

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-12214 of 2011 (O&M)
Date of Decision: 04.02.2015.**

Jag Mohan Oberoi

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Divay Sarup, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Surinder Dhull, Advocate
for respondent No. 2.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the complaint/protest petition under Section 306 of the Indian Penal Code, 1860 ('IPC' for short) (Annexure P-2) as well as the summoning order dated 15.7.2010 (Annexure P-3) and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that no offence punishable under Section 306 IPC could be said to have been committed by the petitioner. As per the suicide note left by the deceased, petitioner had borrowed ₹ 55,00,000/- from the deceased but had failed to repay the same. During investigation, it had transpired that the deceased had no source to pay such a huge amount to the petitioner. Investigating Agency had presented the cancellation report. Complainant

while leading his evidence in support of his protest petition, had failed to *prima facie* establish that the alleged amount had, in fact, been advanced by the deceased to the petitioner by way of loan. Even otherwise, petitioner could not be said to have been abetted the commission of suicide by the deceased. In support of his arguments, learned counsel has placed reliance on '**Gangula Mohan Reddy versus State of Andhra Pradesh (2010) 1 Supreme Court Cases 750**', wherein it was held as under:-

17. 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. The intention of the legislature and the ratio of the cases decided by this Court is 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 committed suicide."

Learned counsel for the petitioner has further placed reliance on '**Amalendu Pal alias Jhantu versus State of West Bangal, 2010 (1) Supreme Court Cases 707**', wherein it was held as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and

also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the 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 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 IPC.”

Learned counsel for respondent No. 2, on the other hand, has opposed the petition and has submitted that the deceased had specifically stated in the suicide note that petitioner was responsible for his death. Hence, the summoning order was liable to be upheld.

Prosecution case was set in motion on the basis of the

statement of respondent No. 2 Ranbir Singh Dahiya. Complainant made a statement before the police that on 28.4.2006, his son Sanjiv told him that his employer i.e. petitioner humiliated him for no reason and due to this reason, he remained under depression. On 1.5.2006, at about 7.00 A.M., complainant called his son to meet him at Hisar. However, when the complainant made a phone call to his son at about 9.30 A.M., the same was not answered by his son. When the complainant reached the residence of his son, he found that his son had consumed poison and had died. One suicide note was recovered and as per the same, the deceased had stated that he had been harassed by his employer and due to this reason, he has committed suicide. His brother had also given effect to enmity. Karambir had been given job after seven years. His employer had taken ₹ 55,00,000/- from him at the time of marriage of his daughters but had denied the said fact and due to this reason, he was committing suicide.

The case of the complainant was that the deceased was being harassed by his employer i.e. petitioner and the employer had denied the factum of loan advanced to him by the deceased to the tune of ₹ 55,00,000/-. After investigation of the case, cancellation report was submitted by the police. The said report has been placed on record as Annexure P-4. A perusal of the same reveals that during investigation, it transpired that the deceased was working as a Manager on a monthly salary of ₹ 15,000/-. There was no record/proof that the deceased was in a capacity to give ₹ 55,00,000/- as loan to his employer. It transpired during investigation that the deceased had built a

house in Hisar and had also purchased a car during his service period. The deceased had sent his resignation on 18.4.2006 through fax to the company. When the records of the company were audited, it was found that huge amount of money had been manipulated in the record of the company. An application was given by the petitioner to the police on 24.4.2006 and notice was issued to the deceased. On one occasion, the deceased had appeared before the company for rendition of accounts but thereafter committed suicide on 1.5.2006. On checking the record of the company, it transpired that one receipt with same number and same date had been issued to two different persons. It also transpired that the receipt had been issued to another person whereas the amount was deposited by some other person. So far as the petitioner is concerned, he was the owner of the company and bank accounts were in his name and he could withdraw the money as and when required by him from the accounts.

Respondent No. 2 was issued notice by the Court after the cancellation report was submitted by the police. Respondent No. 2 filed protest petition Annexure P-2. The Trial Court directed respondent No. 2 to lead his evidence in support of his protest petition.

A perusal of the impugned order dated 15.7.2010 (Annexure P-3) reveals that while ordering the summoning of the petitioner, the Magistrate had failed to consider the cancellation report submitted by the police. The Magistrate was required to at least consider the cancellation report *viz-a-viz* the evidence led by the complainant in support of his case. The cancellation

report was submitted by the investigating agency after holding detailed inquiry by considering records of the company. The Magistrate while passing the summoning order, was excepted to at least consider the cancellation report whereas a perusal of the impugned order does not reveal that the complainant had, in fact, led some evidence to the effect that the deceased was in a position to advance loan to his employer to the tune of ₹ 55,00,000/-. Hence, it would be just and expedient to set aside the summoning order and direct the Trial Court to pass a fresh order, in accordance with law.

Accordingly, this petition is allowed. Impugned summoning order dated 15.7.2010 (Annexure P-3) is set aside. Trial Court is directed to pass a fresh order, in accordance with law.

**(SABINA)
JUDGE**

February 04, 2015
Gurpreet