

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.20516 of 2012 (O&M)

Date of decision: 23rd July, 2016

Monika and others

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.S. Cheema, Senior Advocate with
Ms. Tanu Bedi, Advocate
for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

Mr. Anurag Arora, Advocate
for the complainant.

FATEH DEEP SINGH, J.

This petition, a consolidated one, by way of revision as well as under Section 482 of the Code of Criminal Procedure (in short, 'the Code') by the accused/petitioners Monika, Madan Lal, Usha Bansal, Ashok Kumar, Nitish Kumar and Pawan Kumar is directed against an order dated 10.03.2012 passed by the trial Court of learned Additional Sessions Judge, Sirsa framing charges against the petitioners under Section 306 IPC read with Section 34 IPC against petitioners No.1 to 5 and Section 216 IPC against petitioner No.6.

The brief contentions of the petitioners' counsel are that neither the trial Court has given reasons for such framing of charges nor there was ample evidence on the records to show prima-facie commission of such offences necessitating framing of the charges and has sought to highlight that there is no element of abetment to suicide elicited from the evidence even if loosely construed.

After hearing at length Mr. R.S. Cheema, Senior Advocate assisted by Ms. Tanu Bedi, Advocate representing the accused/petitioners; Mr. Munish Sharma, Assistant Advocate General, Haryana on behalf of the respondent/State and Mr. Anurag Arora, Advocate for the complainant and on perusal of the records.

Before venturing into the relative contentions of the two sides, it is essential to reproduce factual past which has led to the present legal imbroglio. A marriage between petitioner No.1 Monika and deceased Deepak Goyal, son of the complainant Balwant Rai Goyal, took place on 29.11.2009. Admittedly, the deceased husband and so the petitioner wife were working as lecturers/teachers. It is during the course of their matrimony, a dispute had arisen between the couple which is well elicited in the FIR (Annexure P1) and it is as a sequel to this the husband has filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights on 20.05.2011 (Annexure P8). It is worthwhile to refer here that even from the side of the wife/petitioner

Monika, complaint has been moved against the family of her husband for demand of dowry as well as cruelty which is Annexure P12. It is by another quirk of fate that on 27.05.2011 Deepak Goyal had jumped into a canal and thus met his nemesis. His father made a statement (Annexure P2) to the police leading to registration of the present FIR (Annexure P1). The brief allegations contained therein besides the admitted facts were that his daughter-in-law was working as a guest-teacher in Girls Government School, Rania and used to commute daily to Sirsa and remained under her parental influence and her behaviour was never cordial with Deepak and the husband tried to prevail upon the wife to leave the job as he too was well-off and it is thereafter the father Madan Lal, mother Usha, brothers Ashok Kumar and Nitish Kumar, present petitioners No.2 to 5 had come to the house of the complainant and hurled abuses telling the family of the boy that they would not let their daughter leave the job and thereafter, took the wife along with them. One-and-a-half months thereafter, the couple again started living together in a separate dwelling unit. It is thereafter, the deceased told the complainant that brothers of his wife petitioners No.4 and 5 have again extended him threats demanding money and that petitioner No.2 was also with them and that in the month of March, Monika left Deepak and went to Rania. It is alleged that on 08.05.2011, parents as well as brothers of Monika came to the house of the complainant and assaulted

his wife Kanta Devi and gave beatings to the parents of the deceased as well as the deceased followed by another episode on 25.05.2011 whereby Madan Lal and his sons went to the shop of the complainant and threatened the complainant and the deceased that they will take away Deepak and get him implicated in a false case. Thereafter, the petitioners made a telephonic call to the complainant side telling them that they have lodged a case against them threatening that they will also implicate their elder son Yogesh Kumar and his wife Sushma Devi in the said case. It is thereafter on 27.05.2011, dead-body of the deceased was recovered by the police from the canal leading to registration of the present case.

It is subsequent thereto on the basis of supplementary statement dated 01.06.2011 the complainant handed over to the police a suicide note (Annexure P4) written by the deceased. The same is reproduced below to lay emphasis:

“I Deepak Goyal was married to Monika Goyal d/o Sh.Madan Lal Bansal, resident of Rania on 29th November, 2009. She is a very bad girl and her moral character is also not good. The said girl has made me and my family shed tears of blood. Now, she and her family members are jointly implicating us in a false case. Now, I feel very much harassed at their hand. Now, I am going to commit suicide for which

my wife Monika, her brothers (both) mother and father are responsible.

