

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.1919 of 2014 (O&M)****Date of Decision: March 16, 2016**

Mahesh Kumar

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGHPresent: Mr.Preetinder S. Ahluwalia, Advocate
for the petitioner.Mr.P.S.Grewal, Deputy Advocate General, Punjab
for the respondent-State.Mr.Ram Bilas Gupta, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Mahesh Kumar against State of Punjab and Sunita Devi, challenging the impugned order dated 16.04.2014 passed by learned Addl. Sessions Judge, Patiala, whereby charge under Section 306 IPC was framed against the petitioner.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The copy of the FIR has been annexed as Annexure P-4.

The FIR has been registered on the statement of Sunita Devi, who

mainly stated that her son Sunil Kumar aged about 14 years, was working with Mahesh Kumar on his shop from the last 5 months on payment of ₹2,500/- per month. After five months, she asked her son to say Lalaji (Mahesh Kumar) to raise salary to ₹3,000/-. Lalaji said that he cannot pay ₹3,000/- as salary. Then Sunil Kumar said that he will not work with Lalaji. Lalaji told Sunil Kumar that if he has decided not to work, then he will pay ₹3,000/-. It is also in the FIR that complainant's son told the complainant that after one month when he demanded salary, then Lalaji said that he will pay two months' salary at one time. When her son demanded salary from Lalaji, then he started quarreling and Lalaji said that he will pay salary on 31.03.2010. On 31.03.2010, Micky son of Lalaji came for calling the complainant and said that there is pain in abdomen of her son and he has to be taken to the hospital. Then the complainant came at the shop and when she entered inside, she saw that her son was lying on earth near stairs and found that there were marks of rope on his neck and he had already expired. It is further in the FIR that death of her son has taken place due to non-payment of salary and harassment given by Lala Mahesh Kumar. The complainant further stated that on 01.04.2010, she had not got recorded her statement because her other relatives were not there and on 02.04.2010, she had got recorded her statement in the presence of her husband Raju Mandal.

At the time of arguments, learned counsel for the petitioner firstly argued that there is no harassment by the accused-petitioner of any type nor there is any abetment by the accused to the deceased to

commit suicide. He next argued that even if facts of the FIR are taken as it is, even then, no abetment to commit suicide is made out from the averments.

On the other hand learned counsel for respondent No.2 argued that it is rather a case of murder and application of respondent No.2 for framing the charge under Section 302 IPC has already been dismissed by the trial Court.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, I find that at the time of framing of charge, the Court is to see whether any prima facie case is made out from the documents and statements relied upon by the prosecution or not. Even if the averments of the FIR are taken as it is, no abetment by the accused-petitioner to commit suicide is made out. As per the FIR, Sunil Kumar was working with the accused (Lalaji) at the salary of ₹2,500/- per month. When Sunil Kumar asked to enhance the salary, even as per the FIR, the salary was enhanced when Sunil Kumar threatened to leave the job. Therefore, there is no abetment even on this ground that the salary was not enhanced. Second point is that aforesaid Sunil Kumar asked for the enhanced salary after one month and when the salary was demanded, at that time, accused started quarreling and stated that he will pay the salary on 31.03.2010. There is nothing in the FIR to show that any quarrel took place on 31.03.2010. On 31.03.2010, Sunil Kumar committed suicide. There is nothing in the FIR that the petitioner has constantly harassed or given beatings or did anything to

Sunil Kumar. Rather, from the FIR, it looks that petitioner has enhanced the salary and did not want that deceased should leave the job.

The perusal of the FIR itself shows that there is nothing in the FIR to show any harassment by the accused-petitioner to the deceased. Even, there is nothing that accused-petitioner has refused to pay the salary to the deceased. No injuries were given to the deceased. From the perusal of the record, I find that no abetment to commit suicide is made out.

From the reply filed by the State, I find that even the cancellation report was submitted by the police but respondent No.2 approached this Court by filing CRM No.M-9959 of 2012 and prayed for transfer of investigation. This Court passed the order dated 14.01.2013 and directed the State to depute some senior police officer of IPS rank to conduct the further investigation. The SSP conducted further investigation and arrived at the conclusion that cancellation report is not in order and challan under Section 306 IPC is required to be presented.

Therefore, from the reply also, it is clear that earlier the cancellation report was filed but later on when further investigation was directed to be conducted by this Court from senior police official, then challan was presented but as already discussed, there is no averment in the FIR itself showing any abetment by the accused to the deceased. Therefore, no offence under Section 306 IPC is made out. There is also nothing on the record to show any immediate

abetment to the deceased by the accused-petitioner before the occurrence to commit suicide. The mere fact that petitioner stated to the deceased that he will pay the salary on specific date, will not amount to abetment to commit suicide.

Learned counsel for the petitioner has cited judgment passed by the Hon'ble Supreme Court in ***Madan Mohan Singh vs. State of Gujarat and another, 2011 AIR (SC) (Cri) 806***, in which the deceased who was working as driver, committed suicide and left a suicide note running into 15 pages stating the accused who is his boss, angry with and insulted him a number of times before the staff and he felt depressed and was committing suicide and it is held that accused is not guilty of abetment of suicide. It is also held that it should be seen whether the accused intended or engineered the suicide by his acts and words. It is further held by the Hon'ble Supreme Court that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC. Learned counsel for the petitioner also cited judgment passed by the Hon'ble Supreme Court in ***Netai Dutta vs. State of West Bengal, 2005 AIR (SC) 1775***, in which suicide was committed by a worker of company and suicide note by deceased stated that accused engaged him in several wrong doings and suicide note showed that deceased was dissatisfied with working conditions and it is held that in the suicide note, there is no reference which showed that accused

committed any willful act or omission or intentionally aided or instigated the deceased in committing suicide and proceedings were quashed.

Learned counsel for the petition also relied judgment passed in ***S.S.Chheena vs. Vijay Kumar Mahajan and another, 2010(4) RCR (Criminal) 66***, in which it is held that conviction merely on the basis of allegation of harassment of deceased is unsustainable in law. It is further held that without a positive act on the part of accused to instigate or aid in committing suicide, conviction cannot be sustained and the act of accused must have been intended to push the deceased into such a position that he committed suicide.

I have gone through all the above-cited judgments and the same fully apply to the facts of the present case.

As regarding the argument of learned counsel for respondent No.2 that offence under Section 302 IPC is made out, I find that the application of respondent No.2 for framing the charge under Section 302 IPC has already been dismissed by the trial Court and no revision has been filed against that order and that order has already become final and that order is also not in challenge before this Court. Therefore, this Court need not to give any finding qua that.

As no prima facie case is made out, therefore, the order dated 16.04.2014 passed by learned Addl. Sessions Judge, Patiala is set aside and the accused-petitioner is discharged of the charges framed against him.

March 16, 2016

Vgulati

**(INDERJIT SINGH)
JUDGE**