

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1120 of 2015**

Nivedita Patnaik @ Nivedita Sahni W/o Shri Mrityunjay Sahni Aged About 34 Years Occupation English Teacher At Carmel Convent School Raigarh R/o. - Ward No. 8, Indira Nagar Raigarh, Tahsil - Raigarh, P.S. City Kotwali, Civil And Rev. Distt. Raigarh Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through S.H.O. Of The Police Station City Kotwali, Raigarh, District Raigarh Chhattisgarh.

-----Non-Applicant

For Applicant:	Shri Abhishek Saraf, Advocate.
For Non-Applicant/State:	Smt M. Asha, Panel Lawyer.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

1.8.2016

1. The present Revision has been filed aggrieved by order dated 3.11.2015 passed by the 1st Additional Sessions Judge, Raigarh in Sessions Trial No.119/2015.

2. The facts in nut-shell are that the Applicant is an accused in Crime No.981/2014 registered at P.S City Kotwali, Raigarh in the alleged offence punishable under Section 306 IPC.

3. As per the prosecution story, Ku. Juhi Patel, aged about 18 years is a student of Class-12 who had allegedly committed suicide on 1.12.2014 by hanging herself at her house. The allegation against the present Applicant is that the present Applicant, who is the teacher of the school in which the deceased was studying i.e. Carmel Convent Higher Secondary School, Raigarh, had punished the deceased and a group of other students of the same class for not performing their homework which was assigned to them on

28.11.2014. The said act was reflected from the statement of the father of the deceased recorded on 11.1.2015 based upon which, it is alleged that after the date of incident, i.e. after about a month's time, the First Information Report was registered against the present Applicant and a case was registered against the present Applicant for the offence punishable under Section 306 IPC. Later on, on 24.6.2015, charge sheet has also been filed and the matter was put to trial before the 1st Additional Sessions Judge, Raigarh, who had on 3.11.2015, framed a charge against the present Applicant/accused for the offence punishable under Section 306 IPC leading to the filing of the present Revision.

4. Learned Counsel for the Applicant submits that framing of the charge against the present Applicant for the offence punishable under Section 306 IPC is totally uncalled for and is also misconceived for the reason that the Court below has not properly appreciated the statements which have been recorded during the course of investigation and which form part of the charge sheet. He further submits that none of the witnesses examined during the course of the investigation reflect any evidence required for making out a case under Section 306 IPC. He further submits that the Court below has framed the charge in a mechanical manner only on the basis of the allegations levelled against the present Applicant without considering the merits of the case as is available in the case diary. He also submits that so as to constitute an offence under Section 306 IPC, there has to be an evidence of abetment as defined under Section 107 IPC. In the instant case, the charge sheet accepting as it is without addition or subtraction, would clearly reflect that there is no averment of any sort of abetment or instigation or incitement by the present Applicant for the deceased to have committed suicide. He thus prayed for the quashing of the entire proceedings including

that of the framing of charge.

5. Learned State Counsel however opposes the Revision and submits that the statements recorded during the course of the investigation reflect that about 2-3 days prior to the date of incident, the deceased is said to have been punished by the Petitioner/teacher by sending her out of the class for not doing her homework. There is also an allegation of the deceased being slapped by the teacher in the course of punishing her and therefore, there was sufficient material for the Court below to have framed the charge under Section 306 IPC.

6. 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”.

7. 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.

8. 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 Smt Champa Bai is not established by the prosecution by any element of evidence.

9. Hon'ble Supreme Court 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.

These ingredients are not available in the given facts and circumstances of the instant case. Therefore, clearly an offence punishable under Section 306 IPC is not made out.

10. More recently, in (2014) 12 SCC, 595 (Mangat Ram vs. State of Haryana), the Supreme Court, dealing with the provisions of Section 306 IPC, held as under:-

“The scope and ambit of Section 306 IPC has not been properly appreciated by the courts below. Section 306 IPC 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 fine”.

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 107 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by an act or illegal omission in the commission of suicide.”

11. Considering the total facts and circumstances of the case, this Court is of the opinion that from the available material in the case diary as also the averments made by learned State Counsel, what clearly comes out is that there was some sort of punishment given by the present Applicant not just to the deceased but to a large number of students of her class for not doing their homework. In the present case, none of the other students have alleged any abetment against the Applicant.

12. On perusal of the record, it is clearly reflected that the only allegation against the present Applicant is that she had punished the deceased 2 days prior to the incident for not doing her homework which by no stretch of imagination, can fall within the ambit of abetment, as is required under Section 107 IPC without which the offence under Section 306 cannot be made out.

13. Considering the facts and circumstances of the case and also taking

note of the judgments relied upon in the preceding paragraphs, this Court is of the opinion that the proceedings initiated under Section 306 IPC and as a subsequence the framing of charge is also vitiated. The charge framed also gets quashed and the Petitioner stood discharged for the offence under Section 306 IPC.

14. Accordingly, the instant Criminal Revision is allowed.

Sd/-
(P. Sam Koshy)
JUDGE