

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 362 of 2016**

Pradeep Kumar Tiwari S/o Late Chandrama Tiwari Aged About 38 Years Ward Boy, P H C, Nandghat, District Bemetara, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Bhatapara City, District Baloda Bazar Bhatapara, Chhattisgarh.

-----Non-Applicant

For Applicant:	Shri Varun Sharma, Advocate.
For Non-Applicant/State:	Shri UKS Chandel, Panel Lawyer.

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

20.09.2016

1. The present Revision under Section 482 Cr.P.C has been filed assailing the order dated 14.1.2016 passed by the Additional Sessions Judge, Bhatapara in Sessions Trial No.H-26/15 whereby the Court below has rejected the application for discharge moved by the present Applicant and has framed the charge for the offence punishable under Section 306 IPC against the present Applicant.

2. The facts in nut-shell are that in the intervening night of 1/2.8.2015, there was a dispute between the deceased/wife of the Applicant with the landlord of the premises which the Applicant had taken on rent and at that moment of time, the present Applicant was not present. When the present Applicant came back to the residence, his wife narrated the entire incident to him. Thereafter, it is said that there was a fight which took place between the wife and husband and during the course of the altercation, the Applicant/husband gets a couple of slaps to his deceased/wife Vandana Tiwari. After a couple of hours, the deceased is said to have committed

suicide by setting herself ablaze.

3. Learned Counsel for the Applicant submits that it is a case where the marriage between the Applicant and the deceased took place about 9 years back i.e. in the year 2007 and for all these period, there was no dispute between them whatsoever. Further, he submits that the incident occurred because of the voluntary decision taken by the deceased to end her life. He further submits that there is also a dying declaration made by the deceased which has been recorded on 2.8.2015 in the hospital in the presence of the doctor wherein she has categorically stated that she has herself taken the decision of ending her life by committing suicide and that she has not blamed any person in the family or anybody else for the extreme step that she has taken. In her statement, she has only referred to the incident that transpired the previous night where the Applicant/Petitioner is said to have slapped the deceased in pursuance to the altercation that took place with the landlord. He further submits that even if the entire contents of the charge sheet are taken without additions and subtractions, there is no material whatsoever on the part of the prosecution to show that the ingredients as is required under Section 107 IPC so as to bring home the offence punishable under Section 306 IPC is available. He also submits that in the entire charge sheet, there is no material to show any sort of instigation or for that matter, incitement or abetment to have been made by the present Applicant leading the deceased to commit suicide.

4. Learned Counsel for the Applicant relying upon the judgment of the Supreme Court in *(2011) 3 Supreme Court Cases 626 (M. Mohan vs. State represented by the Deputy Superintendent of Police)* in this regard, refers to paragraph-45 which, for ready reference, is reproduced below:-

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

5. Learned State Counsel however opposes the Revision and submits that a bare perusal of the dying declaration itself establishes that there was an altercation that took place on the same night and there are averments made by the deceased of the Applicant having slapped her and which led the deceased to commit suicide and therefore, it cannot be said that there is no material available for the Court for framing charge under Section 306 IPC and thus prayed for rejection of the Petition.

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 Vandana Tiwari 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 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 Applicant stand discharged for the offence under Section 306 IPC.

12. Accordingly, the instant Criminal Revision is allowed.

Sd/-
(P. Sam Koshy)
JUDGE