

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

+ CRL. M.C. 3670/2008

Reserved on: November 16, 2011

Pronounced on: 21 .11.2011

RAJESH AGGARWAL & ORS.

..... Appellant

Through: Mr. Rakesh Gupta, Sr. Advocate
with Mr. Sunil Arora, Advocate.

Versus

STATE & ANR.

..... Respondent

Through: Ms. Fizani Husain, APP for the
State with SI Subash Chander,
P.S. Keshav Puram.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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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 the Digest ? | - | Yes |

M.L. MEHTA, J.

1. Vide this Crl.M.C. No. 3670 of 2008, petitioners Rajesh Aggarwal, Rajender Aggarwal and Mr. Mukesh Aggarwal seek quashing of FIR No.

98/2008,P.S. Keshav Puram registered against them under section 306/34 IPC.

2. On 16.5.2008, an information was received by the police from control room to the effect that in House No. 117/13, Onkar Nagar, Tri Nagar, Delhi one person had locked himself inside the room. This information was recorded vide DD No. 8 dated 3.5.2008 at P.P. Shanti Nagar, P.S. Keshav Puram. The police, thereafter, reached at the spot and found the room locked from inside. The door of the room was broken open and one male person was seen hanging from ceiling fan in the room. His name was later revealed as Shatrughan Prasad. Upon search of his cloths, four papers were recovered, out of which three papers were in the shape of suicide notes. The said suicide notes were dated 2.5.2008 and 3.5.2008. The aforesaid FIR was registered against the petitioners. After investigation, charge-sheet was filed in the court which is now pending trial before the trial court.

3. Learned Senior Counsel for the petitioners relied upon the cases of (i) ***Roop Kishore Madan Vs. State***, 89 (2001) DLT 150; (ii) ***Hiral Lal Jain Vs. State***, 87 (2000) DLT 265; (both of this court), and (iii) ***Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh***, 2002 (2) RCR

(Cri.) 687; (iv) *Sri Ram Vs. State of U.P.*, 1975 Cr. L.J. 240 and (v) *M. Mohan Vs. The State Represented by the Deputy Superintendent of Police*. 2011 (2) JCC 1078 of the Hon'ble Supreme Court to contend that from the allegations as set out in the FIR, no offence of abatement of suicide was made out against the petitioners. He also submitted that wife and sister of the deceased have given in writing to the SHO that they do not want any action against the petitioners and that they have already been adequately compensated by the petitioners.

4. Per contra, learned APP submitted that from the suicide notes of the deceased it would be seen that the deceased committed suicide on the instigation of the petitioners. She also referred to the statements of wife of the deceased and also his sister under section 161 Cr.P.C. to substantiate that the deceased was under constant stress and pressure to confess the embezzlement and was also being tortured by the petitioners for confession. She also raised the question as regards the power of this Court to entertain the petition for quashing of FIR at the stage when the case was listed for trial before the trial court.

5. With regard to the question raised regarding the powers of this Court under section 482 Cr.P.C. and Article 226 of the Constitution of

India, it may be suffice to state that in the case of *State of Haryana & Others Vs. Bhajan Lal & Others*, (1992) Suppl. 1 SCC, the Supreme Court examined the scope of inherent power of this Court in interfering with the investigation of an offence by the police. In the backdrop of interpretation of various relevant provisions of Cr.P.C. under Chapter XIV and of the principles of law enunciated by the Apex Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent powers under section 482 Cr. P.C. enumerate the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Apex Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kind of cases wherein such power should be exercised:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section [156\(1\)](#) of the Code except under an order of a Magistrate within the purview of Section [155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section [155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

6. There is a catena of judgments of the Supreme Court and reference can be made to ***State of U.P. Vs. Golconda Linga Swamy and Another***, (2004) 6 SCC 522 and ***State of A.P. Vs. Gourishetty Mahesh and Others***, 2010 (11) SCC 226 that while exercising the powers under section 482 Cr.P.C., the Court does not function as a Court of appeal or revision and that such a power though very wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests laid down in the section itself. Section 482 Cr. P.C. envisages three circumstances under which inherent jurisdiction may be exercised namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

7. In the case of ***Golconda Linga Swamy and Another*** (Supra) it was also held that “It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction in the enactment dealing with the procedure and provide for all cases that possibly arise.. . When the complaint is sought to be quashed it is permissible to look into material to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. Similarly, in the case of ***Devendra and Others vs. State***

of Uttar Pradesh and Another, (2009) 7 SCC 495 the Supreme Court held that “when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.”

