

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 486 of 2016**

Mana Ram Kurre S/o Ramlal Kurre (Sarpanch), aged 41 years resident of and holding post of Sarpanch in the comprising Gram Panchayat Dhangaw Police Station Sarsiwa in the civil and revenue Distt. Baloda Bazar-Bhatapar (CG).

---- PETITIONER**Versus**

State of Chhattisgarh through the Station House Officer Police Station Sarsiwa in the civil and Revenue Distt. Baloda Bazar-Bhatapar (CG).

---- RESPONDENT

For Petitioner	:	Shri JR Verma, Advocate.
For respondent/State	:	Ms. M Asha, Panel Lawyer.
For Objector-Kamal	:	Shri Pawan Kesharwani, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/07/2016**

1. Heard on application for condonation of delay in filing the revision petition.
2. For the reasons assigned in the application and considering the submissions to be satisfactory, the application is allowed and delay in filing the revision is condoned.
3. Challenge in this revision is to the order dated 26.04.2016 passed by the IIInd Additional Sessions Judge, Baloda Bazar, in Sessions Trial No. 09 of 2016 whereby the court below has framed charge under Section 306/34 IPC against the petitioner in connection with death of deceased Puja Kurre.

4. As per prosecution case, on 20.11.2015, Puja Kurre is said to have committed suicide by pouring Kerosene and ablazing herself in which she sustained 93 percent burn injuries. She was hospitalized where she died after 5 days i.e. on 25.11.2015.
5. According to counsel for the petitioner, said Puja Kurre was the second wife of the co-accused Puni Ram whose first wife was Kamla Bai. Since from the relationship with Kamla Bai, Puni Ram had no issue, he (Puni Ram) brought Puja Kurre (since deceased) by marriage under Churi Pratha from whom it is said that there are two children. The allegation against the petitioner is that four days prior i.e. on 20.11.2015 he is said to have taken the deceased in his Car to some remote area where it is alleged that he had physical relationship with the deceased Puja Kurre. When this fact came to the knowledge of her husband Puni Ram, he is said to have assaulted her which compelled her to commit suicide. It is also alleged that some village meeting was also convened in this regard.
6. Subsequently, during the course of investigation, the petitioner has also been implicated as an accused person for the suicide committed by the deceased Puja Kurre and case was put to trial before the IIInd Additional Sessions Judge, Baloda Bazar in Sessions Trial No. 09 of 2016, who vide order dated 26.04.2016, ordered for framing charge against the petitioner for commission of offence under Section 306/34 IPC. It is this order which is being assailed by the petitioner seeking for quashment of said charge.
7. Learned counsel appearing for the petitioner assailing the order dated

26.04.2016 submits that he intends to contend only two grounds. Firstly; if the entire contents of charge sheet is taken into consideration on its face value even then, the necessary ingredients for making out an offence under Section 306 IPC is missing and that there is no iota of evidence so far as any instigation or abetment on the part of the petitioner forcing the deceased to commit suicide as is required under Section 107 IPC for making out a case under Section 306/34 IPC against the petitioner. Secondly; on the merit also except for the allegation of the petitioner having taken the deceased on his Car about four days back to some remote area with a further allegation of having physical relationship with the deceased, there is no other piece of evidence against the petitioner of having placed any role in so far as the suicide committed by the deceased is concerned.

8. Thus, for the aforesaid reasons, counsel for the petitioner submits that unless there is ingredients of Section 107 IPC made out in the case diary, an offence under Section 306 IPC could not have been framed against the petitioner. Therefore, this revision petition may be allowed and he may be discharged from the offence under Section 306/34 IPC.
9. The State counsel however opposing the revision submits that there is direct allegation made against the petitioner that four days back he had taken the deceased in his Car and said to have sexually ravished her and after a couple of hours he dropped the deceased back to her house and when this fact was known to the husband of the deceased, he assaulted the deceased which compelled her to commit suicide. Therefore, framing of charge was proper, legal and justified which does

not call for any interference.