*Sd/- Deepak Goyal,
(In English)
27.05.2011”*

As has been argued from the petitioners side, Section 227 of the Code holds out that if upon consideration of the records of the case including documents and on the basis of the submissions of the accused as well as prosecution, the Court considers that there is no sufficient ground for proceeding against the accused, it may discharge the accused and record the reasons for doing so; and it has been well entrenched law that the Court ought to give reasons for framing of the charges. A bare perusal of the impugned orders dated 10.03.2012 shows that in this tersely worded order the only reasons spelled out in para No.5 of the order which is reproduced as below shows that only on the basis of prima-facie case, the Court has come to this conclusion thus, in utter violation of the requirements of these statutory provisions.

“5. Considering the evidence placed on record, prima facie case under Sections 306 read with Section 34 of IPC is made out against accused persons namely, Monika, Madan Lal, Usha Bansal, Ashok Kumar and Nitish Kumar and prima facie case u/s 216 IPC is made out against accused Pawan Kumar. Let the accused be charge-sheeted accordingly in terms of aforesaid order.”

No doubt, the Hon'ble Supreme Court of India while interpreting these statutory provisions in the case of '**State of Bihar v. Ramesh Singh**' AIR 1977 SC 2018 followed by another view of the Hon'ble Apex Court in '**Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others**' 1991(1) RCR(Criminal) 89 has enunciated the principle of prima-facie case but certainly that does not suffice to hold that there has been due application of mind by the Court below. How and in what manner has led the Court to hold out that there was prima-facie case and by what means and manner this test of prima-facie case was applied to the case in hand?

Learned State counsel assisted by Mr. Anurag Arora, Advocate representing the complainant could not controvert this contention that has been raised on behalf of the petitioners who have sought to place reliance on AIR 1972 SC 545 '**Century Spinning & Mfg. Co. Ltd. v. State of Maharashtra**'; AIR 1979 SC 366 '**Union of India v. Prafulla Kumar Samal**'; AIR 1990 SC 1962 '**Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja**'; AIR 1998 SC 3258 '**Suresh B. Kalani v. State of Maharashtra**'; (2002) 2 SCC 135 '**Dilawar Balu Kurane v. State of Maharashtra**' and (2008) 2 SCC 261 '**Onkar Nath Mishra & others v. State (NCT) Delhi**'. From these ratios, it permeates that at the stage of framing of the charge, the Court is required to confine its attention to only that material collected

during the investigations which could be legally termed to be evidence and therefore, Courts need to hold out any such material which does not come within the ambit of evidence collected during the investigations. The Court below ought to have evaluated the material and the documents that were gathered during the investigations and placed on the records including statement under Section 173 of the Code with a view to find out if the evidence emerging from the same on the very face value does disclose the existence of all the **ingredients constituting the alleged offence**; and therefore, a caution has been laid down by different ratios that at this stage the Court is not supposed to delve deep into the probative value of the material that is available on the records. Thus, to the mind of this Court in that aspect the learned trial Court has certainly faltered on that score. In the light of the same, not much can be gained by the respondents out of the cited ratio (2010) 9 SCC 368 '**Sajjan Kumar v. Central Bureau of Investigation**'.

In consonance with the vehement submissions of the two sides to ameliorate the lots of their respective sides, the very wording of Section 306 IPC bears out that it deals with an occurrence where a person commits suicide and the person who abets the commission of such a suicide is engulfed within the ambit of this offence. It is not in any manner disputed either by the learned counsel representing the State/complainant or on behalf of the petitioners that Deepak Goyal, the

husband, has died as a consequence of drowning on 27.05.2011 after he has jumped into the canal and therefore establishes that the death was on account of drowning and was a suicidal one. The second most essential ingredient to attract this offence is of abetment which reflects the very intention of the accused to aid or instigate the deceased to have committed suicide and which is a mandatory prerequisite to complete the offence.

Section 107 of the IPC deals with the offence of abetment. A plain reading shows that an act of abetment is an act of instigation which is done intentionally by illegal means, may be an act or an omission and Explanation 2 to this Section shows and is reproduced as below:

“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 facilitate the commission thereof, is said to aid the doing of that act.”

From this, it is clear that whoever either prior to or at the time of commission of such an act, does anything in order to facilitate the commission of that act, is supposed to aid the doing of that act.

