

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.782 OF 2016

The State of Maharashtra,
Through Osmanpura Police Station,
Aurangabad

..PETITIONER
(Ori. Complainant)

VERSUS

Pranita Padmakar Digraskar,
Age : 22 years, Occu. Student,
R/o Dhrusti Enclave, New
Osmanpura, Aurangabad

..RESPONDENT

Mr K.D. Munde, Addl. Public Prosecutor for petitioner;
Mr N.S. Ghanekar, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 2nd September, 2016

ORAL ORDER :

In Sessions Case No.229 of 2014, (State Vs. Manasi & ors.), pending on the file of Sessions Judge-4, Aurangabad, the present respondent/co-accused, moved an application under section 227 of the Code of Criminal Procedure for discharge from C.R. No.I-13 of 2013, registered with Osmanpura Police Station, Aurangabad, for offences punishable under sections 306, 506 read with section 34 of the Indian Penal Code, which came to be allowed vide order dated 24th November, 2015. As such, present petition by the petitioner – State.

(2)

2. The facts, as are necessary for decision of the present writ petition, are as under :-

One Sulochana Bhalerao, claiming to be mother of deceased Rahul, lodged a complaint on 22nd January, 2013, alleging that on 21st January, 2013, her son committed suicide. It is claimed that the said suicide was abetted by accused Manasi Gokani, her father, her sister, her friend i.e. present respondent and the father of the present respondent and one Shashank Jaiswal, friend of accused Manasi. It is claimed in the first information report that accused Manasi was in love with deceased Rahul and so as to desist him from said act, the above referred persons threatened Rahul with dire consequences. It is also claimed that on 13th January, 2013, first information report came to be lodged against Rahul, at the behest of accused Manasi. As a consequence of above act on the part of all the accused persons, who acted in furtherance of their common intention, abetted suicide of Rahul, resulting into registration of the crime in question.

3. After the charge-sheet came to be filed in the matter, present respondent-accused sought discharge in the above referred crime, vide application Exh.14, claiming that she has no concern with the alleged act of suicide by Rahul. It is then brought on record that Rahul used to flirt/tease co-accused Manasi, who happened to be the friend of the respondent. It is then claimed that even if the allegations are taken to be true at its face value, still offences under sections 306 and 506 of the Indian Penal Code are not constituted, as the act of suicide by Rahul is an

(3)

independent act, without any instigation or incitement from the respondent. It is then claimed that overall perusal of the investigation papers does not depict that there was any instigation, aiding or conspiracy on the part of the respondent herein and as such, no offence punishable under section 306 of the Indian Penal Code could be constituted.

4. Learned Sessions Judge, while dealing with the claim brought before him, noted that in the suicide note it is claimed by deceased Rahul that the accused persons have harassed him and threatened to involve him in a false case. It is further observed by the learned Sessions Judge that as the act on the part of Rahul had started disturbing private life of Manasi and her family members, a complaint came to be lodged with Kranti Chowk Police Station. In the said issue, deceased Rahul, in the issue has tendered an apology and assured that he would not repeat such incident again. One P.S.I. Fula, who was the Inquiry Officer into the complaint registered at the behest of Manasi with Kranti Chowk Police Station, in his statement stated that on 12th January, 2013 co-accused Manasi contacted him and narrated about the conduct of deceased Rahul of making phone calls at odd hours and insisting to marry her. Upon inquiry, it was noticed that Manasi and Rahul together were working in a shop and as such were in friendly terms. At times, there used to be hand loan transactions between them. It is then disclosed that he proposed her for marriage and when she avoided the same, deceased Rahul started giving calls, resulting into lodging of the complaint with Kranti Chowk Police Station. A notice under section 149 of the Code of Criminal Procedure was also served on deceased Rahul at the behest of complaint moved by

(4)

Manasi, so as to prevent a cognizable offence by deceased Rahul. The statement of P.S.I. Fula, who was Inquiry Officer depicts behaviour of deceased Rahul *qua* his intention to any how get married with Manasi.

5. The learned Sessions Judge, after considering the evidence available on record to be correct to its face value, observed that there is no evidence so as to infer that the respondent-accused has played any role in the entire episode. It is further observed that since the abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing, and since no material is available on record so as to demonstrate that the respondent has committed any active act or indirect act, which led deceased Rahul to commit suicide, has ordered discharge. Learned Sessions Judge also observed that there is no material to infer that the respondent had instigated others or had provoked, incited, urged or encouraged in doing of an act by the other co-accused, which prompted Rahul to commit suicide, has ordered discharge of the respondent-accused.

6. While questioning the legality of the order of discharge, learned Addl. Public Prosecutor, by inviting my attention to the contents of the first information report lodged by the mother of the deceased, namely, Sulochana, suicide note left by deceased Rahul and statements of other witnesses, i.e. Manisha; and Sushama Kadam, sisters of deceased Rahul, would urge that there is sufficient material on record to infer that the petitioner was a member of a group which had acted with a common

(5)

intention abetting the suicide by deceased Rahul. He would harp upon the contents of the suicide note so as to submit that the ingredients of sections 306 and 107 of the Indian Penal Code are very much satisfied. According to him, the learned Sessions Judge, while exercising powers under section 227 of the Code of Criminal Procedure for discharge has exceeded the jurisdiction, as there is sufficient material to infer *prima facie* involvement of the respondent in commission of the crime in question.

