



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on: 27.09.2023

Orders pronounced on: 20.10.2023

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

CrI. O.P. (MD).No.12664 of 2020

and

CrI.M.P. (MD).Nos.5758 and 5759 of 2020

1.S.Saranya

2.C.Jeyabharathi

3.K.Selvaraj

4.A.Chellasamy

...Petitioners

Vs.

1.State rep by

Inspector of Police,

Thiruvankadam Police Station,

Tirunelveli District.

(Crime No.265 of 2019)

...1st Respondent

2.Rengalakshmi

...2nd Respondent

Prayer:Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in S.C.No.224 of 2021 on the file of Learned Mahila Court, Tirunelveli.



For petitioners : Mr.V.Kathirvelu Sr.Counsel
for Mr.K.Prabhu

For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl side)

For R2 : Mr.G.Karuppasamy Pandian
for M.R.Karunanidhi

ORDER

This Criminal Original Petition has been filed by petitioners to quash the proceedings in Sessions Case No.224 of 2021 on the file of Learned Mahila Court, Tirunelveli.

2.1. According to the petitioner, based on the complaint given by the Second Respondent, the First Respondent has registered an FIR in CR.No. 265 of 2019 as against these petitioners for the alleged offences under Sections 294 (b), 506 (ii), 306 of IPC and Section 4 of Prohibition of Harassment of Women Act. The case of the prosecution is that the petitioners are arrayed as accused Nos.1 to 4 and there was a property dispute between the family of the accused and the deceased/Lakshmi Ammal. The deceased/Lakshmi Ammal is aunt of the Second Respondent. On 13.11.2019, the Revenue Officials came and surveyed the property in dispute and thereafter when the Second Respondent took measures to



construct a house in the said property and it was opposed by the petitioners.

Thereafter the Second Respondent preferred a complaint to the police and the police also inquired petitioners. Subsequently, on the same day at about 8 PM, all the petitioners came to the house of the deceased/Lakshmi Ammal and verbally abused the deceased/Lakshmi Ammal and threatened that “*you die or we will kill you*”. Thereafter on the next day on 13.11.2019, the said Lakshmi Ammal consumed poison and she was taken to the hospital. Based on the complaint given by the 2nd respondent, the case was registered under Sections 294 (b), 506 (ii) of IPC and Section 4 of Prohibition of Harassment of Women Act, 1998. Later on 18.11.2019 at about 6.15 AM, the deceased/Lakshmi Ammal died. Thereafter, the first respondent altered the Sections of law into Sections 294 (b), 506 (ii), 306 of IPC and Section 4 of Prohibition of Harassment of Women Act, 1998. In fact, these petitioners at no point of time involved in any acts as alleged by prosecution and that the petitioners have been falsely implicated in this case.

2.2. The first respondent without conducting proper investigation wrongly filed final report as against these petitioners. Based on the final report, the case has now been pending before the Learned Mahila Court, Tirunelveli in Sessions Case No.224/2021. Therefore, the above said pending proceedings are abuse of process of law and therefore, the said case



is liable to be quashed.

WEB COPY 3.No counter was filed by the respondents.

4.The Learned Counsel appearing for the petitioner would contend that there was a property dispute pending between the *de facto* complainant and the petitioners herein, the deceased/Lakshmi Ammal is the close relative of the Second Respondent. Due to the civil dispute, the 2nd respondent attempted to construct a house with the land that belongs to the petitioners and the same was objected by the petitioners. Thereafter, the aunt of the Second Respondent named deceased/Laxmi Ammal consumed poison on 13.11.2019 and later she died in the hospital on 18.11.2019. In order to take revenge, the 2nd respondent had given a complaint as against these petitioners with false allegations, as if the petitioners have abetted to commit suicide to the deceased/Lakshmi Ammal. The petitioners were no way connected with the aforesaid case, and even according to the petitioners' complaint and the FIR, there is nothing that attracts the provisions under Sections 294 (b), 506 (ii), 306 of IPC and Section 4 of Prohibition of Harassment of Women Act, 1998. But the first respondent police without investigating the case in a proper manner filed a final report against these petitioners. Based on the final report filed by the first respondent, the case was committed to Sessions Court and now the case is



pending in Session Case No.224 of 2023 before the Learned Mahila Court, Tirunelveli. The pending Session's Case is an abuse of process of law and thereby the case is liable to be quashed.

