

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2038 of 2024

Applicant :- Romit Soni

Opposite Party :- State Of U.P. Thru. Prin.Secy. Addl. Chief Secy.
Home Deptt. And Another

Counsel for Applicant :- Bhupendra Nath Tripathi

Counsel for Opposite Party :- G.A.,Prateek Tewari

and

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Counsel for Applicant :- Bhupendra Nath Tripathi

Counsel for Opposite Party :- G.A.,Prateek Tewari,Raj Nath Singh

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Bhupendra Nath Tripathi, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A-I for the State and Sri. Prateek Tewari, the learned counsel for the opposite party no.2.

2. In application filed under Section 482 Cr.P.C- 8898 of 2024, the applicant has challenged the validity of an order dated 07.06.2023 passed by the Special Additional Chief Judicial Magistrate, C.B.I. (A.P.), Lucknow in Criminal Case No. 64083 of 2023 (State Vs. Romit Soni) and the charge sheet dated 03.06.2022 arising out of Case rime No. 085 of 2021 under Section 306 I.P.C, P.S Mahangar, District Lucknow and in application filed under Section 482 Cr.P.C- 2038 of 2024, the applicant has challenged the validity of an order dated 15.02.2024 passed by the learned Additional District and Session Judge, Court No.15, Lucknow in Session Trial No. 170 of 2024 (State of U.P. Vs. Romit Soni), arising out of Case rime No. 85 of 2021 under Section 306 I.P.C, P.S Mahangar, District Lucknow North (Commissionerate Lucknow), whereby an application filed by

the applicant under Section 227 Cr.P.C for his discharge has been rejected.

3. Briefly stated the facts of the case are that the opposite party no.2 had lodged an F.I.R on 20.03.2021. stating that his husband was working as a Section Officer in the Civil Secretariat, U.P. He was found dead hanging from the ceiling inside a closed room of the house. The complainant stated in the F.I.R that her husband used to tell her that the applicant was harassing her. He had left a suicide note wherein he had held that the applicant is responsible for his suicide.

4. In the suicide note, the deceased wrote that he had paid Rs. 35 lakhs to the applicant, which he is unable to party. He wrote that the applicant was responsible for his suicide.

5. After investigation, the investigating office has submitted a charge sheet on 03.09.2022 against the applicant under Section 306 I.P.C and the trial court took cognizance of the offence by means of an order dated 07.06.2023 and summoned the applicant to face the trial.

6. The submission of the learned counsel of the applicant is that from the contents of the suicide note, no case of instigation for suicide is made out against the applicant. Besides the suicide note there is no other evidence to establish that the applicant had instigated the deceased to commit suicide.

7. During pendency of the application, the applicant had filed an application for discharge under Section 227 Cr.P.C which was rejected by means of an order dated 15.02.2024 passed by the trial court and the applicant has filed an application under Section 482 Cr.P.C No. 2038 of 2024 challenging the validity of an order dated 15.02.2024 passed by the learned Additional District and Session Judge, Court No.15, Lucknow.

8. Per contra, the learned A.G.A-I as well as the learned counsel for the opposite party no.2 have submitted that the deceased has

clearly written in the suicide note that he had committed because of the applicant and the applicant is responsible for the same. Therefore, a case for trial of the applicant is made out and the prosecution should not be scuttled at the threshold without trial of the applicant.

9. I have considered the submission of the learned counsel for the parties.

10. Abetment of suicide is defined in Section 306 I.P.C. as follows:

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“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.”

“Abetment of a thing” has been defined under Section 107 of the Code, which 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 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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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.”

11. In **M. Mohan v. State**, (2011) 3 SCC 626, the Hon’ble Supreme Court held that: -

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

12. The aforesaid judgment in **M. Mohan** (Supra) has recently been followed in **Prabhat Kumar Mishra v. State of U.P.**, 2024 SCC OnLine SC 232.

13. In **Mahendra Singh v. State of M.P.**, 1995 Supp (3) SCC 731, the three appellants were convicted under Section 306 IPC based on the following dying declaration of the deceased:

“My mother-in-law and husband and sister-in-law harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.”

