

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 894 of 2017

Rajeev Kumar Gupta @ Raju, S/o. Ram Khilawan Prasad Sahu, Aged About 32 Years, R/o. Shanti Nagar Quarter, Street No. 5/ B, Supela, Bhilai, District Durg, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through the Station House Officer, Police Station- Chhavni, District Durg, Chhattisgarh.

---- Respondent

For Applicant : Mr. B.P.Singh, Advocate

For Respondent : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

19.09.2017

Heard

1. The present revision is against the framing of charge under Section 306 read with Section 34 of Indian Penal Code, as one K. Appa Rao committed suicide by hanging on 10.03.2017.
2. Learned counsel for the applicant would submit that undisputedly the deceased K. Appa Rao had obtained a loan of Rs.2 Lakhs from the present applicant Rajeev Kumar Gupta @ Raju and other amounts from the other co-accused. It is submitted that the deceased was not able to pay back the loan amount, as such, he was persuaded and pressurized, consequently he committed suicide. It is contended that neither there is any abetment under Section 107 or 109 of IPC nor any ingredients are present whereby the offence under Section 306 of IPC can be said to have been committed. He referred to the order dated 11.09.2014 passed in Criminal Revision No.136 & 199 of 2014 by the co-

ordinate Bench of this Court and would submit that under the similar circumstances, the offence cannot be said to have been committed and the present case is also covered by the same order. He further referred to a case reported in **(2011) 3 SCC 626** in between ***M. Mohan v. State Represented by the Deputy Superintendent of Police*** and would submit that no positive act can be attributed of abetment on instigation or aiding a person in doing of a thing; therefore, the abetment may be discharged from the offence under Section 306 of I.P.C.

3. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the applicant and he read out the statement of the son of the deceased K. Shyam Rao and other witnesses and would submit that under the circumstances at the time of framing the charges the merits cannot be gone into, the same can be established during the evidence only.
4. Perused the documents filed alongwith this petition as also the statement of K. Shyam Rao who is son of the deceased K. Appa Rao. Perusal of the statement would show that he stated that his father K. Appa Rao, the deceased, had taken a loan from the present applicant and other co-accused. He further stated that from the present applicant his father has obtained a loan of Rs.2 Lakhs at the time of marriage of his daughter and in lieu thereof per day the applicant used to recover Rs.2600/- and it was also entered into the diary. The diary appears to have been seized by the police. Narrating the incident, it is stated by son that on 07.03.2017 again the applicant came, at that time, this witness was also in his house, and asked for the payment from his father, when it was disclosed by the father that he could not arrange for

the money then it was stated that he will take the money today itself. Having said so, the witness stated that his father prayed with folded hands and also fell to the feet of the applicant and requested for time. Against that, the applicant stated that in any case he want the amount, thereafter, two persons i.e. neighbour Dhaneshwar Thakur & Beldar Thakur also came there and tried to console the applicant but the applicant did not hear. The witness further stated that father had stated that he could not arrange for the money and he has made his life miserable and if he makes further problem then he will die and then how he will get the amount. Against that, Raju said that he may die he is not concerned with it and he only concerned with the money and interest, otherwise threatened to follow dire consequences. The witness further stated that after Raju went back, his father became very sad and stated that Raju and other co-accused will not allow him to live therefore, it is better to die and after the incident his father was totally disturbed.

5. In facts & background of the case if it is examined in the principles laid down in **(2012) 9 SCC 734** in between ***Praveen Pradhan Vs. State of Uttarakhand & Anr.*** wherein 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 'goading' 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.....”

6. 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.

7. Applying the aforesaid test, if the statement of K. Shyam Rao is seen then what was the *mens rea* of the applicant qua the deceased cannot be adjudicated at this stage. In the statement of K. Shyam Rao direct allegations have been attributed on the applicant which can be adjudged after the evidence is adduced as to whether the applicant had created such situation wherein the deceased felt totally frustrated and committed suicide. Since specific statement has been made that even his father fell into the feet of the applicant and requested, the applicant did not here to it and further pressurised for payment despite the recovery of the interest of Rs.2600/- per day.
8. As has been held in ***State of Rajasthan v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***, it is stated 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 as against the statement of K. Shyam Rao, K. Suresh Rao & Daneshwar Thakur, at this stage, final finding of abetment cannot be arrived at, this can be decided at the end of the trial.
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.

Sd/-
(Goutam Bhaduri)
Judge