5. The Learned Counsel for the Petitioners to support the contention of the petitioners he relied on the judgments hereunder:-

(i).Sanju @ Sanjay Singh Sengar Vs. State Of MP 2002 SCC (Crl) 1141.

(ii).Loganathan Vs. State in CRL.O.P.No.5069 of 2015 on the file of this Court.

(iii). Arunachalam and Ors. Vs. State in CRL.O.P.(MD)No.19952 of 2021 on the file of this Court.

(iv).Suresh Kumar Vs. State (2014) 1 MLJ (Crl) 303 in CRL.O.P.No. 18041 of 2008.

6.1.The Learned Counsel appearing for the Second Respondent would contend that there is a civil dispute pending between the parties with regard to the piece of land. The *de-facto* complainant and the deceased/Lakshmi Ammal attempted to construct the house in the above said place but the petitioners opposed to construct the house and further the petitioners scolded the deceased/Lakshmi Ammal one day prior to the occurrence of her suicide and they threatened her to die yourself or otherwise we would kill



you that's why she consumed poison and committed suicide. Further these petitioners abused in obscene words and also threatened with dire consequences thereby the Second Respondent lodged a complaint before the First Respondent police and an FIR was also registered in Crime No.265 of 2019 for the offences punishable under Sections 294 (b), 506 (ii) of IPC and Section 4 of Prohibition of Harassment of Women Act, 1998. Thereafter the deceased died on 18.11.2019 in the hospital and the Section of Law was altered in to Sections 294 (b), 506 (ii) and 306 of IPC and Section 4 of Prohibition of Harassment of Women Act, 1998.

6.2.The 1st Respondent after completion of the investigation filed a final report before the learned Judicial Magistrate and thereafter the case has been committed to the Session Court and now the case is pending before the Mahila Court, Tirunelveli in Sessions Case No.224 of 2021. As per the final report *prima-facie* material available as against these petitioners and thereby they have to face the Trial and at this stage, this Court cannot invoke the power under Section 482 of Cr.P.C and thereby this petition is liable to be dismissed.

7.Learned Counsel for the 2nd Respondent to support his contention he relied on the judgments in ***Rajeev Kourav Vs. Baisahab and Ors 2020 (2) CTC 125*** and ***Daxaben Vs. The State of Gujarat and Ors.*** in S.L.P.



(Crl.).No.1132 – 1155 of 2022.

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8.The Learned Government Advocate Criminal Side appearing for the Second Respondent would vehemently contend that due to the civil dispute between the parties, there are frequent quarrel between the parties. On 13.11.2019, the Second Respondent gave a complaint before the First Respondent stating that on 12.11.2019 these petitioners have abused with obscene words and threatened the victim Lakshmi Ammal with dire consequences and instigated the deceased/Lakshmi Ammal to commit suicide by saying that “*you have to die or otherwise we would kill you*” and thereby the deceased/Lakshmi Ammal consumed poison. Thereafter, the 2nd respondent lodged complaint and based on the said complaint FIR was registered in Cr.No.265 of 2019 and then on 18.11.2019 the deceased/Lakshmi Ammal died thereby Section of Law was altered into Section 306 of IPC and then the First Respondent conducted a proper investigation and filed a final report against the accused, based on the Final Report, the Learned Magistrate has committed the case to the Session Court and the Session Court has made over the case to the Learned Learned Mahila Court, Tirunelveli in SC No.224 of 2022. As per the final report filed there are *prima facie* materials available, to proceed with the case further and thereby the petitioners have to appear before the Trial Court for



Trial and the grounds raised by the petitioners are all to be agitated before the Trial Court as defense, therefore, at this stage this petition is liable to be dismissed.

9.This court has heard both sides and perused the materials available on record, on perusal of records it is observed that there was a civil dispute pending between the parties and thereby frequent quarrel occurred between them. As per the prosecution case, these petitioners abused obscene words and also caused criminal intimidation to the deceased/Lakshmi Ammal and further these petitioners instigated to commit suicide by saying that “*you die otherwise we would kill you*” and thereby the deceased/Lakshmi Ammal consumed poison.

