the hand writing in the suicide note

tallies with the admitted signatures and the hand writing of the deceased. The contents of the suicide note are as under:-

“To,

SHO Sir, dated 5.12.2001 I had gone for duty to my office and I was called at the office about 2 O'clock and was scolded and was abused and was given no. of threats because our case was pending in the Labour Court and Labour officer instructed three times to the owner that he should not abuse and should not give any kind of threat to the employees. But they did not obeyed any of the instructions and I was called in the office and unparliamentary language was used against me and there in the office I was forced to sign the blank papers by the office accountant along with the owner and they kept on intimidating me for life and forcefully said to me, if you don't sign then I can get you killed by any notorious person by offering him Rs. 20-25,000/- (by giving thousand rupees). Therefore, in view of the safety of my children I was forced to sign on the plain papers and there two staff members of the office were watching all this. There the owner Vijay Sakuja and accountant Uttam Duggal gave the plain paper and made me sign on it and our present staff Surender Kumar Drived and Kishan Kumar Gupta were watching all this by standing outside their cabin because they were involved in the case and the following names are involved in the case pending in the Labor Court for example Shri Gorakh Tiwari, Shri Surender Kumar, Shri Mahender Kumar Drivedi, Hukam Singh, Manoj Kumar Mishra, Sanjy Srivastava, Sushil Kumar Mishra, Deepak Pandey, Santosh Kumar, Sanjeev Kumar Srivastava, Prem Kumar Jha, Ram Kripal and two ladies sweeper employees are named in it.

My children are at Sasa Ram. There are my in-law.

I told all these to my maternal uncle and he said that he will make them understand and when I received a phone call from him on 5.12.2001 at about 2 O'clock after him conversation at length with my uncle, he said to me that tum pani (ma chudwane) labour court mein gaye nahi to bahen ke

loro madar chod apni ma chod vale like this number of other abuses were given to me and asked that what does you Mama do. Then I said that he is here only in C.G.V. Complex. He is in the police department. Then he swore of his livelihood and in front of Goddess Mata which is kept in the basement of the office cabin and said on oath that nothing will happen to you we are with you. For the same he gave me so much of tension that I got pain in the left said of the chest and was sent to Shanti Mukund Hospital with his son and got me the medicine. I had that medicine at that very point of time and I was sent to Hisar on 6th December, 2001 in that tension only for the duty and a big suitcase containing goods of the two parties and Rs. 3600/- of Hisar Bill and one polybag on which word Hisar was written was also sent. All this was in big attaché which is kept below. Because of all this tension I am ending my life and person responsible for my death are Vee Kay Traders (1) Mr. Vijay Sakhuja 20 Vigyan Vihar Yamuna Sports Complex, Delhi 92 (2) Uttam Duggal (Accountant) residing at Ghaziabad Brij Vihar. These two people are responsible for my death.

1. Vijay Sakhuja (Who is our owner)
2. Uttam Duggal (Who is our accountant)

And my family and sister, brother-in-law or my neighbours or landlord are not responsible for my death and they have nothing to do with this. Therefore, they should not be harassed in any manner and person responsible for my death is owner of the office and the accountant.

And your labour court case is pending against me.

And yours,
Sd/-
Sanjay Srivastava

My union is

Trade Brijlal Akhil Bhartiya Karamchari Trade Union
(Regd)

And my home is at Lucknow.”

4. A perusal of the suicide note shows that the Petitioners abused and humiliated deceased when he came to the office. Simpliciter abusing and humiliation may not have amounted to abetment of suicide, however, in the present case the Petitioner threatened the deceased saying that he would eliminate him and therefore, in view of the safety of his children, he signed a number of blank pages. It is stated that the unbearable tension resulted in the deceased ultimately committing suicide. The word instigation denotes provoking or incitement to do “an act”. It is not necessary that the actual words must be used to that effect. It must specifically be suggestive of the consequence, a reasonable certainty to incite the consequence has to be spelt out. In the case in hand the deceased was threatened of the death and implication so as to endanger his life and future of his children. The act of the accused persons to make him sign the papers is a positive act on their part and the same would prima facie amount to instigating the deceased to commit suicide. Thus the act of the Petitioners falls within the ambit of instigation. There is proximity of time also because the incident occurred on 5th February, 2001 and the deceased committed suicide on 7th February, 2001.

5. The decisions relied upon by the learned counsel for the Petitioners are not applicable to the facts of the present case. In *Sanju @ Sanjay Singh*

Sengar (Supra) the allegations against the accused therein were that he told the deceased “to go and die”. This was held not to constitute ingredients of instigation as the presence of mens rea is a necessary concomitant of the instigation.

6. In *M. Mohan* (Supra) their Lordships came to the conclusion that the mens rea to commit an offence under Section 306 IPC was lacking and there was no proximate link between the event when the deceased was denied permission to use family car and she, her husband and child were made to use the public transport instead to reach the Theme Park where the whole family was headed, allegedly being told “if you want to go by a car you have to bring a car from your family”. It was held that the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences of everyday life.

7. In *Madan Mohan Singh* (Supra) the allegations against the accused were that as a boss he was angry and insulted the deceased a number of times before the staff due to which she felt depressed and committed suicide. It was held:

“In so far as Section 306 IPC is concerned, even at the cost of repetition, we may say that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC. It will still fall short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper

allegations against the appellant/accused to the effect that he had intended or engineered the suicide of the concerned person by his acts, words etc. When we put the present FIR on this test, it falls short. We have already explained that the baseless and irrelevant allegations could not be used as a basis for prosecution for a serious offence under Section 306 IPC.”

8. As held above in the facts of the present case if it was mere abuse then it could not be stated that the Petitioners had the requisite mens rea of causing the offence under Section 306 IPC. However, in the present case besides the abuses and humiliation the deceased was threatened to be killed and made to sign number of blank pages. Hence the acts went beyond mere abuse or insults. This Court in *Sanjay Singhal and another vs. State, 2007 (3) JCC 2087* held that the facts sifting exercise required to be undertaken by the Court at the stage of framing of charges has to be to see the broad contours of the material; it should not probe meticulously and make an in-depth analysis of the evidence as such an exercise would amount to a pre-trial appraisal of facts which is not warranted. Sufficient it is that there is a prima facie case that raises a strong suspicion of the accused having committed an offence.

9. Further as to whether the contents of the suicide note relied upon or the other material collected during the course of the investigation are sufficient or otherwise is a matter of trial. The probative value of the evidence and documents would have to be seen at the end of the trial. They may or may not

be sufficient to convict a person. But this Court cannot draw such conclusions on presumption when the matter is still in its infancy.

10. Thus at this stage suffice it would be to note that there is a prima facie case raising a strong suspicion of petitioners having committed the offence under Section 306 IPC. I find no reason to interfere with the impugned order. However anything said hereinabove will not be treated as an expression of opinion on the merits of the case during trial.

11. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 18, 2011
‘raj’