8. In view of the settled position of law as noted above there does not remain any doubt that this Court has inherent power under section 482 Cr. P.C. and also extraordinary power under Article 226 of Constitution of India to entertain the present petition. Since power is to be exercised sparingly, due care and caution will be required to examine the allegations as set out in the FIR and also brought up from the evidence gathered during investigation.

9. Now coming back to the notes which were recovered in the present case, it may be noted that two of them bear the date of 02.05.2008 and other two bear the date of 03.05.2008. Three of these notes are like suicide notes. The operative part of the suicide note of 02.05.2008 is like this:

“There his relation has misappropriated some money which I could not tell. Some of the amount has been found and my employer wanted him to take the blame of misappropriation of balance amount and they also told if I do not accept the same he will get auctioned my house. I am in depression for the last 10 days and I am not left with any other option but to finish my life by committing suicide. If I suffered anything Rajesh

Aggarwal son of Sh. Hukum Chand Aggarwal, Rajender Aggarwal (mamaji) Mukesh Aggarwal Son of Ved Prakash Aggarwal will be responsible for the same. I have two daughters of marriageable age, who will be responsible for them. Hence it is requested that necessary action may kindly be taken. My room was also searched, in which some wrong papers have been found, about which I do not know.”

10. Relevant portion of the contents of the second suicide note are as under:

“I am writing this that these persons, who are telling me that I have taken the money, are absolutely wrong. My family is in so much depression which I cannot tell. It is a fact that if I would have done anything wrong there is a solution for the same. These persons are torturing me, which is wrong. Neither I have taken any money of anybody nor do I have any knowledge. But if Hukam Chand says so then I would say that everything lies upon me only but I have not taken any money belonging to anyone. The accusation made against me is absolutely wrong. All their relations have falsely implicated me. One thing I want to tell that I have not done any wrong thing for which I have been accused. Hence I am requesting that please do not make false accusation against me as it is not good for you. Sd/- English, 03.05.08 today.”

11. The contents of the third suicide note dated 03.05.2008 are :

“I could not tolerate so I have taken liquor, because if I would not have taken it, my brain would have blasted as whoever has done this has

not done the right thing. I am going, but just for the sake of their future I say that Rajesh Babu yesterday you were repeatedly saying that you will kill me or you will commit suicide. Was it that you too never trusted me. I am a poor fellow but you are an educated person how could you say this thing. I could have done anything for this house but now it is not possible.”

12. Referring to the aforesaid suicide notes, learned Senior counsel for the petitioners sought to contend that there was no ingredient of abatement on the part of the petitioners in the commission of suicide by the deceased and that the deceased was only depressed and frustrated person who had committed suicide after drinking on 3rd May.

13. In this submission reliance was strongly placed upon the afore-cited cases by learned Sr. Counsel for the petitioners. In the case of **M. Mohan (Supra)** the Hon’ble Supreme Court has discussed various judgments on the subject of abatement of suicide under Section 306 and 107 of IPC and ultimately came to the conclusion that the High Court ought to have quashed proceedings so that the appellant who were not remotely connected with the offence under section 306 IPC would not have been compelled to face the rigmaroles of criminal trial. In the case of **M. Mohan** the deceased lady had telephoned her father and told him about her having been taunted by her sister-in-law for having not brought car and thus been deprived of travelling in the car along with them to the temple. There was no whisper of demand for dowry on the part of the appellants in the complaint made by the father of the deceased before the

