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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 1173 OF 2015

Jayprakash Mishra, S/o Shri Muniraj Mishra, aged about 40 years, Inspector at Income Tax Department, R/o Navapara, Ambikapur, P.S. & Tahsil Ambikapur, District Surguja (C.G.)

… Petitioner

Versus

The State of Chhattisgarh, through Station House Officer of Police Station City Kotwali, Ambikapur, District Surguja (C.G.)

… Respondent

For Petitioner	:	Mr. Shailendra Dubey, Advocate.
For Respondent	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/10/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioner seeking for quashment of the FIR registered as Crime No. 397 of 2015 on 31.7.1015 at Police Station Ambikapur, so far as the Petitioner is concerned,.

2. Learned Counsel for the Petitioner submits that for proper adjudication of the case the narration of the facts would be necessary. As per the facts of the case on 26.6.2015 one Prashant Agrawal, a Chartered Accountant, is said to have had made a telephone call to the deceased Rajiv Ranjan Jayaswal, who was an Income Tax Officer posted at Ambikapur office of Income Tax Department. It is said that from the said telephone call he had made certain allegations against the deceased Income Tax Officer and was harassing him at regular intervals thereafter. Subsequently, it is said that the Petitioner is said to have joined hands with the said Prashant Agrawal to harass the deceased and which led to the deceased committing suicide on 3.7.2016 by hanging himself at his residence.

3. Learned Counsel for the Petitioner submits that if the entire charge-sheet dated 23.11.2016 is perused and minutely observed even then without adding and subtracting of any of the contents in the charge-sheet the offence under Section 306 of IPC is not made out against the Petitioner. According to the Counsel for the Petitioner, for making out an offence under Section 306 of IPC the necessary ingredients of abetment as defined under Section 107 of IPC is not available. According to him, there is no iota of evidence showing any sort of instigation or incitement of committing any act which led to the deceased committing suicide. Thus the Petitioner is not in any manner related to the act of suicide committed by the deceased and he should be discharged from the said case and his name ought to have been deleted from the FIR.

4. Counsel for the Petitioner further submits that it is also a case where the Petitioner is a subordinate to the deceased, inasmuch as the deceased was an Income Tax Officer and the Petitioner is only an Income Tax Inspector and there is no scope of any sort of instigation or incitement which could have been made by the Petitioner forcing the deceased to commit suicide. Thus, prayed for the quashment of the FIR as well as the charge-sheet so far as the Petitioner is concerned.

5. Learned Counsel for the State however referring to the statement of the wife of the deceased, namely Priya Rani Jayaswal, as also the statement of another Income Tax Officer, namely Muktaram Chimankar, who in their statements recorded under Section 161 of CrPC, have stated that there was a great element of harassment being made by the Petitioner along with co-accused Prashant Agrawal, which forced the deceased to commit suicide and therefore it cannot be said that the Petitioner has been falsely implicated in the said case and thus prayed for the rejection of the petition.

6. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, a sole consideration for making the Petitioner an accused is the statement of Priya Rani Jayaswal, wife of the deceased, as also the statement of Muktaram Chimankar, the Income Tax Officer. A perusal of the statement of these two persons would clearly reflect that there is no specific allegation against the Petitioner in respect of any sort of abetment or instigation made by the Petitioner which led to the deceased committing suicide. It also reveals that the nature of allegation against the Petitioner is that he was scolded by the deceased for insubordination of not discharging of his official duties properly and for not being available at times in the office at Ambikapur on account of his family and children residing at Bilaspur. The said scolding was not accepted by the Petitioner and is said to have given some reply to the deceased at the time of his being scolded and this under any circumstances cannot be brought within the ambit of an abetment nor does it constitute any of the ingredients that constitute abetment as is defined under Section 107 of IPC.

7. As far as the allegation of abetment for committing suicide is concerned, if it is seen in the light of abetment as defined in Section 107 of IPC, there has to be some act to be termed as instigation or incitement to have been done for bringing home the offence under Section 306 of IPC. Section 306 of 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 life."

If we see the provisions of Section 306 of IPC, it is evidently clear that implicating somebody for the offence punishable under Section 306, the necessary ingredient to prove the said offence is abetment. Abetment has been defined under Section 107 of IPC. For ready reference, the provisions of Section 107 is reproduced below:-

> "**Section 107.** A person abets the doing of a thing, who –
> **First.** – Instigates any person to do that thing; or
> **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 facilitates the commission thereof, is said to aid the doing of that act."

If we see the definition of abetment, it clearly stipulates that, firstly, there has to be an instigation by a person to do a thing; secondly, the person must engage himself with one or more than one person conspiring to do something and, thirdly, there should be an intentional aid by the said person or an illegal omission on the part of the said person for doing of that thing.

8. It is also trite at this juncture to mention that for making out a case under Section 306 of IPC, the basic ingredient as defined in Section 107 of 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 is not established by the prosecution by any element of evidence. Hon'ble Supreme Court in a decision made in the case of **M. Mohan** Vs. **State** [2011 (3) SCC 626] 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 of IPC cannot be said to be made out.

9. A perusal of the statements recorded during the course of investigation would clearly reflect that there is no element of any sort of abetment to have been committed by the Petitioner on the date of incident i.e., 3.7.2015, on which date the deceased is said to have committed suicide by hanging himself at his residence that too at 11 pm. All the incidents which have been taken to be the cause for the deceased to commit suicide particularly in respect of the present Petitioner, relates to almost 3-4 days back and not immediately before the incident is said to have been committed. This also goes in favour of the Petitioner to establish that there is no act played by him on the date of incident forcing the deceased to commit suicide. Thus, in the given circumstances, no offence whatsoever is made out against the Petitioner. Moreover, the necessary ingredients for making out a case of abetment as required under Section 107 so as to bring home the offence under Section 306 of IPC is also not available against the Petitioner.

10. The Petition is therefore allowed. FIR No. 397 of 2015, dated 31.7.1015, registered at Police Station Ambikapur is quashed so far as the Petitioner is concerned. The Petitioner stands discharged from the charge levelled against him.

Sd/-

(P. Sam Koshy)
Judge

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