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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 492 of 2015

1. Saiyyad Afzal Ali S/o Saiyyad Akbar Ali, aged about 36 years, R/o Baldeu Bag, Ward No. 14, Rajnandgaon, Police Station Rajnandgaon, Civil and Rev. Distt. Rajnandgaon, Chhattisgarh.
2. Rakesh Dubey S/o Krishna Kumar Dubey, aged about 30 years, R/o Ward No. 8, Main Road, Sewtapara, Dongargaon, Police Station Dongargaon, Civil and Rev. Distt. Rajnandgaon Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh through District Magistrate Rajnandgaon Distt. Rajnandgaon, Chhattisgarh.

---- Respondent

For Applicants : Shri Awadh Tripathi, Advocate
For Respondent : Shri U. K. S. Chandel, PL

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/05/2016

The present Criminal Revision has been preferred against the order dated 09.01.2014 passed by the Second Additional Session Judge, Rajnandgaon in S.T. No. 43 of 2013 questioning the order of framing charges against the applicants for the offence under Sections 306/34 IPC and 4 of the Riniyo Ka Sanrakshan Adhiniyam.

2. At the outset, Shri Awadh Tripathi, learned counsel appearing for the applicants submits that he does not want to press part of impugned order by which charges were framed for commission of offence under Section 4 of the Riniyo Ka Sanrakshan Adhiniyam.

3. Accordingly, the Revision challenging the impugned order framing charges under Section 4 of the Riniyo Ka Sanrakshan Adhiniyam is dismissed as not pressed.

4. Counsel for the applicants submits that in the entire charge sheet there is no material available on record to frame charges against the applicants for the offence under Section 306/34 of IPC and therefore the Court below has committed manifest illegality in framing charges against the present applicants as there is no proximity and nexus between the conduct and behaviour of the applicants with that of suicide committed by the deceased.

5. Per contra, State counsel submits that there is sufficient material available on record for presuming that the applicants have committed offences, and as such, there is no illegality in the order impugned framing charges against the applicants, warranting interference by this court.

6. The question in the present case is as to whether considering and accepting the entire material available on record as absolutely correct and true, a prima facie case for alleged commission of offence punishable under Section 306 IPC is made out against the present applicants.

7. To resolve the controversy it appears necessary first of all to have a look on the provisions of Section 306 and 107 IPC which 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 life.

Section 107. A person abets the doing of a thing, who –

> *First. – Instigates any person to do that thing; or*
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> *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 places 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 willful misrepresentation, or by willful 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 facilitate the commission thereof, is said to aid the doing of that act."

8. As Section 306 IPC makes abatement of commission of suicide punishable, therefore, making liable for an offence punishable under Section 306 IPC, it is a duty of the prosecution to establish that such person has abetted the commission of suicide. For the purpose of determining the act of the accused it is necessary to see that his act must fall in any of the three categories as enumerated under Section 107 IPC. Therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more other person in any conspiracy for seeking that the deceased commits suicide or he must intentionally aid by any act or illegal omission, of the commission of suicide by the deceased.

9. The Supreme Court has considered the scope of Sections 107 and 306 IPC in the case of **Sanju @ Sanjay Singh Sengar v. State of MP**[1] and held as under:

> "9. In Swamy Prahaladdas v. State of MP[2], the appellant was charged for an offence under Section 306 IPC on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide."

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1 2002 (5) SCC 371
2 1995 Sup. (3) SCC 438

10. In the case of **Ramesh Kumar v. State of Chhattisgarh**[3], while considering the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate 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, the Supreme Court acquitting the accused held as under:

> "17. 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 difference in domestic life quite common to the society to which the victim belonged and such petulance discord the difference 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 quality."

