

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7985 OF 2015

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.231 of 2016 on the file of Charminar Police Station for the offence punishable under Section 306 read with Section 107 IPC and Charge Sheet No2182 of 2015 for the offences punishable under Sections 306 & 107 of I.P.C pending on the file of Chief Metropolitan Magistrate, Hyderabad.

The petitioner is the accused who allegedly committed an offence punishable under Section 306 read with Section 107 IPC and he challenged the proceedings on various grounds mainly on the ground that the allegations made in the complaint lodged with the police dated 01.09.2013 and the allegations made in the charge sheet on its face value would not prima facie constitute an offence punishable under Section 306 read with Section 107 IPC.

The petitioner also challenged the proceedings on the ground that there were several disputes with regard to evicting one Tej Narayan Agarwal and filed W.P.No.22547 of 2013 against the Wakf Board and obtained several orders. Finally, it is contended that the prosecution is groundless and in the absence of existence of any grounds to proceed against him for the offence punishable under Section 306 read with 107 IPC, the proceedings are liable to be quashed and registering crime and filing charge sheet against

the petitioner is in fact abuse of process of law.

In view of the specific contention raised by the learned counsel for the petitioner, it is relevant to note the allegations made in the complaint dated 02.09.2013, which are extracted hereunder:

“This is blessed affectionately by Mr. Faisal Jee to me I had no difference of any manner with him. Seth Sadiq Bhai Saheb has failed to keep the shop in his fold – When the shop R.R. Gopal was given with high respect and trust and love only to Seth Sadiq bhai. When Mr. Faisal was nowhere-”” For helping me in Trade as a friend for my constant bad health. The shop events started as (1) Started by caveat received by me. (2) Banner torned shoplock = why Mr. Faisal has not informed his father – why??? Then opened after 8/10 days ”” (5) Ramzan done cartoons pckd – (6) closed for 15 days (7) opened again Sadiq Bhai not known. Seth Sadiq Bhai and me were each other only with the work? & Faisal Bhai god knows everything – all the best – But you have punished me, the death – The in depth hidden place facts are still far away from S/o Sadiq Seth.”

The basis for registering a crime filing charge sheet is suicide note written by Tej Narayan Agarwal (deceased) on 26.08.2013. The main allegation made in the suicide note is that the petitioner is responsible for his eviction from the premises. However, it is better to have a glance at the relevant allegations made in the suicide note once again for better appreciation of facts at relevant page.

As seen from the various allegations made in the complaint dated 01.09.2013, there is absolutely nothing pointing out the involvement of the petitioner in the offence punishable under Section 306 read with Section 107 IPC, except intimating to the police by Dr. Anand Agarwal S/o Tej Narayan Agarwal (deceased) about death of his father. Even according to the allegations made therein that on 01.09.2013 at about 12:00 noon, he received a

phone call from his neighbor by name Gopal stating that his father's body was lying on the floor in front of one complex i.e. R.R. Gopal House, MJ Phatak, Hyderabad, immediately he found the dead body of his father Tej Narayan Agarwal aged about 71 years lying on the pavement in the ground floor and he was diabetic, was on treatment and that he came to conclusion that he might have fallen due to blood pressure and giddiness. If this statement is taken on its face value in its entirety, there is nothing to show that on account of abatement by the petitioner, he committed suicide. But, it is evident from the allegations that he fell down due to hypertension and giddiness and died while he was on treatment for diabetes.

The other document which the prosecution relied on is the suicide note. Even in the suicide note written by Tej Narayan Agarwal, indirectly he pointed out that the petitioner was responsible for eviction from the shop. But nothing is mentioned about abetting him to commit suicide. In the absence of any specific allegation about abetting Tej Narayan Agarwal to commit suicide, the petitioner cannot be proceeded for the offence punishable under Section 306 read with Section 107 IPC.

Section 306 IPC deals with abatement of suicide and it reads as under:

“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.”

Undoubtedly, death of Tej Narayan Agarwal is an unnatural and he died after writing suicide note. Even if the contents of the suicide note are accepted on its entirety, the petitioner never abetted Tej Narayan Agarwal to commit suicide, except making an allegation that he was responsible for eviction from the premises. The language used in the suicide note referred the name of the petitioner herein as “**Faisal Bhai God knows everything**”. But these allegations would not constitute abetment.

Learned counsel for the petitioner relied on the judgment of the Supreme Court in **State of Kerala v. S. Unnikrishnan Nair**¹ and contended that in the absence of allegation of abetment to commit suicide, the present impugned proceedings are liable to be quashed and the Supreme Court held as follows:

“10. To appreciate the rivalised submissions in the obtaining factual matrix, it is necessary to understand the concept of abatement as enshrined in Section 107 Indian Penal Code. The said provision reads as follows:

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 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 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.