If one goes through the very statement of the complainant who happens to be the father of the deceased and which forms the FIR, it only shows that there was a matrimonial dispute between the couple which has engulfed the families of the two as well and the instance dated

08.05.2011 quoted therein is only that one of the accused Usha, mother of the girl, had pushed Kanta Devi, mother of the boy, who fell on the ground and thereafter Madan Lal and his two sons had given beatings to the complainant and his son; and the second incident which pertains to 25.05.2011 only shows that accused Madan Lal and both of his sons went to the shop of the complainant and threatened the complainant and his son that they will implicate them in a false case and after quarrelling went back. After a few days, as per these allegations, they received a telephonic call from Madan Lal who had informed them that he had named five of their family members in a case got registered by him. The most essential to highlight here, the complainant has further illustrated in his statement that because of this threat his son Deepak Goyal had got frightened and having been harassed by his wife and his in-laws family had left the house on the fateful day leading to commission of suicide. Thus, the sole question that needs to be adjudicated is if such an act attributed to the accused/petitioners tantamounts to abetment and thus the offence is covered under Section 306 IPC? needs to be gone into.

Learned counsel for the petitioners has placed reliance on various pronouncements of the Hon'ble Supreme Court in **(2010) 12 SCC 190 'S.S. Chhena v. Vijay Kumar Mahajan & another'**; **(2010) 8 SCC 628 'Madan Mohan Singh v. State of Gujarat & another'**; **JT 2002 Suppl (1) SC 248 'Sanju @ Sanjay Singh Sengar v. State of MP'**; **(2010) 1 SCC 750 'Gangula Mohan Reddy v. State of Andhra**

Pradesh’; (1989) 1 SCC 244 ‘Wazir Chand & another v. State of Haryana’; 1995(3) Supp (3) SCC 438 ‘Swami Prahaladdas v. State of M.P. & another’; CRR 40 of 2011 ‘Ms. Lovina Pankaj Bhatia v. CBI (Bombay High Court)’; 2010(1) SCC 707 ‘Amalendu Pal @ Jhantu’; and (2001) 9 SCC 618 ‘Ramesh Kumar v. State of Chhattisgarh’ and all that trickles down is that abetment involves a mental process of instigating a person or intentionally aiding a person in committing of a thing. It was held by their Lordships that without a positive act on the part of the accused to instigate or aid in committing suicide, attraction of offence under Section 306 IPC does not materialize. To the mind of this Court, whatever has come up apparently, nothing meets the eye to show any sort of involvement on the part of the petitioners. The most important document is the suicide note which only shows that the deceased has expressed that his wife was a very bad girl and her moral character was not good and she has made their family shed tears of blood and that they were implicating them jointly in a false case and he feels very harassed at their hands and thus was going to commit suicide; from which, it is clear that it was as a consequence of a criminal case lodged by the girl’s side, the deceased felt that he was being harassed and thus committed suicide. From this all, it is clear that it was on the basis of the criminal prosecution, the deceased had committed suicide, which is reflective of the sensitivity of the deceased and shows that merely out of the fright he has jumped into

the canal and thus committed suicide. There is no element of mens-rea attributable to the accused reflective either in this dying-declaration or the statement of the complainant.

Learned State counsel could not convince this Court how or in what manner there is active act, direct or otherwise, attributable to the accused forcing the deceased to commit suicide. What act of the accused intended to push the deceased to commit suicide, is nowhere borne out of the evidence so collected in the investigations.

What one can conclude and postulate is that the deceased was a hypersensitive and on account of discord and differences with the wife and on account of this matrimonial turmoil has led to his taking such a drastic step and therefore, is what could be termed as hypersensitivity to such episodes whereby the wife had taken legal recourse against her in-laws and husband, and therefore she and her family cannot be attributed any mens-rea to push the deceased towards such a doing. Thus, even taking the entire evidence on the records to be a gospel truth, without putting it to the check of veracity and legality, cannot be even loosely termed to be falling within the compass of this crime. Even the offence attributable to petitioner No.6 as regards allegations of harboring his co-accused, does not crystallize by any means as nothing tangible is there by way of evidence to that effect.

Thus, from this all evidently and by applying the 'Doctrine of abuse of process of Court', as has been laid down in a catena of case

law including '**Chandran Ratnaswami v. K.C. Palaniswamy & others**' (2013) 6 SCC 740, this Court exercising its inherent powers under Section 482 Cr.P.C., holds that this proceeding at the behest of complainant is not only to counter the prosecution earlier launched by his daughter-in-law against him and his family but also as a weapon of harassment, persecution and thus, the ends of justice require this prosecution to be quashed as it is manifestly impregnated with malice, vengeance an outcome of grudge.

Thus, in the totality of what has been detailed and discussed above, none of the essential ingredients of any of the offences, for which the challan against the accused has been submitted, is made out. The impugned order dated 10.03.2012 ordering framing of charges against the accused/petitioners by the Court below and continuation of trial against the petitioners is certainly highly uncalled for, illegal in its outcome and perverse in its approach, necessitating intervention by this Court by way of acceptance of the present petition whereby the impugned order is set aside. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

July 23, 2016

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Whether to be referred to the Reporters or not?