10.According to the Petitioners they have not committed any offences as alleged by the prosecution and even as per the complaint, FIR and the Final Report there are no *prima facie* material to constitute the offences and Section 306 of IPC would not attract as against these petitioners. The words mentioned in the complaint, FIR and Charge-Sheet would not constitute the offences under Sections 294 (b), 506 (ii) and 306 of IPC and Section 4 of Prohibition of Harassment of Women Act, 1998.



11.As per the prosecution, the First Respondent conducted investigation and based on the investigation filed the final report and as per final report some of the offences are made out as against these petitioners. As far as the offences under Section 306 of IPC is concerned, as per prosecution the accused threatened the deceased on 12.11.2019 that you die or otherwise we would kill you, and also threatened with dire consequences, thereby on the next day morning the deceased consumed poison and then she was admitted in the hospital and on 18.11.2019, she died in the hospital. The deceased was taking treatment for more than five days in the hospital but the statement of victim was not recorded by the police and the deceased has also not stated anything about the deceased before the Doctor. Even according to the prosecution the civil dispute was pending between the parties and the deceased tried to construct a building in the disputed house and the same was opposed by the petitioners. While so the uttering of words that you die or otherwise we would kill you are not sufficient to constitute any offence under Section 306 of IPC. Thereafter the available materials are not sufficient to constitute the offence under Section 306 of IPC and however the records show that some other offences are made out as against the petitioners.



12. The Learned Counsel appearing for the Petitioners relied on the judgements in:-

(i). ***Suresh Kumar Vs. State (2014) 1 MLJ (Crl) 303*** in CRL.O.P.No.

18041 of 2008, wherein this Court held that:

“14. Law makers in India are very clear in their mind that Section 306 (2) IPC cannot be invoked against all and sundry indiscriminately. That is why special definition for abetment of suicide is given by the Legislature in some statutes. For example:

(i) Section 7 of the Tamil Nadu Prohibition of Ragging Act, 1997 (Tamil Nadu Act 7 of 1997) reads as under:

'7. Deemed abetment.-- If the head of the educational institution or the person responsible for the management of the educational institution fails or neglect to take action in the manner specified in sub-section (1) of section 6 when a complaint of ragging is made, such person shall be deemed to have abetted the offence of ragging and shall be punished as provided for in section 4.'

(ii) Section 4-B of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 (Tamil Nadu Act 44 of 1998) reads as under:

'4-B. Harassment suicide.-- (1) If any woman commits suicide and it is shown that soon before her death, she was subjected to harassment by any person or that in respect of her an offence under Section 294, 354 or 509 of the Indian Penal Code (Central Act XLV of 1860) was committed, such suicide shall be called the harassment suicide and such person shall be deemed to have abetted the suicide.

(2) Notwithstanding anything contained in Section 4, whoever abets harassment suicide shall be punished with imprisonment of either description for a term which may extend to ten years and with fine which shall not be less than fifty thousand rupees.'



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(iii) Section 9 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (Tamil Nadu Act 38 of 2003) reads as under:

“9. Abetment of Suicide – Where a debtor or any member of his family commits suicide and if it is shown that immediately prior to such suicide, the debtor or any member of his family was subjected to molestation by any person, the person who has advanced loan shall, unless the contrary is proved, be deemed to have abetted the commission of such suicide.”

The Legislators have understood the law of suicide well but it is only the implementers who feign ignorance.

15. In Amalendu Pal @ Jhantu Vs. State of West Bengal AIR 2010 SC 512 : (2010) 1 SCC 707 : LNIND 2009 SC 1978 : (2010) 2 MLJ (Crl) 109 the Supreme Court has held that:

“In order to bring a case within the purview of Section 306 (2) IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 (2) of IPC.”

(ii). Arunachalam and Ors. Vs. State in CRL.O.P.(MD)No.19952 of

2021 on the file of this Court wherein this Court in para 10 held as follows:-

“10. In the above decision, the order of the Hon'ble Supreme Court held that even the word “to go and die”



were not even prima facie enough to instigate the deceased to commit suicide. Further, considering the definition of abetment under Section 107 of IPC found that the charge for the offence under Section 306 (2) is not sustainable merely on the allegation of threat of the deceased. Further, the ingredients of the offence of abetment are not at all attracted as per the statement of the witnesses. Therefore, the charges, as against the first petitioner is concerned, cannot be sustained.”

