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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.7.2015

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Crl.R.C.No.45 of 2014

Karthik : Petitioner

versus

1. State by Inspector of Police,
Railway Protection Force,
Egmore, Chennai.

2.M.Nandan : respondents
(2nd respondent impleaded as per
order dated 9.7.2014)

Criminal Revision filed against the order passed by the learned Sessions Judge, Mahila Court, Chennai in Crl.M.P.No.11410 of 2013 in S.C.No.313 of 2013 dated 6.12.2013.

For petitioner : Mr.S.Saravana Kumar

For respondent : Mr.V.Arul, Government Advocate, for R-1

O R D E R

This revision is filed against the dismissal of the discharge application filed by the petitioner, by the learned Sessions Judge, Mahila Court, Chennai in Crl.M.P.No.11410 of 2013 in S.C.No.313 of 2013, dated 6.12.2013.

2. The facts of the prosecution case in brief is as follows :-

(a) The deceased and the petitioner were lovers. The deceased requested the petitioner to marry her. However, the petitioner refused to marry. While so, on 21.10.2009, an argument broke out between the deceased and the petitioner over marriage proposal. The petitioner refused to marry the deceased and in a fit of anger asked the deceased to go and die. It is said that due to such words of the petitioner, the deceased committed suicide by falling before a running train. Though initially police registered a case under Section 174 Cr.P.C., later, on the complaint of the father



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of the deceased, that the petitioner cheated the deceased and instigated her to commit suicide, the case was altered and the petitioner was booked for offence under Section 306 I.P.C. The petitioner filed a discharge petition before the lower Court. However, the same was dismissed. Challenging the said dismissal order, the present criminal revision has been filed.

3. The learned counsel for the petitioner submitted that the case was originally registered under Section 174 Cr.P.C., and only on the basis of the complaint given by the father of the deceased, it was altered into abetment to commit suicide. According to the learned counsel, there is no evidence to show that the petitioner has actually abetted the commission of suicide by the deceased. Even the train driver has only stated that a girl attempted to cross the railway line and got hit. There is no direct evidence to prove that the petitioner instigated the deceased to commit suicide. The learned counsel further submitted that mere uttering of the words "to go and die" itself would not constitute ingredients of instigation. In this connection, the learned counsel relied on the judgments of the Supreme Court reported in 1995 Supp (3) SCC 438 [Swamy Prahaladdas vs. State of M.P. and another] and AIR 2002 SC 1998 [Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh]. According to the learned counsel, in this case, there is no piece of evidence to show that the petitioner was instrumental for the deceased to commit suicide. Therefore, the learned counsel submitted that the order of the lower Court may be set aside.

4. The learned Government Advocate would only contend that even though originally case was registered under Section 174 Cr.P.C., pursuant to the investigation of the complaint given by the father of the deceased, it was altered into section 306 IPC. Since there existed a love affair between the petitioner and the deceased, an inference could be drawn that the deceased committed suicide because of rejection of marriage proposal by the petitioner.

5. Heard both sides.

6. On a careful reading of the entire materials, it is evident, even as per the statement of the train driver, that the deceased attempted to cross the railway track and she got hit and died. Nowhere it is stated by anyone that she had committed suicide only because of the alleged uttering of the words by the deceased. Crossing of the track by a commuter or passenger is a common thing. It is not known how or why the deceased crossed the railway track. But for the ipse dixit of the father of the deceased that the deceased and the petitioner were lovers and that the petitioner cheated his daughter with marriage proposal, there is no evidence to show that the petitioner instigated the deceased to commit suicide. Even if the petitioner had stated in a fit of anger "to go and die", that would not amount to instigation to commit suicide.



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7. In Swamy Prahaladdas vs. State of M.P. and another [1995 Supp (3) SCC 438], the Supreme Court has observed that the words "go and die" do not amount to instigation to commit suicide. The relevant observation is as under :-

"At the time of framing of charge, the trial court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Session was in error in summoning the appellant to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is apparent requiring rectification. The appeal is accordingly allowed. The orders of the High Court and that of the Court of Session are thus upset. The appellant need not face the charge.

8. In Sanju @ Sanjay Singh Sengar vs. State of Madhya Pradesh (AIR 2002 SC 1998), the Supreme Court has again observed that the words "go and die" do not amount to instigation to commit suicide. The relevant paragraphs are as under :-

"12. In Ramesh Kumar V. State of Chhattisgarh (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:



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"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

13. 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 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



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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.

15. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handy work of a man with sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 Cr.P.C. before the Investigation Officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26th July, 1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C. It is in the statement of the wife that the deceased always remained in a drunken condition. It is a common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased



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was a victim of his own conduct unconnected with the quarrel that had ensued on 25th July, 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death."

9. This Court is of the view that the above judgments of the Supreme Court would squarely apply the case on hand. In this case, there is no evidence to show that the petitioner had actually instigated the deceased to commit suicide. Moreover, even if he had said, "go and die", that would not amount to instigation. Therefore, the order of the lower Court is set aside and this criminal revision is allowed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Sessions Judge, Mahila Court, Chennai.
2.The Public Prosecutor, Madras High Court
3.The Inspector of Police,
Railway Protection Force,
Egmore, Chennai.

+1 cc to M/S.S.SaravanaKumar Advocate sr.37562

Cr1.R.C.No.45 of 2014

rsl(co)
aa18/08/2015