7. While resisting the submissions, Mr Ghanekar, learned Counsel appearing on behalf of respondent – accused would take me through the ingredients of sections 306 and 107 of the Indian Penal Code and upon pointing out the evidence as is brought on record in the form of charge-sheet, would urge that there is hardly any material to infer making out of a case punishable under section 306, 506 read with section 34 of the Indian Penal Code against the respondent. According to him, even if the evidence is accepted to be correct at its face value, still looking to the role attributed to the petitioner, there is hardly any material to infer commission of an offence punishable under section 306 of the Indian Penal Code. He would rely upon the Division Bench judgment of this Court at Nagpur, in Criminal Application No. 332 of 2016 (Dilip & ors. Vs. State of Maharashtra & anr.), rendered on 5th August, 2016, so as to submit that the learned Sessions Judge has rightly discharged the respondent-accused.

8. It is required to be noted that the provisions of section 227 of the

(6)

Code of Criminal Procedure for discharge could be invoked by party before the Court, if upon consideration of the record and the material available therewith, it is *prima facie* made out before the Court that there is not sufficient material for proceeding against the accused, the Judge may order discharge of the accused by recording his reasons for doing so.

9. Upon perusal of the order passed by the learned Magistrate, it is required to be seen whether the Sessions Judge has recorded reasons in support of the order of discharge and whether such reasons are germane to the cause for such order of discharge.

10. It is to be noted that the respondent is booked for an offence punishable under sections 306, 504, 506 read with section 34 of the Indian Penal Code. So far as offence under section 306 of the Indian Penal Code is concerned, it is required to be noted that the 'abetment' is defined under section 107 of the Indian Penal Code. The charge of abetment against the accused person is sought to be co-related with the harassment as has been alleged in the first information report, and in the suicide note in the present case. It is worth to observe that deceased Rahul, in his suicide note, had claimed that the present respondent-accused was harassing him since long and false allegations were made against him and further threats of implicating in a false offence were issued. It is then claimed in the suicide note that he was called by the accused persons and the police were intimated in advance and he and his family members were threatened. He has stated in the suicide note that he was disturbed

(7)

because of the said act and he was implicated in a false case in Kranti Chowk police station. Because of the above act on the part of the co-accused and humiliation that he suffered, he is committing suicide. If the contents of the first information report and the statements of the complainant, two real sisters of deceased Rahul are perused in the said background, they are also towing the same lines of allegations against all accused persons.

11. Though the narrations of cause for suicide made in the suicide note are in the compressed words, still if the incidents as are narrated therein are looked into, particularly in the background of notice issued to deceased Rahul under section 149 of the Code of Criminal Procedure, pursuant to the complaint lodged by Manasi on 12th January, 2013, the statement of Rahul of the even date, recorded by the Police Officer Rahul Pandharinath Fula on 25th January, 2013, speaks the story other way round. It appears that deceased Rahul was in one sided love with Manasi, co-accused and after rejection of marriage proposal by her, Rahul was quite disturbed. His mind state of calling the present respondent on her mobile, co-accused Manasi, her mother, etc. of issuing threats in wild words speaks about his criminal intention of issuing threats to the respondent-accused. It is then to be observed here that, but for the statements of complainant Sulochana and her two daughters referred supra, there is no other independent material so as to infer commission of an offence punishable under section 306 of the Indian Penal Code by the respondent herein or the other co-accused. The material as is stated in the first information report by

(8)

Sulochana, mother of Rahul and his two sisters, *prima facie* does not satisfy the ingredients of offences punishable under sections for which the present respondent was booked. It is to be noted here that for constituting offences under sections 107 and 306 of the Indian Penal Code, if the role attributed to the present respondent is assessed, but for her presence being friend of Manasi, in the earlier incident dated 12th January, 2013, or her otherwise association with Manasi as a friend, there are hardly any attributions against her. Even the suicide note refers to the present respondent, to the extent of making false allegations against deceased Rahul. The harassment as is claimed in the suicide note, in my opinion, cannot be stretched to the extent of satisfying the ingredients of section 306 of the Indian Penal Code against the respondent-accused. Even if it is assumed that there were differences between Manasi and Rahul over the issue of marriage, still the role as is attributed to the respondent, in the background of the story narrated in the earlier incident dated 12th January, 2013, does not speak of involvement of respondent in the crime in question. In my opinion, perusal of first information report and suicide note do not satisfy the ingredients of section 306 of the Indian Penal Code, so as to suggest that the respondent-accused, in any way, abetted or aided commission of suicide by Rahul. The act on the part of respondent-accused as has been alleged in the first information report, in no terms could be inferred to have knowledge to the present respondent that the act as has been alleged will prompt Rahul to commit suicide.

12. In my opinion, the prosecution has not established through the

(9)

record that the respondent-accused had an intention to aid or instigate or abet deceased Rahul to commit suicide, at least there is no such material on record. The mental process of Rahul, in the matter of commission of suicide, in any case, cannot be stretched too far to the extent of involving the present respondent in a crime of abetment of suicide.

13. In my opinion, the learned Counsel appearing on behalf of the respondent-accused has rightly invited attention of this Court to the judgment rendered by the Division Bench of this Court in Criminal Application No.332 of 2016 (Dilip & ors. Vs. State of Maharashtra & anr.), on 5th August, 2016, as the present case is squarely covered by the law laid down therein.

14. The observations made in paragraph 13 by the Apex Court, in the matter of Sanju @ Sanjay Sengar, which is referred to in the above referred Division Bench judgment in the matter of Dilip Shirsao & ors. (supra), are worth referring to :-

“It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which

(10)

had been used by the appellant on 25th July, 1998 driven the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

The Division Bench, thereafter in paragraph 20 of the order has observed thus :-

"20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is clear mens rea to

(11)

commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.”

14. In the result, Criminal Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

amj