(iii).Sanju @ Sanjay Singh Sengar Vs. State Of MP 2002 SCC (Crl)

1141, wherein the Hon'ble Supreme Court held that:

“12.Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under [Section 161](#) Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under [Section 161](#)Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to



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be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

13. On careful perusal of those judgments, it is clear that in order to attract provision No. 306 of IPC, the words to “Go and die” were not even *prima-facie* enough to instigate the deceased to commit suicide and in order to attract the provision under Section 306 of IPC some positive action have to be done by the accused and further the words uttered in a fit of anger or emotions without any intention cannot be termed as instigation and in order to bring a case within a purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to be abetted must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. In the case on hand



also due to the civil dispute these petitioners opposed to construct a house and have no any intention to instigate the deceased to commit suicide and further the words uttered by the accused that you die or we will kill you would not amounts to instigation to commit suicide that too according to the prosecution's case the words uttered by the accused on 12.11.2019 but the deceased consumed poison on the next day, therefore, the above said case laws are quietly applicable to the facts of the present case.

14.The Learned Counsel appearing for the Second Respondent has produced judgment in ***Rajeev Kourav Vs. Baisahab and Ors 2020 (2) CTC 125*** wherein the Hon'ble Supreme Court held in Para Nos. 8 and 9 as follows:-

“8.We do not agree with the submissions made on behalf of Respondent Nos.1 to 3. The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the statements recorded under Section 161 CrPC. Statements of witnesses recorded under Section 161 CrPC being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 CrPC1 .

9. Moreover, the High Court was aware that one of the witnesses mentioned that the deceased informed him about the harassment meted out by Respondent Nos.1 to 3 which she was not able to bear and hence wanted to commit suicide. The High Court committed an error in quashing criminal proceedings by assessing the statements under Section 161 Cr. P.C.”



20. In ***Daxaben Vs. The State of Gujarat and Ors.*** in S.L.P.(Crl.).No.

1132 – 1155 of 2022, the Hon'ble Supreme Court held as follows:-

“In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

15. On careful perusal of the aforesaid judgments, it is clear that in exercise of power under Section 482 of Cr.P.C the Court does not examine the correctness of the allegation in the complainant exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence, and the High Court while sitting in 482 Cr.P.C cannot consider the statements of witnesses and only to interfere for preventing abuse of Process of Court or to secure the ends of justice and not to embark upon the appreciation of evidence. But in the case on hand due to the dispute with regard to piece of land there was a quarrel between the parties and thereby the deceased consumed poison on the next day and the alleged words uttered by the accused would not constitute the offence under Section 306 of IPC, therefore the pending case against the petitioners for the alleged offence under Section 306 of IPC is abuse of Process of Law and the same is liable to be quashed. As far as the other offences are concerned the petitioners have to face Trial in accordance with law.



16. In the case on hand there is a civil dispute pending between the parties and the words uttered by the accused does not constitute any offence under Section 306 of IPC, therefore, the above said case laws submitted by the 2nd respondent will not be applicable to the present facts of the case.

17. In view of the judgments relied by the learned Counsel for the Petitioners and in view of the above said discussions, this Court is of the opinion that the offence under Section 306 (2) would not attract as against these petitioners. Thereby, the offence under section 306 of IPC is quashed as against these petitioners. However on perusal of final report and other records some of the offences are made out.

18. It is an admitted fact that no charges have been framed in this case, therefore the Trial Court has to decide what are all the offences made out as against these petitioners except under Section 306 of IPC, and the Trial Court has to proceed with the case as per the law. If any offences are made out then the Trial Court can decide the case on its own merits by framing appropriate charges and if any offence exclusively triable by Session Court are not made out then the Trial Court has to return back the case to the concerned jurisdictional court for trying the case in accordance with law.



19. With the above said observations, the said petition stands disposed. No costs. Connected Miscellaneous Petitions are closed.

20.10.2023

Index : Yes/No.
Speaking : Yes/No.
NCC : Yes/No.
Nst

Copy to

1. The Inspector of Police,
Thiruvankadam Police Station,
Tirunelveli District.

2. The Public Prosecutor, High Court, Madras.



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P. DHANABAL,J

nst

Pre Delivery Order in

Crl. O.P. (MD).No.12664 of 2020

and

Crl.M.P. (MD).Nos.5758 and 5759 of 2020

20.10.2023