

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No.1109 of 2015**

1. Nandani Rathore W/o Mukesh Rathore Aged About 26 Years R/o C.S.E.B. Colony, Quarter No. 587, Rampur, Korba, Distt. Korba, Chhattisgarh.
2. Ramu Rathore S/o Ramdulari Aged About 54 Years R/o C.S.E.B. Colony, Quarter No. 587, Rampur, Korba, Distt. Korba, Chhattisgarh.
3. Chameli Bai W/o Ramu Rathore Aged About 49 Years R/o C.S.E.B. Colony, Quarter No. 587, Rampur, Korba, Distt. Korba, Chhattisgarh.
4. Narendra Rathore S/o Ramu Rathore Aged About 29 Years R/o C.S.E.B. Colony, Quarter No. 587, Rampur, Korba, Distt. Korba, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Station House Officer, P.S. Kusmunda, Distt. Korba, Chhattisgarh.
2. Shivram Rathore, S/o Ramjilal Rathore, aged about 50 years, R/o Village Mudhali, PS & Tahsil Hardibazar, District Korba (CG)

-----Respondent

For Petitioners:	Shri SS Masih, Advocate.
For Respondent No.1/State:	Smt. M. Asha, Panel Lawyer.
For Respondent No.2:	Shri Ashutosh Shukla, Advocate.

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

5.9.2016

1. The present Petition has been filed by the Petitioners seeking for quashment of the charge sheet dated 18.3.2015 filed by the Petitioners for the offence punishable under Section 306/34 IPC and also for quashment of the Sessions Trial No.42/2015 wherein the present Petitioners are prosecuted for the offence referred to above.

2. The relevant facts for adjudication of the present Petition are that the marriage of Petitioner No.1 was performed with one Mukesh Rathore on

28.4.2009. After sometime of the married life, the relations between the two got strained and it is alleged that Petitioner No.1 was being subjected to ill-treatment, cruelty and harassment and also mental and physical torture by her in-laws. When the harassment and torture being made by the in-laws of Petitioner No.1 became unbearable, she lodged a complaint before the police authorities in this regard and initially, there was a counselling held between the parties after which, the matter was settled there and Petitioner No.1 went back again and started staying at her matrimonial home.

3. After sometime, the dispute again arose and the allegations again were leveled by Petitioner No.1 and it is alleged that she was again ousted from the matrimonial home and then she again lodged a complaint before the PS Balco Nagar vide Crime No.288/2014 who registered an FIR against the in-laws of Petitioner No.1 for the offence punishable under Section 498-A/34 IPC. Immediately after the registration of the said FIR, the in-laws of Petitioner No.1 namely Balram Rathore - father-in-law, Smt Rajkumari Rathore - mother-in-law and Ku. Nisha Rathore – sister-in-law had approached the Court below for grant of anticipatory bail. However, the Court below, vide order dated 25.8.2014, rejected the application for grant of anticipatory bail.

4. Upon the anticipatory bail being rejected, the father-in-law - Balram Rathore, apprehending his arrest and humiliation that would follow, committed suicide by consuming poison at the house of his brother namely Shivram Rathore who stays in a different village i.e. at Village Mudhali, District Korba. Thereafter, FIR was lodged on the same day against Petitioner No.1 Smt Nandani Rathore and the body was also sent for postmortem and the doctor who conducted the postmortem i.e. Dr. RK. Divya, gave a report that the mode of death was asphyxia due to poisoning. That later on when the charge

sheet was filed, the police authorities also made the other Petitioners apart from Petitioner No.1 i.e. the father of Petitioner No.1 i.e. Petitioner No.2-Ramu Rathore, the mother of Petitioner No.1-Chameli Bai-Petitioner No.3 and brother of Petitioner No.1-Narendra Rathore -Petitioner No.4 as accused persons in the instant case. The matter was later committed to the Sessions Court where it was registered as Sessions Trial No.42/2015 and the matter was put to trial before the Additional Sessions Judge, Khatgora, District Korba where the trial is still going on.

5. Learned Counsel for the Petitioners assailing the entire criminal prosecution initiated by the police and committal of trial before the Sessions Court, submits that the Court below has miserably failed to consider the fact that for the purpose of framing of charge under Section 306 IPC, the necessary ingredient required that of abetment as per Section 107 IPC mandatorily required is not available.

6. The Court has duly ignored this aspect to find out as to what is the abetment, instigation or incitement on the part of the Petitioners which led to the deceased Balram Rathore commit suicide by consuming poison on 26.8.2014. According to the Petitioners, the only allegation against them is that they firstly have falsely implicated the deceased and the other in-laws of Petitioner No.1 in a case under Section 498/34 IPC and secondly, the Petitioners jointly have been threatening the in-laws of Petitioner No.1 of dire consequences on the ground of the alleged cruelty, torture and ill-treatment met upon Petitioner No.1 by her in-laws including the deceased father-in-law Late Balram Rathore.

