

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1197 of 2016

1. Chandraprakash S/o Shri Ramadhar Yadav Aged About 27 Years,
2. Suraj Yadav S/o Ramadhar Yadav Aged About 22 Years,
3. Karan Yadav S/o Late Shri Bhuwan Yadav Aged About 44 Years, All are R/o Ward No.13, Punjabipara Mahasamund, Police Station Mahasamund, Civil & Revenue District- Mahasamund, Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh Through The District Magistrate, Mahasamund, District Mahasamund, Chhattisgarh.

---- Respondents

For applicants-Shri Sunil Sahu, Advocate.
For respondent/State- Shri Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

01/08/2017

1. Heard.
2. Instant petition is against framing of charge under Section 306 of the IPC.
3. As per the case of the prosecution, one Dinesh Bhoi committed suicide by hanging on 22/02/2016. It is alleged that Dinesh Bhoi was working in petrol pump. There has been some dispute with the present applicants and the deceased was assaulted by them. Assault was made in public as such it was stated that deceased lost his self respect. Consequently, he committed suicide. Thereby the applicants have abetted the cause.
4. Learned counsel for the applicants would submit that initially after death merg was recorded on 23/02/2016 and during such merg inquest no allegations were attributed to the applicants. It is further stated that only on the statement of Laxmi Soni and Lokeshwari present applicants have been charged under Section 306 of IPC whereas there are no ingredients in this case which would attract Section 107 of IPC to cause abetment. He placed his reliance in case of **Arvind & Ors. Vs. State of C.G.** reported in **2014(2)**

C.G.L.J.414 and would submit that under the similar circumstances of the case this High Court has quashed the charges as no abetment was made out.

5. Per contra, learned State counsel opposes the argument and would submit that order is well merited which do not call for any interference.

6. Perused the original case file which contains the statement of the witnesses. The statement under Section 161 of Cr.P.C. which was recorded on 15/07/2016 of Anil Bhoi brother of the deceased would show that it was stated that on 22/02/2016 the deceased was subjected to assault by the present applicants. He suffered self condemnation, lost his self respect, in a result committed suicide. Case file also contains statement of Lokeshwari. She has stated that she received a call from the deceased on her mobile on 22/02/2016 and it was disclosed by the deceased that in open public he was assaulted by the applicants, therefore he has lost his self respect and will commit suicide in the night itself. Likewise, statement of Laxmi Soni is also on record wherein she stated that while Dinesh was sitting outside her shop and was tense and was talking in mobile, subsequently, when she asked him what is the reason why he is so disturbed, he stated that in the afternoon petrol pump Manager and his family members have assaulted him in public, therefore he is feeling guilty conscious and will commit suicide in the night, therefore witness stated that she made him console. Other statement of Ajay Kumar Bhoi also stated that deceased disclosed to him that for no reason he was subjected to assault for which report was made on the date itself. One Rahul Chandrakar who is owner of the petrol pump also stated that deceased was subjected to assault and as such lost self respect and he committed suicide. All the statements they were recorded in between 15/07/2016 and subsequently thereafter discloses the reasoning behind the cause of death. Witnesses have stated that deceased himself has disclosed the fact that because of the reason that he was assaulted he would commit suicide and eventually it was made. Reasoning which was given by the deceased that he

was beaten in public, therefore he lost his self respect and made up his mind for the suicide.

7. If such statement of the witnesses 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. In the given set of facts, argument advanced by learned counsel for the applicants that statement was recorded after long gap on 15/07/2016 cannot be appreciated at this stage which is subject of trial. It cannot be branded that since statements were recorded on 15/07/2016, therefore it loses its efficacy or authenticity. Allegation of the witnesses point out the reason for taking some extreme steps by the deceased, this can be looked from the other angle, before committing suicide the deceased had disclosed the reason and had there been no such disclosure of the reason it could have been otherwise. Factual aspect can only be clarified when witnesses are examined before the court during course of evidence. Statement as now exist point out the circumstances were created by the applicants which prima facie are enough to frame charges under Section 306

of IPC.

9. 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.”

10. 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)**.

11. 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 applicants, 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 ?

12. 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.

13. 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