

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION No. 613 of 2016**

Niteen Saurya @ Raj S/o Ratan Lal Saurya, aged about 28 years, R/o Sector 22, Packet-15, House No. 75, PS Begampur, District- Rohini, Outer Delhi .

---- Applicant

VERSUS

State of Chhattisgarh through the Police Station Bhilai Nagar (Supela), District Durg (CG).

---- Respondent

For Applicant	:	Shri Vishnu Koshta, Advocate.
For Respondent/State		Shri U. K. S. Chandel, Panel Lawyer.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****01/08/2016**

1. The present revision petition has been filed challenging the order dated 02.06.2016 passed by the 1st Additional Sessions Judge, Durg in S. T. No. 44/2016. Vide the said impugned order, the Court below has framed charges against the applicant for the offence under Sections 306/149, 420/149, 467/149, 468/149, 471/149 and 120B of IPC.
2. Counsel for the applicant submits that in the present revision petition he is confining his prayer to the extent of framing of charge under Section 306/149 of IPC against the applicant. So far as the other charges framed against the applicant are concerned, he is not challenging the same in the present revision petition.
3. Counsel for the applicant submits that so far as the constitution of an offence under Section 306 IPC is concerned, the necessary ingredient i.e. abetment

as defined under Section 107 IPC is missing from the documents enclosed along with the case diary. He submits that in the face of the documents which have been filed with the Charge Sheet without adding and subtracting anything to the said documents itself would indicate that there was never an action on the part of the applicant of abetting, instigating or inciting the deceased persons for committing suicide. He submits that the applicant happens to be an employee of the main accused Ashok who was running a fake Company in the name of Citizens Finance Company in Delhi and the applicant was posted there as a Computer Operator. Counsel for the applicant further submits that the applicant had processed certain documents which were submitted by the deceased Manish Jaiswal and his wife for clearance of some loan and except processing of certain documents of the deceased submitted to the Citizen of Finance Company, there is no other allegation or overtact committed by the present applicant which compelled the deceased persons to commit suicide. Thus, counsel for the applicant prays for quashment of the framing of charge under Section 306/149 of IPC against the applicant.

4. State counsel however opposes the prayer made by the counsel for the applicant and submits that admittedly the applicant was an employee of the fake Company Citizens Finance Limited and it was he who in the capacity of the Computer Operator had processed the documents furnished by the deceased persons. He further submits that the present applicant was fully aware of the fact that he was working for a fake Company and the entire act committed by him for the said fake Company was fraudulent and the financial transactions which the Company entered into with the deceased persons were also at the behest of the applicant and the co-accused Surjit. Therefore, it cannot be said that the offence under Section 306/149 IPC was not made out against the applicant. Thus, State counsel prays for dismissal of the present

revision petition.

5. Having considered the rival contentions put forth by the counsel for the parties, so far as the law with regard to an offence under Section 306 IPC is concerned, it is by now well settled by a catena of decisions of the Hon'ble Supreme Court that for the purpose of making out a case under Section 306 IPC the first ingredient that has to be established is an act of abetment on the part of the accused persons which compelled the deceased to commit suicide.
6. In support of his contention, counsel for the applicant placed reliance on the decision of the Supreme Court rendered in the matter of Sanju Alias Sanjay Singh Sengar vs. State of M.P. Reported in (2002) 5 Supreme Court Cases 371 as also the judgment dated 3.11.2011 passed by this Court in criminal revision No.511/04 (Nihalluddin @ Munna vs. State of Chhattisgarh). Both the cases referred above pertain to the offence punishable under Section 107 IPC. The Supreme Court in the case of Sanjay Singh Sengar vs. State of M.P. (Supra) has categorically held that "ingredients of Section 107 are that instigating a person to do a thing and "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act which in the instant case is not reflected from the documents adduced along with the case diary. The supreme court in para – 12 of its judgment has held as under:-

"The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation".

7. Similarly, this Court while deciding Cr. Rev. No.511/04 in the case of Nihalluddin Vs. State of Chhattisgarh dated 3.11.10 has also relied upon the above referred judgment of Supreme Court and also the earlier judgments

referred by the Supreme Court, considering the ingredients required for an offence under Section 306/107 IPC held that there should be a clear mens rea to commit an offence under this section and there should be a direct or active act by the accused which led the deceased to commit suicide. This court while deciding the case of Nihalluddin vs. State of Chhattisgarh (supra) further held that there must be some evidence of instigation or cooperation or initial assistance by the accused persons forcing the victim/deceased to commit suicide to attract the offence under Section 306 IPC. This Court has also in the case of Arvind & Others v. State of C.G. reported in @014 (2) C.G.L.J. 414 relying upon the above referred judgments quashed the framing of charge under Section 306/107 IPC against the applicants therein.

8. Further, if we read the documents adduced along with the case diary it do not reflect any ingredient to frame a case against the applicant for abatement of suicide committed by the deceased persons. Such ingredients being absent, offence under Section 306/149 IPC would not be made out.
9. For the foregoing reasons, the instant Criminal Revision is allowed. The impugned order dated 02.06.2016 passed by the First Additional Sessions Judge, Durg, framing charge against the applicant only under Section 306/149 IPC is set aside. The charge framed under Section 306/149 IPC against the present applicant stands quashed and he is discharged from the said offence and the Trial Court shall now proceed against him for the remaining offence.

Sd/-
(P.Sam Koshy)
JUDGE