

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.6002 of 2016

and Crl.M.P.No.3083 of 2016

Ayyasamy

.. Petitioner

Vs.

State rep. by  
Inspector of Police  
Erode North police station  
Erode.  
Crime No.377/2014

.. Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records in S.C.No.7/2016 on the file of the II Additional Sessions Court, Erode and quash the same.

For Petitioner :Mr.C.S.Saravanan

For Respondent :Mr.C.Emalias  
Additional Public Prosecutor

ORDER

This petition is filed for quashing S.C.No.7/2016 on the file of the II Additional Sessions Court, Erode.

2.Learned counsel for the petitioner submits that one Raja, who was working under the petitioner's power loom, requested him to give some amount and that the petitioner had given him Rs.28,000/-. But thereafter, the said Raja did not come for job. However, Raja worked in the power loom of one Palanisamy. Since the said Raja has neither come for job nor returned the money, the petitioner went to Palanisamy's power loom and asked Raja to return back his money or come for work. At that time, it is alleged that the petitioner abused the deceased Raja using filthy language and made criminal intimidation. Therefore, on 09.07.2014, Raja committed suicide by hanging in his house. On the basis of the complaint lodged by the wife of the deceased Raja, a case in Crime No.377/2014 has been registered against the petitioner for an offence under Section 306 IPC. It is further submitted that after investigation, a charge sheet has

been filed and the same was taken in P.R.C.No.8/15 and then it was committed to the Sessions Court and taken on file in S.C.No.7 of 2016 on the file of the learned II Additional Sessions Judge, Erode. He further submitted that the contents of the F.I.R. and 161 statement of the defacto complainant are not constituted the offence under Section 306 IPC. Furthermore, ingredients of Section 106 IPC, which deals with abatement, have not been made out against the petitioner. Hence it is a fit case to quash the proceedings and no purpose will be served if the case will be tried. To substantiate his arguments, he relied upon the decision in (M.Mohan v. State represented by the Deputy Superintendent of Police) reported in (2011) 3 SCC. Thus, he prays for quashing the proceedings.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.A perusal of the complaint reveals that the deceased Raja was working under the petitioner's power loom and he received a sum of Rs.28,000/- as an advance from the petitioner. Thereafter, the said Raja neither returned the money nor came for work. However, Raja had gone for work in the power loom of one Palanisamy. On 05.07.2014, at about 5.45 a.m., the petitioner came to the house of deceased Raja, abused him using filthy language and threatened him. Again on 08.07.2014, the petitioner came to the power loom of Palanisamy and threatened the deceased Raja and the same was intimidated by him to his wife Lakshmi. On the same day, during night hours, Lakshmi had gone for night work along with her children. On 09.07.2014, at about 7.00 a.m., when she returned back to her house, she saw her husband hanging. Immediately, she gave the complaint before the respondent police and the case has been registered in Crime No.377 of 2014 against the petitioner for an offence under Section 306 IPC.

5.Furthermore, Section 161 Cr.P.C. statements of wife of the deceased Lakshmi and one Sulakshana, who was working along with the deceased Raja at Palanisamy's power loom, prima facie made out the offences under Sections 107 and 306 IPC. So it is appropriate to extract the same, which are as follows:

"Section 306 IPC deals with 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.

Section 107. Abetment of a thing. \_\_\_ 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 place 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 wilful misrepresentation, or by wilful 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 the act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

6. In the first ingredient of Section 107 IPC, it was stated that "instigates any person to do that thing", which means instigate any person to commit suicide. According to F.I.R., on 08.07.2014, at about 11.30 p.m., the deceased Raja had intimated to his wife that the petitioner had made criminal intimidation against him, which clearly shows that the deceased Raja was forced to commit suicide.

7. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the petitioner reported in *M. Mohan v. State* represented by the Deputy Superintendent of Police reported in (2011) 3 SCC, wherein para-44, 51 and 53 are extracted hereunder:

"44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

51. This Court had an occasion to examine the legal position in a large number of cases. In *R. P. Kapur v. State of Punjab* (AIR 1960 SC 866) this Court summarised some categories of cases where the High Court in its inherent power can and should exercise, to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

53. This Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other Courts."

There is no quarrel over the proposition laid down in para-44. On considering para-51 of the above decision, it was specifically held that where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. In the case on hand, sessions case is pending after framing of charges. Under such circumstances, the above decision is not applicable to the facts of the present case.

8. In the decision reported in 1992 SCC (Cr1) 426 (*State of Haryana and others v. Bhajan Lal and others*), it was clearly held that under what circumstance, the F.I.R. is liable to be quashed. Para-102 is extracted hereunder:

"102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as

contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In the case on hand, after completing investigation, prima facie the trial Court came to the conclusion that materials are available for framing charges. It is well settled dictum of the Honourable Apex Court that while dealing with the quash petition under Section 482 Cr.P.C., this Court need not go into the merits of the case as to whether it is a fit case for conviction. The Court ought to consider as to whether prima facie the offence has been made out for framing charges.

9. At this juncture, learned Additional Public Prosecutor appearing for the respondent police submits that charges have already been framed and the case has been posted today (i.e.) on 22.03.2016 for examination of the witnesses.

10. Considering the aforestated facts and circumstances of the case, on 08.07.2014, the petitioner had gone to the work place of the deceased Raja and demanded him money by abusing him in filthy language and made criminal intimidation, which forced him to commit suicide. Under such circumstances, I am of the view, prima facie the contents in the F.I.R. and Section 161 Cr.P.C. statements of Lakshmi/defacto complainant and Sulakshana proved that the ingredients of offence under Section 306 IPC

have been made out against the petitioner. Therefore, this Court feels that it is not a fit case for quashing. Accordingly, the Criminal Original Petition stands dismissed as devoid of merits. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the matter on merits. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police,  
Erode North police station,  
Erode.
- 2.The II Additional Sessions Judge ,  
Erode.
- 3.-Do- Principal Sessions Judge,  
Erode.
- 4.The Public Prosecutor  
High Court, Chennai.

+1cc to Mr.C.S.Saravanan, Advocate sr.18300

सत्यमेव जयते

Cr1.O.P.No.6002 of 2016  
and Cr1.M.P.No.3083 of 2016

ksj (CO)  
srg (11/04/2016)

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