7. A bare perusal of the entire statement which has come on record would itself clearly indicate that in fact the deceased had committed suicide

immediately after the rejection of the anticipatory bail on 25.8.2014 and the incident is of the intervening night of 25/26.8.2014 at 3.00 am. According to the Petitioners, there was no any sort of abetment met by the Petitioners to the deceased in particular leading him to commit suicide. It is further submitted that all the allegations which have been leveled against them were not of the time immediately preceding the commission of the act of suicide committed by the deceased. It was also contended by the Petitioners that so as to bring home the offence under Section 306 IPC, the prosecution has to first have cogent, sufficient and clear evidence of the accused persons of having instigated any person to commit suicide. Likewise, it was also necessary for the prosecution and the investigating agency to collect materials to show that the accused persons to have got themselves engaged in conspiracy for doing an act which would lead to the commission of the suicide. Similarly, the police authorities also should have collected materials which would disclose that the Petitioners had intentionally aided by an act or by illegal omission which resulted in the deceased to commit suicide.

8. In the instant case, according to the Petitioners, none of the ingredients as are required under Section 107 IPC are made out. Similarly, according to the Petitioners, there is also no sufficient material available in the charge sheet by which also it could reflect that at any point of time, the Petitioners had in fact misbehaved with the deceased before the commission of the offence. It was also the case of the Petitioners that neither is there a complaint or a police report lodged on the part of the deceased in respect of any threat or threat perception given by Petitioners so as to substantiate the allegations leveled. That in the absence of any of these ingredients, learned Counsel for the Petitioners submits that the Petitioners should not be forced to undergo the entire trauma of trial which itself is nothing less than

harassment and mental torture by attending each date of hearing before the Court below and that the trial itself is going on at a very slow pace. That no fruitful purpose will be served if the Petitioners are forced to face the trial without prima facie presence of necessary ingredients required under Section 107 IPC so as to meet the requirement of a case under Section 306 IPC to be made out. Thus, the Petitioners prayed for quashment of the entire criminal proceedings initiated against all the Petitioners.

9. Learned State Counsel as well as learned Counsel for Respondent No.2 opposing the Petition submit that since the matter has already been put to trial, it would not be proper for this Court to exercise its discretionary jurisdiction to quash the entire criminal proceedings itself as whether there is a material available against the Petitioners or not is a matter of evidence and it would not be proper to stifle the entire proceedings at this stage and thus prayed for rejection of the Petition.

10. However, on a specific query being put to Counsel for the Respondents so as to pin-pointedly show as to what is the abetment on the part of the Petitioners reflected from the case diary or from the statements recorded during the course of the investigation so as to show that the police authorities have in fact been able to collect materials by which the abetment on the part of the Petitioner stands established, they have fairly submitted that the only allegation against the Petitioners is firstly of a false complaint under Section 498-A/34 IPC being registered against the deceased father-in-law of Petitioner No.1 and all her other in-laws and secondly, all the Petitioners used to visit the matrimonial home of Petitioner No.1 and used to threaten the in-laws of Petitioner No.1 inclusive the deceased father-in-law of Petitioner No.1 of dire consequences.

11. These two allegations are the only material available in the entire charge sheet on the basis of which the Petitioners are being prosecuted for the offence punishable under Section 306/34 IPC.

12. True it is that the matter has already been put to trial and it has reached the stage of evidence being recorded but one cannot fail to take note of the fact that the proceedings in the instant case are in fact progressing at a slow pace and the Petitioners are being forced to undergo the trauma of trial by attending the Court proceedings on all the dates of hearing and also have to face the humiliation of repeatedly going to the Court and appear before the Court as accused persons on all the dates of hearing. That facing of a trial itself is a humiliating factor particularly in the Indian society and under the said factual background of the case, this Court is of the opinion that the High Court in exercise of its power under Section 482 Cr.P.C, can look into the veracity of the complaint and the nature of allegations and can also in case it is prima facie established that the basic ingredients for making out an offence itself if is found missing, then it can exercise its power and order for quashment of the entire proceedings itself so as to prevent the misuse of the process of law and also misuse of the process of the Court.

13. So far as the law in respect of an offence under Section 306 IPC is concerned, it is by now well settled by the Supreme Court in the case of (2002) 5 SCC 371 (Sanjay Singh Sengar vs. State of M.P) wherein the Supreme Court 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 of 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. In the instant case, the ingredient required for abetment for the commission of the act of suicide by the deceased Balram Rathore is not established by the prosecution by any element of evidence.

16. Hon'ble Supreme Court again 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.

17. 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.”

18. For the foregoing reasons, in view of the nature of allegations leveled against the Petitioners, this Court is of the opinion that prima facie ingredients of abetment are not reflected from any of the witnesses examined during the course of the investigation, neither is there any material to show any sort of abetment, instigation or incitement made by the Petitioners particularly, to the deceased immediately before the date of incident. It is also necessary to

particularly taking note of the fact that the anticipatory bail application of the deceased got rejected on 25.8.2014 and it is on the same night that he has committed suicide by consuming poison. Thus, this Court is of the opinion that it is a fit case where this Court, in exercise of its powers under Section 482 of Cr.P.C should and is accordingly ordering for quashment of the criminal prosecutions initiated against the Petitioners vide Crime No.225/2014 at PS. Balco Nagar, Korba and also criminal proceedings in Sessions Trial No.42/2015 pending before the Additional Sessions Judge, Khatgora, Distt. Korba and the Petitioners are also ordered to be discharged from the said offences.

19. The instant Cr.M.P stands allowed in the above terms.

Sd/-
(P. Sam Koshy)
JUDGE

Priya