

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M 24479 of 2014 (O&M)

Date of decision: 01.03.2016

A.K.Janmeja

.....Petitioner

versus

State of Punjab and others

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Dr.Anmol Rattan Sidhu, Senior Advocate with
Mr.Pratham Sethi, Advocate for the petitioner
Mr.Ashish Sanghi, DAG Punjab
Mr.Vikram Chaudhri, Senior Advocate with
Mr.Sartaj Singh Gill, Advocate for respondent no.2

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?* **yes**
2. *To be referred to the Reporters or not ?* **yes**
3. *Whether the judgment should be reported in the Digest?* **yes**

Kuldip Singh, J.

The petitioner seeks quashing of complaint vide case No.105/2009/2012/2013 instituted on 12.9.2008/26.11.2012/1.7.2013 (Annexure P8) as well as the summoning order dated 9.7.2002 (Annexure P9) and the FIR No.143 dated 8.7.2008 under Section 306 IPC registered at Police Station B Division, District Amritsar along with all consequential proceedings.

An FIR (Annexure P1) was registered at police station B Division Amritsar under Section 306 IPC on the complaint of Milap Singh, resident of 417-A, New Pratap Nagar, Amritsar. It comes out

that Manjot Singh was admitted in Government Medical College & Hospital, Sector 32, Chandigarh on the basis of merit, as he had got 36th rank in the All India CBSE Pre-Medical and Dental Tests. On 1.8.2007 Milap Singh along with brother-in-law left Manjot Singh in the College. He was provided Room No.319 in Nursing Hostel No.2. Next day i.e. on 2.8.2007 at about 8.00 pm, Manjot Singh made a phone call to his mother and told her that there is something wrong. He is not feeling good and he wants to come back home. The mother advised Manjot Singh that as it is late night now so he should come tomorrow after attending the class. On next day, Manjot Singh came back to his house at Amritsar at about 2.00 p.m. He was very worried and while laying on bed, he started weeping. When he was asked for the reason, he continued weeping. On the next day, Milap Singh motivated his son Manjot Singh and then Manjot Singh told him that there is lot of trouble. He narrated the sequence of events of the two nights spent by him in nursing hostel. He disclosed to his father that when he was left in the hostel, then at night he went to the mess of the hostel of boys for having dinner and when he was coming back after having dinner, his seniors encircled him and took him in a room, harassed him a lot and gave filthy abuses to him. They allowed him to go back in his room at 11.00 p.m. On the next day i.e. Thursday night, when he was coming back after taking meal from the mess, the said boys again encircled him and harassed him a lot till 2.00 A.M. They were about 10-12 boys, out of which mostly were smoking and two were consuming liquor. He disclosed names of two boys as Thakur and Nikhil but others were not known to him

being a fresher. They were also watching adult movie and compelled him to smoke. When he refused to smoke then they forcibly put cigarette and were giving filthy abuses in the names of mother and sister and compelling him to do everything and had threatened him that if he want to live there, he has to obey their orders and left him at 2.00 A.M. He was asked to come at 7.00 a.m. to polish their shoes and thereafter go to the class. Manjot Singh further disclosed his father that rather than doing all this, he would like to die. All the family members convinced him that they will go on Monday and narrate the whole incident to Principal and Warden and will also talk to the boys to which Manjot Singh replied that he had already brought the matter to the notice of the Principal and Warden on the first day but on the next day he misbehaved with him a lot. Then on the next day i.e. Sunday at 7.00 p.m. when Milap Singh had gone to the market for purchasing some articles and came back at 9.00 p.m., he found Manjot Singh dead. One Amit son of Gurbachan Singh also disclosed to Milap Singh that Manjot Singh had met him on Saturday and told him regarding the harassment by senior boys Nikhil and Thakur and 10-12 persons of the hostel. Accordingly, dead body of Manjot Singh was cremated. On the basis of the same, FIR No.143 dated 8.7.2007 under Section 306 IPC was registered.

It comes out that Milap Singh made a complaint to the Human Right Commission, Punjab, whereupon, case was registered. The Amritsar police sent a report to the Senior Superintendent of Police, Chandigarh. The Senior Superintendent of Police, Chandigarh vide communication dated 12.8.2008 sent the inquiry

report stating that the deceased was not harassed or ragged by the senior students of the Government Medical College & Hospital, Sector 32, Chandigarh and that he had committed suicide in his house at Amritsar. Therefore, the Amritsar police registered an FIR. It also comes out that the police, after investigation, submitted the cancellation report (EX.P9), in which, Milap Singh, complainant filed a protest petition. Vide order dated 7.7.2010, the Court rejected the cancellation report and the evidence of the complainant was called for. After recording the evidence of the complainant and going through the statements of the witnesses recorded under Section 161 Cr.P.C., the learned Judicial Magistrate 1st Class, Amritsar vide impugned order dated 9.7.2012 (Annexure P9) summoned Nikhil Garg, Vishal Garg, Thakur, Principal H.M. Swami and Warden Dr.Janmanja of Government Medical College, Sector 32, Chandigarh under Section 306 read with Section 34 IPC. The Principal and Warden were summoned on the ground that it was the duty of the Warden to check the ragging.

I have heard learned counsel for the parties and have also gone through the file carefully.

Section 306 IPC provides 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.”

The abetment is defined in Section 107 IPC, which is reproduced as under:-

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.”

It goes to show that there are three ways of abetment. One is instigating to do a thing, secondly by engaging in conspiracy and thirdly, intentionally aiding, by way of act or illegal omission, the doing of that thing.