¹ (2015) 9 Supreme Court Cases 639

The aforesaid provision was interpreted in ***Kishori Lal v. State of M.P.***² by a two-Judge Bench discussed was held that, Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in Indian Penal Code. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.

In ***Analendu Pal Alis Jhantu v. State of West Bengal***³ dealing with expression of abetment the Court observed that the expression "abetment" has been defined Under Section 107 Indian Penal Code which means a person is said to abet the commission of suicide when a person instigates any person to do that thing as

² (2007) 10 SCC 797

³ (2010) 1 SCC 707

stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 Indian Penal Code. Section 109 Indian Penal Code provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned Counsel for the Respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 Indian Penal Code only would be attracted. According to him, a case of abetment of suicide is made out as provided for Under Section 107 Indian Penal Code.

As I find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, I have reproduced it hereinbefore. On a plain reading of the same, it is difficult to hold that there has been any abetment by the Respondents. The note, except saying that the petitioner punished him and cheated him and put him in deep trouble, contains nothing else.

In ***Netai Dutta v. State of West Bengal***⁴, a two-Judge Bench, while dealing with the concept of abetment Under Section 107 Indian Penal Code and, especially, in the context of suicide note, had to say that, in the suicide note, except referring to the name of the Appellant at two places, there is no reference of any act or incidence whereby the Appellant therein is alleged to have committed any wilful act or omission or intentionally aided or

⁴ (2005) 2 SCC 659

instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the Appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag. Apart from the suicide note, there is no allegation made by the complainant that the Appellant therein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the Appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the Appellant. The prosecution initiated against the Appellant would only result in sheer harassment to the Appellant without any fruitful result. In the considered opinion, the learned Single Judge seriously erred in holding that the First Information Report against the Appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the Appellant therein and find that this is a fit case where the extraordinary power Under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the Appellant and accordingly allow the appeal.

In ***M. Mohan v. The State represented by The Deputy Superintendent of Police***⁵, while dealing with the abatement, the Court has observed that, 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. The

⁵ (2011) 3 SCC 626

intention of the Legislature and the ratio of the cases decided by the Apex Court are clear that in order to convict a person Under Section 306 Indian Penal Code 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.

As far as ***Praveen Pradhan v. State of Uttaranchal***⁶, is concerned, the learned counsel, has emphatically relied on it for the purpose that the Court had declined to quash the F.I.R. as there was a suicide note, he has drawn the attention to paragraph 10 of the judgment, wherein the suicide note has been reproduced. The Court in the said case has referred to certain authorities with regard to Section 107 Indian Penal Code and opined that, in fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of

⁶ (2012) 9 SCC 734

the proceedings, a Court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to Under Section 228 Code of Criminal Procedure. Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, deceased was evicted from the business premises belonging to the Wakf Board, the petitioner also played role in evicting him and there was litigation regarding eviction. But, as seen from the contents of the report of police and suicide note which is trumpcard, the petitioner appears to have punished the deceased, none of the contests indicate either directly or indirectly that the petitioner drove him to commit suicide or instigated him by doing any act or omitting to do any act. In such case, it is highly difficult to come to *prima facie* conclusion that the petitioner is responsible for committing suicide. Therefore, keeping in view, the law declared by Courts, I find no ground to proceed against the petitioner for the above offence.

Quoting in extenso from the said judgment and I have no hesitation in stating that the suicide note therein was quite different, and it is appropriate to quash the proceedings because of the tenor and nature of the suicide note.

Again turning to the facts at hand, as I have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, I am disposed to think that there is any amount of justification to quash the proceeding, for it is an accepted position in law that where no

prima facie case is made out against the accused, then the High Court is obliged in law to exercise the jurisdiction Under Section 482 of the Code and quash the proceedings. [See **V.P. Shrivastava v. Indian Explosives Limited and Ors.**⁷”

In **Gangula Mohan Reddy v. State of Andhra Pradesh**⁸, the Supreme Court discussed the scope of abatement under Section 107 and held that 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.

In the instant case, the deceased was undoubtedly hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

The Apex Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**⁹ had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket

⁷ (2010) 10 SCC 361

⁸ AIR 2010 SUPREME COURT 327

⁹ 2009 (11) SCALE 24

formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

The intention of the Legislature and the ratio of the cases decided by this Court is 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 committed suicide.

In the present case, the deceased indirectly made an allegation that the petitioner is responsible for eviction of the premises which belongs to Wakf Board and also made an allegation that “**God knows everything**”. The term “**God knows everything**” used in the suicide note would not even constitute an abetment or instigation to commit suicide. In those circumstances, the proceedings against him cannot be allowed to be continued.