10. Learned counsel appearing for the objector-Kamal, opposing the revision at the instance of brother of the deceased also submits that statement of the witness recorded during the course of investigation would reveal that the deceased herself while she was in hospital is said to have given statement to her relative particularly to her Uncle as well as to her Brother of the fact that four days back she had gone with the petitioner on his Car and after a couple of hours the petitioner left her in the house which was opposed by her husband Puni Ram and subsequently the villagers also came to know about her illicit relationship with the petitioner and due to disgrace she had committed suicide and the petitioner is the person instrumental for the deceased to have committed suicide, and therefore, at the state of framing of charge, this court exercising its revisional power should not interfere with the same.
11. Having considered the rival contentions put forth by the either side and on perusal of records, what is an admitted position, which is not controverted by the any of the counsel is that, the only allegation against the petitioner was that he took the deceased for ride in his Car for a couple of hours four days prior to commission of suicide by the deceased. The other admitted position is the fact that the deceased had not filed any objection, protest or complaint against the petitioner in so far as forcibly or without the consent of the deceased he had taken her for a drive and to alleged physical relationship. It is also not the case of the prosecution that after knowing the fact with regard to

relationship between the petitioner and deceased, the husband had lodged any complaint against the petitioner for the alleged act committed by the petitioner four days prior to the date of suicide. The only allegations which have come on record is that when the family members and villagers came to know about the relationship that the petitioner was having with the deceased, she was assaulted/man handled by the husband and because of which she is said to have committed the suicide.

12. Now we have to see as to whether for making out a case against the petitioner for offence under Section 306/34 IPC, necessary ingredients for the said offence has been made by the prosecution or not, for which, the first ingredient required is abetment by the accused persons for the commission of the suicide. abetment has been defined under Section 107 of the IPC which clearly defines abetment and the ingredients for making out abetment is, there has to be instigation by the accused person forcing the deceased to commit suicide. Secondly; the accused person should also engage either individually or jointly conspiring for doing a thing which leads to commission of suicide and thirdly; there is intentionally aid by the accused persons by any act or an illegal omission leading to the commission of the suicide.
13. The Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh Sengar vs. State of M.P) 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 records. 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”.

14. Similarly, this Court while deciding Cr. Rev. No.511/2004 in the case of Nihalluddin vs. State of Chhattisgarh dated 3.11.2010 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 and 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.
15. It is also trite at this juncture to mention that for making out a case under Section 306 IPC, the basic ingredient as defined in Section 107 IPC has to be established, but in the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased Puja Kurre is not established by the prosecution by any element of evidence.
16. Hon'ble Supreme Court more recently in a decision made in the case of [2011 (3) SCC 626] (M. Mohan vs. State) held that abetment involves a mental process of instigation or intentionally aiding a person to do a

thing. It required commission of direct or active act by the accused which led the victim to commit suicide. Seeing no other option and such act must be intended to push the victim into a position that he or she commits suicide. That is to say, there must be some evidence of instigation, cooperation or initial assistance by the accused to commit suicide by the victim.

17. In the instant case, no such evidence has been either brought on record or has come in the course of investigation and in the absence of any of the ingredients as required under Section 107 IPC, no case under Section 306 IPC could be made out against the petitioner.
18. Under the given facts and circumstances of the case and also keeping in mind the legal position settled by the Supreme Court in aforesaid case, this court is of the opinion that the prosecution has not been able to make out a case of instigation or abetment against the petitioner.
19. Accordingly, the revision petition is allowed. The order impugned dated 26.04.2016 passed by the IInd Additional Sessions Judge, Baloda Bazar, framing charge against the petitioner under Section 306/34 IPC being not proper, legal and justified, deserves to be and is hereby set aside/quashed and the petitioner stands discharged from the offence under Section 306/34 IPC.

Sd/-
(P.Sam Koshy)
JUDGE