

A.F.R.

Court No. - 27

Case :- CRIMINAL REVISION No. - 228 of 2024

Revisionist :- Km. Ruchi Tripathi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

Counsel for Revisionist :- Santosh Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Santosh Srivastava Advocate, the learned counsel for the revisionist, Sri Anant Pratap Singh, the learned Additional Government Advocate and Ms. Neetu Shukla, the learned counsel for the opposite party No.2 and perused the record.
2. By means of the instant revision filed under Section 397/401 Cr.P.C. the revisionist has assailed the validity of the order dated 01.02.2022 passed by the learned Additional Sessions Judge/F.T.C.-1, Lucknow in Sessions Trial No.2567 of 2022 arising out of Case Crime No.79 of 2018 under Section 306 IPC, Police Station Gazipur, Lucknow whereby the application for discharge of the revisionist has been rejected.
3. The aforesaid case has been initiated on the basis of an FIR lodged by opposite party No.2 on 05.02.2018 against the applicant and her sister, stating that the complainant's son was in a relationship with the revisionist. Negotiations for settlement of the marriage of complainant's son with some other girl were going on and upon coming to know about it, the accused persons threatened to defame him in the society, to stop his marriage and to entangle him in a rape

case, due to which the complainant's son committed suicide by hanging himself inside his room at 09:30 PM on 30.01.2018.

4. The deceased has left a suicide note stating that the revisionist was responsible for putting the deceased in agony; that he too could have defamed the revisionist, but he would not do so; that the revisionist had compelled him to commit suicide and that the deceased too had some intimate pictures but that would not be seen by any other person. The deceased had recorded a video message prior to committing suicide wherein he categorically stated that the revisionist alone was responsible for his death and she had ruined his life. She had done extremely bad things against him and had insulted him beyond limits. He too could have defamed the revisionist but he refrained from doing so.
5. A charge-sheet for commission of offence under Section 306 IPC was submitted against the revisionist alone and her sister was exonerated by the investigating officer.
6. The revisionist filed an application for her discharge stating that the deceased and the revisionist were descendents of a common ancestor and they were related as brother and sister and they resided in same village. The deceased was infatuated to the revisionist. On 30.01.2018, he had made a telephone call to the revisionist and had asked about her final decision regarding the marriage. She declined to marry him and thereafter he committed suicide. It was also stated in the application seeking discharge that the deceased was an ambitious person, he was not satisfied with his job, he was disturbed for numerous reasons and he was suffering from depression, due to which he had become habitual of consuming alcohol and sleeping pills. The discharge application further stated that no expert hand-writing opinion has been obtained regarding the suicide note.
7. The trial court rejected the application for discharge by recording that the investigating officer has mentioned in the case diary that from an examination of the Whatsapp Chat in the mobile phone of the

deceased, it transpired that the revisionist used to abuse the deceased. Some independent witnesses have stated that she had asked the deceased to commit suicide. From the aforesaid material a *prima facie* case of trial of the revisionist is made out. Correctness of the allegations can only be ascertained after conclusion of the trial. In view of the facts and circumstances of the case, no case for discharge of the revisionist without her trial is made out.

8. The learned counsel for the revisionist has submitted that the allegations leveled in the FIR and the material collected during investigation merely indicate that the deceased and the victim were in some kind of relationship and the deceased committed suicide after the revisionist declined to marry him. He has submitted that there is absolutely no evidence to even *prima facie* establish that the revisionist had incited or abetted the deceased to commit suicide. He has placed reliance on the decision of the Hon'ble Supreme Court in **Naresh Kumar vs State of Haryana** : Criminal Appeal No.1722 of 2010 decided on 22.02.2024, wherein it has been held that: -

“in order to convict a person Under Section 306 of the Indian Penal Code there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an Accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.”

9. The learned Counsel for the revisionist has also placed reliance on a judgment of the Hon'ble Supreme Court in **Kumar @ Shiva Kumar versus State of Karnataka** : Criminal Appeal No.1427 of 2011 decided on 01.03.2024, in which it has been held that: -

“31. In India attempt to commit suicide is an offence under Section 309 IPC. This section provides that whoever attempts to commit suicide and does any act towards the commission of such offence, he shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both. But once the suicide is carried out i.e., the offence is complete, then obviously such a person would be beyond the reach of the law; question of penalising him would not arise. In such a case, whoever abets the commission of such suicide would be

penalised under Section 306 IPC. Section 306 IPC 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.

31.1. Thus, as per Section 306 of IPC, if any person commits suicide, then 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.

32. The crucial word in Section 306 of IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. Section 107 of IPC reads thus:

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.

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.

32.1. From a reading of Section 107 IPC what is deducible is that a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing. Explanation 1 clarifies that even if a person by way of wilful misrepresentation or concealment of a material fact which he is otherwise 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. Similarly, it is clarified by way of Explanation-2 that whoever does anything in order to

facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

* * *

47. Human mind is an enigma. It is well nigh impossible to unravel the mystery of the human mind. There can be myriad reasons for a man or a woman to commit or attempt to commit suicide: it may be a case of failure to achieve academic excellence, oppressive environment in college or hostel, particularly for students belonging to the marginalized sections, joblessness, financial difficulties, disappointment in love or marriage, acute or chronic ailments, depression, so on and so forth. Therefore, it may not always be the case that someone has to abet commission of suicide. Circumstances surrounding the deceased in which he finds himself are relevant.