In **Gurcharan Singh v. State of Punjab**¹⁰, the Apex Court considered the scope of Sections 307 & 107 IPC. The pith and purport of Section 306 IPC has since been enunciated by this Court in **Randhir Singh vs. State of Punjab**¹¹, and the relevant excerpts therefrom are set out hereunder.

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process

¹⁰ Crl.A.No.1135 of 2016 [02.12.2016] (Supreme Court)

¹¹ (2004)13 SCC 129

of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

In **State of W.B. Vs. Orilal Jaiswal**¹², this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

Significantly, the Apex Court underlined by referring to its earlier pronouncement in **Orilal Jaiswal** (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common

¹² (1994) 1 SCC 73

to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty.

The above view was reiterated in **Amalendu Pal @ Jhantu vs. State of West Bengal**¹³.

That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in **S.S. Chheena vs. Vijay Kumar Mahajan**¹⁴.

In **Pinakin Mahipatray Rawal vs. State of Gujarat**¹⁵, this Court, with reference to Section 113A of the Indian Evidence Act, 1872, while observing that the criminal law amendment bringing forth this provision was necessitated to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives demanding dowry, it was underlined that the burden of proving the preconditions permitting the presumption as ingrained therein, squarely and singularly lay on the prosecution. That the prosecution as well has to establish beyond reasonable doubt that the deceased had committed suicide on being abetted by the person charged under Section 306 IPC, was emphasised. The

¹³ (2010) 1 SCC 707

¹⁴ (2010) 12 SCC 190

¹⁵ (2013) 10 SCC 48

assessment of the evidence on record as above, in our considered opinion, does not demonstrate with unqualified clarity and conviction, any role of the appellant or the other implicated in-laws of the deceased Surjit Kaur, as contemplated by the above provisions so as to return an unassailable finding of their culpability under Section 306 IPC. The materials on record, to reiterate, do not suggest even remotely any act of cruelty, oppression, harassment or inducement so as to persistently provoke or compel the deceased to resort to self-extinction being left with no other alternative. No such continuous and proximate conduct of the appellant or his family members with the required provocative culpability or lethal instigative content is discernible to even infer that the deceased Surjit Kaur and her daughters had been pushed to such a distressed state, physical or mental that they elected to liquidate themselves as if to seek a practical alleviation from their unbearable earthly miseries.”

From the legal principles referred above, it is clear that there must be a direct allegation against the accused about instigation or abetment to commit suicide and that they must be considered based on the sanctity of justice. But here, there is absolutely no allegation against the petitioner that he instigated or abetted to commit suicide as defined under Section 107 of IPC or drove him to commit suicide by his act or omission, except making an allegation that he is indirectly responsible for his eviction from the property. Such acts would not constitute an offence punishable

under Section 306 read with Section 107 IPC. While deciding a petition under Section 482 of Cr.P.C, the Court has to look into the allegations in the charge sheet and connected material also to find out whether these allegations on its face value, accepting in entirety would *prima facie* constitute an offence and the defence of accused cannot be taken into consideration.

This Court can exercise its inherent jurisdiction sparingly and in exceptional circumstances. The Apex Court in ***R.P. Kapur v. State of Punjab***¹⁶, this Court laid down the following principles:

- “(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

In the landmark case of ***State of Haryana v. Bhajan Lal***¹⁷ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- “(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*

¹⁶ AIR 1960 SC 866

¹⁷ 1992 Supp. (1) SCC 335

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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR 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 FIR 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.

Guideline No.1 of **Bhajan Lal** case is relevant to decide the present case and according to it, 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 and the Court can exercise inherent jurisdiction under Section 482 Cr.P.C.

In ***State of Karnataka v. L. Muniswamy and Ors.***¹⁸, the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

In view of the law declared by the Apex Court in the above judgments, this Court can exercise its inherent jurisdiction sparingly to give effect to the orders passed by this Court to prevent abuse of process of the Court and on the cumulative effect of the law declared in all the judgments referred supra, if the allegations made in the complaint on its face value accepting in their entirety would not constitute a prima facie offence against the petitioner, the Court can quash the proceedings. Even otherwise, at this stage, the Court has to consider the allegations made in the complaint and other material alone, if the complaint and the suicide note are considered, keeping in mind the principles laid down in the judgments referred supra, I find absolutely no ground

¹⁸ AIR 1977 SC 1489

existing on record to proceed against the petitioner for the offences punishable under Section 306 read with Section 107 IPC.

Hence, by exercising inherent power under Section 482 Cr.P.C conferred by this Court, the proceedings are liable to be quashed.

In the result, the criminal petition is allowed by quashing the proceedings in Crime No.231 of 2016 on the file of Charminar Police Station

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand closed. No costs.

23.12.2016

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JUSTICE M. SATYANARAYANA MURTHY

