

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 593 of 2017**

Yanesh @ Yogesh Kumar Sahu S/o Shri Chandrahas Sahu, Aged
About 32 Years R/o Village & Post Palari, Tahsil & Police Station
Gurur, District Balod, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through The Police Station Gurur, District
Balod, Chhattisgarh.

---- Respondent

For petitioner - Smt. Hamida Siddiqui, Advocate.
For State -Smt. M. Asha, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/06/2017

1. Heard.
2. This instant petition is against the order dated 3/06/2017 whereby an application to discharge the petitioner under Section 306 of IPC was dismissed.
3. The brief facts of this case are that one Bharti Sahu wife of the petitioner committed suicide. It is alleged by the prosecution that present petitioner has abetted the deceased to commit suicide. The trial court after evaluating the primary statement dismissed an application refused to discharge the petitioner from the charges and as such being aggrieved there by the said order is under challenge before this court by way of instant petition.
4. Learned counsel for the petitioner would submit that deceased Bharti Sahu and the petitioner were married in the year 2013 and out of the wedlock a child was born. It is contended that the deceased herself

was suffering with sickle cell disease as also the child was also suffering with some heart ailment. Consequently, the deceased was in depression and she herself has taken this step and committed suicide for which the petitioner cannot be held liable. It is further contended that during investigation a suicidal note was also seized which has been affirmed by the prosecution that it was in hand writing of the deceased wherein deceased has stated that no one is responsible for commission of suicide. Consequently, only on imaginary facts the petitioner cannot be held liable to have caused abetment. It is further stated that the petitioner in facts of this case has not committed any offence of abetment, therefore the petitioner may be discharged.

5. Per contra, learned State counsel opposes the petition and would submit that it is for the trial court after evidence to adjudicate the fact that whether abetment was caused or not. Therefore, at this stage this cannot be conclusively stated that the petitioner has not abetted the crime.

6. Perused the case diary and the copy of charge sheet. The facts as would reveal that FIR was registered against the petitioner for an incident of suicide committed by wife of the petitioner namely Bharti Sahu on 15/02/2016 by hanging. The charge sheet contains the statement of relatives of the deceased namely Bhimsen Sahu father, Lokeshwari Sahu sister, mother Smt. Pushpa Sahu, Dharmendra Kumar Sahu the brother-in-law. In all such statement the witnesses have categorically stated that the petitioner was having illicit relation with a girl and for that reason the deceased who was wife was subjected to abuse and assault by the petitioner. Further it is also stated that the petitioner after consuming liquor used to torture mentally and physically to the deceased. Consequently, for those reasons she committed suicide. Father also stated that suicidal note which is alleged to have recovered was not made with free mind of the

deceased and refused to accept the same in turn had levelled allegation to the petitioner for cause of suicide committed.

7. Such statement if are examined in the light of law laid down in case of **(2012) 9 SCC 734** in between **Praveen Pradhan Vs. State of Uttaranchal & Anr.** wherein it has been 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. It is further been held that 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. Further in the case of **Praveen Pradhan Vs. State of Uttaranchal & Anr.** (supra) 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

certainly 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.....”

9. In the given set of facts, therefore if statement of relatives of the deceased are examined the statement which are on record as of now it would reveal that circumstances created by petitioner, who is husband forced to commit suicide by wife and allegations of mental and physical torture has been levelled against petitioner on different grounds. Therefore the abetment or instigation whether existed or not has to be further clarified during course of evidence. Statement as now exist point out circumstances were created by the petitioner to form a prima facie opinion.

10. The Supreme Court in a case law reported in ***AIR 2013 SC 52 – Shoraj Singh Ahlawat Vs. State of U.P*** has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

“240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an

offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

11. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in ***Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)***.

12. The Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as prima facie the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?

13. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of ***State of Rajasthan Vs. Fatehkaran Mehdu*** reported in ***AIR 2017 SC 796***. It is stated that framing of 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.

14. In view of such principles, I am of the opinion that no case is made out for interference in the order of framing of charge. Accordingly, the revision petition is dismissed. It is however clarified that this court has not expressed any opinion on merits of this case and the learned trial court shall not be influenced by any observation made by this court at this stage.

Sd/-

(Goutam Bhaduri)

JUDGE