

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 169 of 2017

Chandrika Prasad Tiwari S/o Late Devidin Tiwari Aged About 72
Years R/o Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through Police Station Marwahi

---- Respondent

For petitioner - Shri Anand Mohan Tiwari, Advocate.
For State -Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/05/2017

1. The challenge in this petition is to the charges framed under Section 306 of IPC and the order dated 15/12/2016 whereby an application to discharge the petitioner was dismissed.

2. Brief facts of this case are that on 10/08/2015 one Madan Gopal Singh S/o Tulaman Singh committed suicide by hanging. It is alleged that he was Centre In-charge of Aadim Jati Seva Sahkari Samiti, Marwahi wherein in execution of the policy of the State Rs.19 lakhs was found to be shortage in paddy procurement and the entire allegation was on the deceased. As per the prosecution, the deceased Madan Gopal Singh was pressurized and further threat was extended by the other members of the Aadim Jati Seva Sahkari Samiti, Marwahi that he should admit the guilt as such he was instigated with all intention which resulted into abetment to commit suicide by all the members of the Samiti. The petitioner was one of them. FIR having been registered on the basis of the suicidal note wherein

the entire cause was attributed to the present petitioner and others, charge sheet was filed.

3. Shri Anand Mohan Tiwari, learned counsel appearing on behalf of the petitioner would submit that taking the case of the prosecution as it is, charges would not be made out under Section 306 of IPC and it would be completely irrelevant to connect death of Madan Gopal Singh who was Centre In-charge with present petitioner that he was one of abettor. He went through the suicidal note and would submit that infact the charges of misappropriation of amount was on deceased. Consequently, if deceased thereafter committed suicide abetment cannot be attributed to the present petitioner. He placed his reliance in case of **Rakesh Vaishnav Vs. State of M.P.** reported in **2004 (1)C.G.L.J. 324** and case of **Jhaggar @ Ramnaresh Vs. State of Chhattisgarh** bearing Criminal Revision No.199 of 2014 decided on 11/09/2014. He submits that the petitioner may be discharged from the offence.

4. Perused the documents filed alongwith the petition. It is not in dispute that one Madan Gopal Singh committed suicide by hanging on 10/08/2015. This is also not in dispute that he was working as Centre In-charge of Paddy Procurement Centre, Marwahi. After the suicide, on 11/08/2015 on the basis of suicidal note the son of deceased Balendra Singh initially made a report wherein allegations were made that his father was working as In-charge of Marwahi and the paddy procurement was being done with the help of the Branch Manager and other employees and the entire account were maintained by them. It states that the allegation was attributed of misappropriation of Rs.19 lakhs and report purports that for last three months father of the complainant Balendra Singh was being cornered to make payment of the entire amount though they were also liable. Thereby he was mentally upset. Allegation also made that the

employees of the Cooperative Society also used to come to their house and he was falsely implicated in such misappropriation, though it was actually misappropriated by them.

5. The suicidal note which is part of this petition which was written by the deceased would show that procurement of paddy was being done by all the members of the society and manager also played the active role and it was not possible to procure the paddy single handed and instead when shortage was found entire allegations were passed over to the deceased who was Centre In-charge. It is further alleged that subsequently the Board of Director of the Society forcefully got confession from the deceased that he is only liable for the entire shortage. The suicidal note shows that by exerting force on the deceased such confession was recorded. Now turning to the statement of Balika Singh wife of the deceased. She has stated that her husband has stated that he never want to become Centre In-Charge but threat was extended that if he do not accept the position of Centre In-charge he would be removed from the services and in case he takes the charge they would support. Subsequently, when shortage of paddy was found and was calculated to Rs. 20 lakhs her husband was pressurized to make good the entire loss and after selling part of land Rs.6 lakhs was desposited. Subsequently after depositing the accused had further pressurized that entire amount has to be paid by the deceased or otherwise he would be sent to jail and he will not get bail also. She further stated that before the incident on 8/08/2015 the present petitioner and others also further pressurized the deceased to take charge of ration shop and extended threat that if he do not take charge of ration shop he would be removed from the services. Subsequently, for this incident deceased was in immense pressure. The statement of the son Balendra Singh shows that his father had told that

he was humiliated in the office and was asked to deposit Rs.20 lakhs and threat was extended that if he do not pay the same, he would be sent to jail.

6. In a case law reported in **(2012) 9 SCC 734** in between **Praveen Pradhan Vs. State of Uttaranchal & Anr.** instigation and abetment has been defined which reads as under:-

“15. In **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605** this Court while dealing with the term “instigation” held: (SCC p.611, paras 16-17)

“16.....instigation is to goad, urge forward, provoke, incite or encourage to do 'an act.' To satisfy the requirement of 'instigation', though it is not necessary that actual words must be used to that effect or what constitutes 'instigation' must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17.Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is a thing that stimulates someone into action; provoke to action or reaction;..... to keep irritating or annoying somebody until he reacts.....”

7. Further it was held that the offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. Therefore, as has been held the instigation has to be gathered from the circumstances of a particular case and no straitjacket formula can be laid down to find out as to whether in a particular case there has been

instigation which forced 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 a given set of circumstances, 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. Therefore, case is required to be considered in the light of the said preposition.

8. In the instant case, reading the suicidal note, statement of the wife Balika Singh and son Balendra Singh jointly if are considered together it would go to show that prima facie abatement is attributed to the accused which is still to be affirmed during course of trial. Further as has been laid down in case of **State of Rajasthan Vs. Fatehkaran Mehdu** reported in **AIR 2017 SC 796** that at the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

9. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the petitioner cannot be accepted as gospel truth. The same has to be decided on the floor of the court during evidence while they are tested by virtue of examination and cross examination.

10. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the revision petition is dismissed. However it is observed that the trial court during the trial shall not be influenced by any observation made in this

order and shall decide the case on it's merits after evidence.

Sd/-

(Goutam Bhaduri)

JUDGE

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