11. In the case of **M. Mohan v. State represented by the Deputy Superintendent of Police**[4], the Supreme Court has clearly held that in order to convict a person under Section 306 IPC, there has to a clear mens rea to commit the offence, by observing as under:

> "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. In the light of aforesaid enunciation of law, the facts of the present case are to be examined. It is the case of the prosecution that Ranjit Nishad had consumed some poisonous substance on 02.01.2012. He was found unconscious near Shiv Mandir of village Sakripar and after noticing him unconscious, villager Ganeshram Sinha informed to his family

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3 2001 (9) SCC 618
4 2011 (3) SCC 626

member and thereafter he was admitted to District Hospital, Rajnandgaon, where during treatment he died. Information regarding his death was given to the Police Station Dongargaon and during the course of investigation, Panchnama suicide note has been seized in which he has made some allegations against the present applicants and others. During the course of investigation, statement of the witnesses have been recorded, in which they have alleged that a sum of Rs.80,000/- had been taken as loan from the father of accused Amit Gandhi i.e. Manik Lal Gandhi. Though the said amount was returned, they had been given threating the deceased of dire consequence and demanding more money, therefore, the deceased being fed up thereby consumed poisonous substance. On that basis, offence was registered against the present applicants and the trial Court framed charges for commission of aforesaid offences.

13. The question to be considered is whether there is reasonable nexus and proximity between the conduct and behaviour of the applicants with that of suicide committed by Ranjit Nishad. It is an admitted position on record that father of Amit Gandhi i.e. Manik Lal Gandhi and deceased Ranjit Nishad entered into an agreement on 27.09.2010 for sale of land belonging to Ranjit Nishad on or before 13.01.2011. It is further case of the prosecution that Ranjit Nishad had taken loan of Rs.80,000/- from the father of Amit Gandhi by mortgaging his land with him. Said Manik Lal Gandhi has already died on 30.07.2011 i.e. prior to suicide of Ranjit. It is further case of the prosecution that Ranjit Nishad had already repaid the loan amount of Rs.80,000/- except interest part and after Manik Lal's death, accused Amit Gandhi along with other co-accused Jhaggar and others regularly visited the house of the deceased to recover the amount in dispute and fifteen days prior to date of death of Ranjit Nishad, they came to his house and not only abused him, but also threatened him, and

thereafter in the moth of December, 2011, Ranjit Nishad left his house due to fear stating that he is going to his sister's village, but he did not go there and choose to commit suicide by consuming poison.

14. In fact, there is no evidence against the present applicants to show that they had ever instigated or abetted the deceased in any manner whatsoever which could have compelled him for commission of suicide. The fact remains that the co-accused persons allegedly threatened the deceased in the month of December, 2011, whereas the deceased committed suicide on 08.01.2012. As there was sufficient time to come to terms with the threatening given by the accused persons and to take appropriate steps against them for prosecuting them. In the opinion of this Court, considering and accepting the entire material available on record as absolutely correct and true on their face value, no prima facie case for framing charge for offence punishable under Sections 306 IPC is made out against the present applicants as there is no nexus and proximity with the conduct and behaviour of the accused persons with that of the suicide committed by Ranjit Nishad. Further, the co-accused Jhaggar @ Ramnaresh and Amit Gandhi have already been discharged from the offence punishable under Section 306/34 of IPC by the Co-ordinate Bench of this Court vide order dated 11.09.2014 passed in Criminal Revision No. 199 of 2014 and Criminal Revision No.136 of 2014 respectively.

15. Consequently, the Revision filed by the present applicants Saiyyad Afzal Ali and Rakesh Dubey is allowed in part. Thus, the order framing charges against both the applicants for commission of offence punishable under Section 306/34 IPC is set aside. It is held that there is no material for framing charges against the present applicants and they are discharged from the offence punishable under Section 306/34 of IPC. However, the prosecution of the applicants for commission of offence

under Section 4 of the Riniyo Ka Sanrakshan Adhiniyam would stand as the revision to that extent has been dismissed as not pressed by the applicants.

Sd/-
(**P. Sam Koshy)**
JUDGE

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