

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 7327 of 2023

Petitioner :- Komal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Azizur Rahman Khan

Counsel for Respondent :- G.A., Alkesh Singh, Sucheta Pathak, Sudeep Kumar Pathak

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Azizur Rahman Khan, learned counsel for the petitioner, Sri Sudeep Kumar Pathak, learned counsel for respondents no.2, 3 and 4 and Sri L. D. Rajbhar, learned A.G.A. for the State and perused the record.

2. This petition under Article 227 of the Constitution of India has been filed to set aside the order dated 21.03.2023 passed by Sessions Judge, Mainpuri in Criminal Revision no.98 of 2022, (Komal vs. Pradeep Verma and others) and order dated 10.08.2022 passed by Civil Judge (S.D.), F.T.C./Additional Chief Judicial Magistrate, Mainpuri in Misc.Case/F.R. Case No.22 of 2022 (Jeetu Verma vs. Pradeep Verma and others) arising out of case crime no.66 of 2022, under Section 306 I.P.C., P.S.Kishani, District Mainpuri.

3. From the papers and submissions of both sides following relevant facts emerged:-

i. Younger brother of the deceased lodged an F.I.R. under Section 306 I.P.C. on 22.02.2022 against respondents no.2, 3, 4 and 5 with the allegations that his brother had borrowed Rs.20,000/- from the accused persons and his brother could not repay the amount, therefore, they have been demanding the same for quite sometime. On his inability to repay the amount the accused persons started harassing and also threatened and physically assaulted him, therefore, his brother committed suicide on 22.02.2022.

ii. The matter was investigated upon. After investigation the police filed a final report. I.O. mentioned in the final report that because of poor economic condition the deceased used to have altercation with his wife and other members of his family. Because of domestic rifts, brawls and disaffection between him and his wife and other members of his family over economic strains, he committed suicide in his house by hanging himself from a ceiling fan. The I.O. further expressed opinion that no evidence of committing atrocities to abet the commission of suicide was found, therefore, the case is being closed by submitting final report.

iii. Admittedly the first informant did not protest against submission of final report instead the first informant filed an application stating that final report may be accepted, However, wife of the deceased filed a protest application on 18.07.2022 alleging that final report had been submitted in collusion with the accused persons and same may be rejected.

iv. Learned trial court heard both the sides and passed an order dated 10.08.2022 accepting the final report and dismissed the protest application filed by the wife of the deceased.

v. The wife of the deceased preferred Criminal Revision No.98 of 2022 and same was also dismissed. Now aggrieved party is before this Court.

4. Submission of the petitioner are that post mortem report shows death by hanging; real fact of the matter is that the deceased committed suicide on abetment by accused persons for non payment of money. My attention has been drawn to paper (Annexure 12) paper no. 142. With reference to this paper it is contended that this paper is a dying declaration. The same was given to the I.O. but was not taken by I.O. on record. My attention has further been drawn to para-9 of the protest application and it is contended that this para refers to the paper of dying declaration which wife of deceased had sought to submit to I.O.

5. The submissions of the respondents are as below:-

i. First informant who happens to be real younger brother of the deceased did not protest against the final report.

ii. The I.O. conducted a detailed investigation; he recorded the statements of witnesses including of the first informant, wife of the deceased, mother and father and other members of family of the deceased but nothing material came into their statement which could point out the role of the accused persons in commission of suicide. In this case no such fact was found during investigation.

iii. The I.O. gave an opinion that deceased committed suicide in strained mental conditions over domestic dispute because of poor economic condition. It is contended that the wife of the deceased has, with false allegations filed protest application for ulterior motives. My attention has been drawn to para 9 of the protest application in which there is vague reference to some application given by wife. It is argued that no such application is on record.

iv. It is further argued that so called dying declaration was never brought in the knowledge of the I.O. at any stage of investigation. Further it is contended that this paper has come out of thin air. This is a false and concocted paper prepared just to manipulate and misdirect the court.

6. A two Judges Bench of the Supreme Court in ***Ude Singh and Ors. vs. State of Haryana, (2019) 17 SCC 301*** observed as below:-

"16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his

continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self- esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

7. From papers and submission of both the sides, this is not disputed that all material witnesses gave their statement under Section 161 Cr.P.C. and that none of the witnesses or wife of the deceased ever said that there was a piece of writing by deceased which actually is a dying declaration implicating the accused persons. This piece of paper was produced for the first time with protest application. Even protest application does not clearly refer to this paper and does not say that accused used to write a diary. And that he wrote something implicating and naming the accused holding them responsible for his suicide. No such statement was ever given under Section 161 Cr.P.C. even remotely suggesting that accused used to maintain a personal diary.

8. I went through the order passed by learned trial court. Trial court has dealt with each and every aspect of the matter in the light of the protest application filed by his wife. Learned revisional court, likewise dealt with all the aspects. Both the courts below considered the statements given by witnesses under Sections 161 Cr.P.C. and documentary evidence. The inferences drawn by the trial court and the sessions court are based on material on record. The findings cannot be faulted from any angle whatsoever. The courts are not expected to not to apply judicial mind and to go about mechanically.

9. In my view, there is no good ground to interfere in the impugned orders in exercise of jurisdiction under article 227 of the Constitution of India. This petition under Article 227 of the Constitution of India is, therefore, **dismissed.**

Order Date :- 6.11.2023

Asha