10. Both the aforesaid judgments relied upon by the learned Counsel for the revisionist were passed in Criminal Appeals filed against orders passed by the High Courts affirming the conviction of the accused after a full fledged trial by the High Court and none of those considered the scope of interference at the stage of discharge of an accused without trial. As the impugned order has been passed under Section 227 Cr.P.C., it will be appropriate to have a look at the aforesaid provision before proceeding further. The aforesaid provision reads as follows: -

*“227. **Discharge.**—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”*

11. In **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia**, (1989) 1 SCC 715, the Hon’ble Court while examining the scope of Section 227 held as under: -

“14. ... Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that “the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused”. The “ground” in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in

the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime.'

12. In **Rajbir Singh v. State of U.P.**, (2006) 4 SCC 51 it was held that in accordance with Section 227, the High Court must ascertain whether there is “sufficient ground for proceeding against the accused” or there is ground for “presuming” that the offence has been committed.
13. In **Chitresh Kumar Chopra v. State (NCT of Delhi)**, (2009) 16 SCC 605, wherein it was held that: -

“25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

14. The difference between the approach with which the Court should examine the matter in while considering an application for discharge under Section 227 Cr. P.C. and while framing charge under Section 228 of the Code has been explained by the Hon'ble Supreme Court in **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, in the following words:—

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is

ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

* * *

30. We have already noticed that the legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659 referred to the meaning of the word “presume” while relying upon Black’s Law Dictionary. It was defined to mean “to believe or accept upon probable evidence”; “to take as proved until evidence to the contrary is forthcoming”. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.”

15. Thus the law regarding the approach to be adopted by the court while considering an application for discharge of the accused persons under Section 227 and approach while framing charges under Section 228 of the Code, is that while considering an application for discharge of the accused under Section 227 of the Code, the Court has to form a definite opinion, upon consideration of the record of the case and the documents submitted therewith, that there is no sufficient ground for proceeding against the accused. However, while framing charges, the

Court is not required to form a definite opinion that the accused is guilty of committing an offence. The truth of the matter will come out when evidence is led during the trial. Once the facts and ingredients of the Section exist, the court would presume that there is ground to proceed against the accused and frame the charge accordingly and the Court would not doubt the case of the prosecution.

16. The learned A.G.A. has relied upon the judgment in the case of **State of M.P. v. Deepak**, (2019) 13 SCC 62, which was passed in an appeal against a judgment of the Madhya Pradesh High Court, discharging the respondent from charges framed by the trial Court under Section 306 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The victim had consumed poison at her residence, she was immediately moved to the District Hospital for treatment, where her dying declaration was recorded. The relevant part of the dying declaration is extracted below:

“Question : What has happened to you?”

Answer : I have consumed poison.

Question : Why you have consumed poison?

Answer : I am not able to get the job, wherever I go, Deepak Bhamawat R/o Jeeran, gets me sacked out from the job. Earlier he had molested me, on which, I had instituted a case against him, since then, he is harassing me.

Question : Whether you want to say anything else?

Answer : No.”

17. While setting aside the order of the High Court discharging the accused, the Hon’ble Supreme Court held that: -

“10. The High Court did not at all apply the relevant test, namely, whether there is sufficient ground for proceeding against the accused or whether there is ground for presuming that the accused has committed an offence. If the answer is in the affirmative an order of discharge cannot be passed and the accused has to face the trial. The High Court after merely observing that ‘as the firing was aimed at the other persons and accidentally the deceased Pooja Balmiki was passing through that way and she was hit’ and further observing that ‘the

applicant neither intended to kill the deceased nor was she aimed at because of the reason that she was a Scheduled Caste' set aside the order by which the charges had been framed against Respondent 2. There can be no manner of doubt that the provisions of Section 301 IPC have been completely ignored and the relevant criteria for judging the validity of the order passed by the learned Special Judge directing framing of charges have not been applied. The impugned order is, therefore, clearly erroneous in law and is liable to be set aside."

18. In **State of M.P. v. Deepak** (Supra), the Hon'ble Supreme Court reiterated the well established principle of law that: -

"16. It was also noted that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence"

19. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the above mentioned cases, it appears that the categorical assertions made by the deceased in his suicide note and in the video message recorded by him immediately before committing suicide, which have been referred to above, a case for trial of the applicant for the offence under Section 306 I.P.C. is made out, as there is no ground for presuming that she has not committed the offence.
20. There is no error in the impugned order which may call for interference by this Court in exercise of its revisional jurisdiction.
21. In view of the aforesaid discussion, the revision is dismissed at the admission stage.

(Subhash Vidyarthi, J.)

Order Date : 14.03.2024
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