Regarding Dr.Janmeja petitioner, the allegations are that when the deceased Manjot Singh was ragged, he brought the matter to the notice of the Principal and Warden on the first day but on the next day, he misbehaved with him. The FIR does not disclose that the deceased has disclosed the name of the said Warden also to the petitioner, though in the complaint, name of Dr.Janmeja is mentioned. First of all, it is to be seen whether Dr.Janmeja was the Warden, controlling the administration of Nursing Hostel No.2, where Manjot Singh deceased stayed for two nights i.e. 1.8.2007 and 2.8.2007. He

probably, left for Amritsar on 3.8.2007 early in the morning as he reached Amritsar around 2.00 p.m. The copy of the order dated 22.9.2005 (Annexure P11) shows that Professor A.K.Janmeja, Head. Department of Respiratory Diseases & Tuberculosis, GMCH, Chandigarh was appointed as Chief Warden of the Hostels in addition to his own duties. Further order 31.7.2007 (Anneuxre P12) shows that Professor A.K. Janmeja was allowed to attend the Zonal Task Force Workshop to be held on 3-4 August 2007 at Lucknow to represent Chandigarh. Therefore, the period of his absence i.e. 2.8.2007 to 5.8.2007 shall be treated as duty period. Further certificate Annexure P13 shows that Professor A.K.Janmeja had attended the said 5th Zonal Task Force Workshop (North Zone) India at Lucknow on 3rd and 4th August 2007. Further, Minutes of the Meeting (Annexure P14) shows that Dr.Dasari Harish is in fact the Warden of doctors hostel and Nursing Hostel No.2, Government Medical College & Hospital, Sector 32, Chandigarh. A copy of the information supplied under RTI shows that Dr.Dasari Harish was the Warden of the Nursing Hostel No.2. There are other hostels also. Names of the Wardens of each hostel is mentioned. Dr.Dasari Harish was also Warden of Males doctors Hostel, whereas Professor A.K.Janmeja was Chief Warden of all Hostels. So, it goes to show that Professor A.K.Janmeja was over all incharge of six hostels in Government Medical College & Hospital, Sector 32, Chandigarh. The record above also shows that Dr.Janmeja remained out of Chandigarh to attend the workshop at Lucknow from 2.8.2007 to 5.8.2007. The deceased Manjot Singh had come to the hostel on

1.8.2007 and the first incident of ragging took place on 1.8.2007 night. The allegations are that the complaint was made to the Principal and the Warden but they did not take any step to stop the ragging. In this way, at the first instance, Dr.A.K.Janmeja was not the Warden and was not the immediate incharge of the Nursing Hostel No.2. According to the allegations leveled in the FIR, the complaint was made by the Manjot Singh deceased on the next day i.e. 2.8.2007 when Dr.A.K.Janmeja had already left to attend Workshop at Lucknow and he came back on 4.8.2007 when the occurrence had already taken place. Therefore, it cannot be said that Dr.A.K.Janmeja in any way failed to prevent the ragging, as alleged by the complainant.

Assuming for the sake of the arguments that Dr.A.K.Janmeja was present on the day when the ragging was done on 1.8.2007 and 2.8.2007 night and a complaint was made on 2.8.2007 to Dr.A.K.Janmeja, the question would arise whether failure to prevent the ragging on the following day amounts to abetment to suicide? I am of the view that if the definition of the abetment is examined, it comes out that failure to prevent the ragging neither amounts to instigation to commit the offence nor it amounts to entering into conspiracy nor it can be said to be intentionally aiding. The omission to exercise the effective control over the seniors in the hostel to prevent the incident of ragging cannot be stretched to make it an offence of abetment of suicide. The petitioner could have been made liable if he had created such a condition which resulted in suicide of Manjot Singh. Here the ragging was done by some of the

seniors of the deceased and only allegations against the petitioner are that despite the complaint, he failed to prevent the ragging. It being so, I am of the considered view that the offence of abetment of suicide by Manjot Singh is not made qua the present petitioner Dr.A.K.Janmeja. Consequently, proceedings qua the petitioner including the summoning order is nothing but misuse of the process of Court.

Learned counsel for the respondent-complainant has relied upon the authority of Mohit alias Sonu and another v. State of U.P. and another, 2013(3) RCR (Criminal) 673 and it is pressed that this Court should not interfere in the summoning order and should leave the petitioner to avail remedy of revision before the Sessions Court. I am of the view that ordinarily this Court relegate the party to Sessions Court to avail the remedy of revision against the summing order. However, even then there can be some exceptional cases where this Court should step in under Section 482 Cr.P.C. to quash the proceedings, where from facts and circumstances it comes to the conclusion that apparently it is nothing but misuse of the process of Court. In the present case, the cancellation report was filed by the police after investigation, which has been rejected by the lower Court and on the protest petition, summoning order has been passed. In the FIR, the allegations were against the Warden, whereas it is found that one Dr.Dasari Harish was the Warden and the present petitioner was only Chief Warden. Further, it comes out that he was out of Chandigarh from 2.8.2007 to 5.8.2007 to attend Workshop at Lucknow. Therefore, if something happens in his absence, he cannot

be tried for abetment of suicide for one of inmates of the hostels on account of ragging done by his seniors.

In these circumstances, the petition is allowed, the impugned complaint case No.105/2009/2012/2013 instituted on 12.9.2008/ 26.11.2012/ 1.7.2013 (Annexure P8), as well as the summoning order dated 9.7.2002 (Annexure P9) and the FIR No.143 dated 8.7.2008 under Section 306 IPC registered at Police Station B Division, District Amritsar along with all consequential proceedings stands quashed qua the present petitioner.

01.03.2016*gk***(Kuldip Singh)
Judge**