police. He simply narrated about the ill treatment to his daughter at the hands of her husband and the sister in law. It was in those circumstances that the Apex Court quashed charges against the appellant under section 306 IPC. In the cases of ***Roop Kishore Madan (supra)*** and ***Hira Lal Jain (supra)*** of this Court the facts were entirely different and distinguishable from the present case. In the case of ***Roop Kishore Madan (supra)*** the deceased who had left a suicide note was aware of the petitioner being already married and in spite of that she continued to have affairs with him. She wanted him to leave his wife even after her death. Prima facie it appeared to be a case of deceased being frustrated due to petitioner not leaving his wife. In the case of ***Hiral Lal Jain (supra)*** from the contents of suicide note recovered, it could not be seen that the petitioner had goaded, provoked, instigated or urged the deceased to commit suicide.

14. The case of ***Sri Ram (supra)*** related to the consideration of abatement by one lady in the commission of offence of murder. She had simply shouted on seeing the deceased Kunwar Singh, Advocate, that “the Vakil has come”. Apart from these words there was nothing at all to show that she was aware of any nefarious designs of the accused persons. In the backdrop of all these facts she was acquitted by the Supreme Court. The case of ***Sanju @ Sanjay Singh Sengar (supra)*** was also based on its own facts where the deceased had returned from her in laws house and told her brothers and acquaintances that the appellant (brother in law) had threatened and abused her by using filthy language. He had visited the

house of his in law on 25.07.1998 and committed suicide on 27.07.1998. In these facts it was held that the fact that deceased had committed suicide on 27.07.1998 would itself clearly point out that it is not the direct result of the quarrel that took place on 25.07.1998 when it is alleged that the appellant had used abusive language and had also told the deceased to go and die.

15. The concept of abatement to suicide is dealt with under section 306 of IPC 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.”

16. Abatement of a thing has been defined under section 107 of the Code. The same reads 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 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”

17. In the case of ***Rakesh Kumar vs. State of Chhattisgarh*** (2001) 9 SCC 618 three judges Bench of the Hon'ble Supreme Court in paragraph No. 20 examined different shades of the meaning of word "instigation"-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

18. In the case of ***Chitresh Kumar Chopra Vs. State (Govt.of NCT of Delhi)***, 2009 (16) SCC 605, the Supreme Court dealt with the dictionary meaning of the words 'instigation' and 'goading' –

"The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be

decided on the basis of its own facts and circumstances.”

19. Now having seen above that it was not possible to lay down a straightjacket formula in dealing with such cases and each case was to be decided on the basis of its facts and circumstances, it may be reiterated that in the present case the deceased was seen to be in a fit state of mind on 2.5.2008 as well as on 03.05.2008. He has maintained about his having been tortured and harassed for confession of embezzlement of huge amount of money by the petitioners. He also stated that some amount has also been found and he was being blamed for misappropriation of the balance amount. He was not only worried about himself, but about his family and his house being threatened to be auctioned. Though, he had consumed some liquor on 03.05.2008, but he very honestly stated having done so because he was unable to tolerate the torture and harassment which were about to blast his brain. From the language used by him in his note that he attributed to the petitioner Rajesh Aggarwal addressing him as Rajesh Babu, he seems to be in his senses and sound disposing mind at the time of commission of offence. The version as found in the suicide notes finds corroboration from the statements of his sister and his wife who have also stated about the deceased having been tortured for the confession of the offence of embezzlement of money. As per the case of ***Ramesh Kumar (supra)*** the requirement of instigation in the present case was satisfied. To find an evidence that the accused had directly used the words suggestive of commission of offence of suicide by the deceased, is hardly be available

in such cases. In the present case, the petitioners by their acts or omissions continued a course of conduct that left the deceased with no other option except to commit suicide. This is so gathered from the suicide notes of the deceased. These all will amount to instigation within the ambit of abatement under section 107 of IPC.

19. I do not see any justifiable reason to quash the aforesaid FIR.

20. With regard to the plea that the petitioners have compensated the wife and sister of the deceased, this would have no bearing as regards the commission or the gravity of the offence. Consequently, the petition is devoid of any merit. Dismissed.

M.L. MEHTA, J.

November 21, 2011
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