Allowing the appeal and setting aside conviction, the Hon’ble Supreme Court held that: -

“2. ... The dying declaration, per se, could not involve the appellants in offence punishable under Section 306 IPC, because it provides for abetment of suicide. Whoever abets the commission of suicide, and if any person commits suicide due to that reason, he shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Abetment has been defined in Section 107 IPC to mean that a person abets the doing of a thing who firstly instigates any person to do a 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. Neither of the ingredients of abetment are attracted on the statement of the deceased. The conviction of the appellants under Section 306 IPC merely on the allegation of harassment to the deceased is not sustainable.”

14. In **Ramesh Kumar v. State of Chhattisgarh**, (2001) 9 SCC 618, the dying declaration was as under: -

“Q. What is your name? What is the name of husband? Marriage when done?

Ans. Seema Bai. Name of husband — Ramesh Dubey. Marriage performed in June 1985.

Q. What happened with you?

Ans. Today in the morning I poured kerosene on me and set fire.

Q. Why you set fire?

Ans. Today in the morning quarrel had occurred between me and my husband.

Q. Previously also quarrel had occurred at any time?

Ans. No. From being aggrieved by the quarrel of today, I set fire.

Q. What happened in today's quarrel?

Ans. In the morning he told me that you are free. You go wherever you want to go.

Q. Whether you want to say anything more?

Ans. No.”

The Hon'ble Supreme Court held that: -

“19. The picture which emerges from a cumulative reading and assessment of the material available is this: presumably because of disinclination on the part of the accused to drop the deceased at her sister's residence the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcomings which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life partner. The accused Ramesh may or must have told the deceased that she was free to go anywhere she liked. Maybe that was in a fit of anger as contrary to his wish and immediate convenience the deceased was emphatic on being dropped at her sister's residence to see her. Presumably the accused may have said some such thing — you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had “freed” her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the trial court misspelt out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to

commit suicide. Making the deceased free — to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free “to commit suicide” as held by the trial court and upheld by the High Court.

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.”

15. In **Geo Varghese v. State of Rajasthan**, (2021) 19 SCC 144, the suicide note consisted of three pages with following written on each separate paper: -

01st page — ‘MY ALL THINGS GOES TO MY DEAR BRO KAIRN EVEN MY LOVE BYE BUDDY & SORRY’

02nd page — ‘NEEDED JUSTICE’

03rd page — ‘THANKS GEO (PTI) OF MY SCHOOL’

The Hon’ble Supreme Court referred to various precedents on the point and held that: -

“22. What is required to constitute an alleged abetment of suicide under Section 306IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused are otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

16. When this court examines the facts of the present case in the light of the law laid down in the aforesaid cases, it appears that the deceased had written in the suicide note that he had paid rupees thirty five lacs to the applicant and the applicant was unable to repay the amount. He did not allege that the applicant was not repaying the amount deliberately. Besides stating that the applicant was unable to repay the amount and that the applicant was responsible for his suicide note, the deceased did not alleged commission of any act by the applicant.

17. Therefore, there is no allegation of either direct or indirect act of incitement to the commission of offence of suicide. By merely stating that the applicant was responsible for suicide of the deceased as he was unable to repay the money taken from the deceased, no case for abetment of suicide is made out against the applicant.

18. In the case of ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, the Hon'ble Supreme Court considered the law laid down in various precedents regarding scope of interference under Section 482 Cr.P.C. and summarized the law in the following words:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds 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, no 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 ground 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 proceeding 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.”

19. The present case falls within the categories of (1) and (3) as from the allegations levelled in the F.I.R. and the material collected during investigation, no case of abetment of suicide is made out against the applicant.

20. In these circumstances, the continuance of criminal proceedings against the applicant would not be in the interest of justice. Accordingly, the application is **allowed** and the order dated 07.06.2023 passed by the Special Additional Chief Judicial Magistrate, C.B.I. (A.P.), Lucknow in Criminal Case No. 64083 of 2023 (State Vs. Romit Soni) and the charge sheet dated 03.06.2022 arising out of Case Crime No. 085 of 2021 under Section 306 I.P.C, P.S Mahangar, District Lucknow and the order dated 15.02.2024 passed by the

learned Additional District and Session Judge, Court No.15, Lucknow in Session Trial No. 170 of 2024 (State of U.P. Vs. Romit Soni), arising out of Case rime No. 85 of 2021 under Section 306 I.P.C, P.S Mahangar, District Lucknow North (Commissionerate Lucknow) are hereby quashed and the applicant stands discharged.

(Subhash Vidyarthi, J.)

Order Date :- 21.3.2024
Preeti.