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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.06.2017

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.34 of 2011

and

M.P.Nos.1 and 2 of 2011

M.Ponrajan

... Petitioner

vs.

1.State Rep. by

The Assistant Commissioner of Police,
S-6, Sankar Nagar Police Station,
Tambaram Range, (Cr.No.839/2007)
Tambaram.

2.P.Muniasamy

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in P.R.C.No.76 of 2010 on the file of the learned Judicial Magistrate, Tambaram, quash the proceedings therein.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondents : Mr.K.Madhan (for R1)

Government Advocate (Crl.Side)

No Appearance (for R2)

JUDGMENT

The brief facts necessary to dispose of this Criminal Original Petition is recapitulated as under: The marriage between the petitioner and one Kalaiselvi the daughter of the 2nd respondent herein was solemnized on 01.11.2006 as per Hindu rites and customs.

2.After marriage the petitioner and his wife Kalaiselvi lived separately at Pammal. While so, on 05.10.2007 said Kalaiselvi committed suicide by hanging herself at their home at Pammal.

3.Pursuant to the above said occurrence, a case was registered in Crime No.838 of 2007 under section 174(2) CrPC and the same was under investigation. The Sub-divisional Magistrate, Chengalpet conducted inquest and submitted his report on 10.10.2007 to the 1st respondent police. Thereupon final report was filed on 17.12.2009 for the offence under Section 498-A and



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306 I.P.C before the learned Judicial Magistrate, Tambaram in P.R.C.No.76 of 2010 arraying the petitioner herein as 1st accused and his parents as 2nd and 3rd accused respectively. Challenging the same the petitioner has filed the above Criminal Original Petition under Section 482 of the Code of Criminal Procedure to quash the final report.

4.It is contented by the learned counsel for the petitioners that the implication of the petitioner in the above final report is meant only to harass and humiliate the petitioner. The Sub-divisional Magistrate, Chengalpet having conducted inquest had submitted a report detailing that the deceased Kalaiselvi has committed suicide by hanging herself due to mental agony caused by her parents and for non-visiting her frequently after the marriage. In the report, it is further stated that the suicide of the deceased Kalaiselvi was not caused by any ill-treatment for dowry. There is no specific overt act against the petitioner as if he has abetted or harassed the petitioner.

5.Per contra, the learned Government Advocate (Criminal Side) argued that prima facie materials are available against the petitioner herein and strongly objected to quash the final report filed against the petitioners herein in P.R.C.No.76 of 2010.

6.I heard Mr.C.S.Dhanasekaran, learned counsel for the petitioner and Mr.K.Madhan, learned Government Advocate (Criminal Side) for the 1st respondent and perused the materials available on record. There is no appearance on the side of the 2nd respondent.

7.The report of Sub-Divisional Magistrate, Chengalpet dated 11.10.2007 states that there is no dowry demand or harassment made by the petitioner as against the deceased Kalaiselvi and further report detailed that the suicidal death might have been due to the non-visiting of parents of the deceased.

8.Now, this Court in view of the facts involved in the case would like to emphasis a decision of this Hon'ble Court made in the matter of Thanga Durai Versus State & Another reported in 2007 (2) MLJ (Cri) 1501 while dealing with the question of abetment to attract an offence under Section 306 IPC, this Hon'ble Court was pleased to hold that

"7. Section 107 IPC defines abetment which reads as follows:

"107. ABETMENT OF A THING:- a person abets the doing of a thing, who-

First-Instigates any person to do that thing; or,

Secondly-Engages with one or more other person or persons in any capacity for the doing of that thing, if an act or illegal



omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing."

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9.This makes it clear that there should be instigation when the case has to come under the first category and there should be intentional aid or illegal omission when the case comes under the third category. The second category need not be discussed. In view of the first and the third category under section 107 IPC, the accused should have instigated the deceased or he might have been in a specific surface of omission to prevent the commission of offence, but with intentional or to aid the deceased to commit suicide. From the facts available, it is clear that the accused will not come under the third category also since it is not the case of the prosecution that he intentionally aided by any specific act.

10.There is nothing to show that there was any illegal omission on the part of the accused as if he failed in his attempt to prevent the suicide. As per the allegation, it is only that the petitioner uttered the words that "why should the deceased be alive". The suicidal note of the deceased is only to the extent that it was only the decision of the deceased and it was only the feeling of the deceased and there is nothing to suggest that the petitioner instigated the deceased to commit suicide.

11.In the decision of the Hon'ble Supreme Court in 1995 SCC (Cr1.) 943, [SWAMY PRAHALADDAS Vs. STATE OF MADHYA PRADESH AND ANOTHER] it is observed in paragraphs 2 and 3 as follows:

"2..... Sushila Bai, respondent, a married woman, is alleged to have two paramours, one was the deceased and the other is the appellant. It is alleged that there was sexual jealousy between the two. The deceased was a married man. The prosecution alleges that Sushila Bai had completely bewitched him her heart was with the appellant. On the morning of 13.6.1992, all the three had a quarrel while sharing their morning tea. During that course, the appellant is said to have remarked for the deceased to go and die. The prosecution alleges that thereafter, the deceased went home in a dejected mood, whereafter he committed suicide. The suicide has been termed as the direct cause for the treatment meted out to the deceased by the appellant. It is Sushila Devi though, who alone stands committed to the Court of Session to fact trial because of her preferential treatment to the appellant.

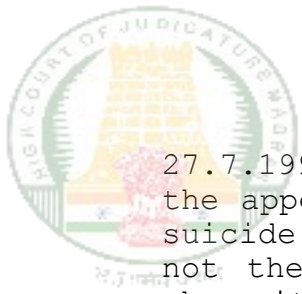
3. At the time of framing of charge, the Trial Court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Session was in



error in summoning the appellant to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. The appeal is accordingly allowed. The orders of the High Court and that of the Court of Session are thus upset. The appellant need not face the charge."

12. In the decision of the Hon'ble Supreme Court reported in 2002 SUPREME COURT CASES (Cr1.) 1141 [SANJU ALIAS SANJAY SINGH SENGAR VS. STATE OF M.P.], in paragraphs 12 to 15, it is observed as follows:

"12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25.7.1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased, "to go and die". For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C., when reportedly, the deceased after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C., is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told that the appellant had asked him "to go and die". Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25.7.1998 ensued by a quarrel. The deceased was found hanging on 27.7.1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25.7.1998 drove the deceased to commit suicide. Suicide by the deceased on



27.7.1998 is not proximate to the abusive language uttered by the appellant on 25.7.1998. the fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25.7.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

13.By appraising the nature of accusation and the scope of criminal liability was pleased to hold as following that

"13. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of "abetment" are totally absent in the instant case for an offence under section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25.7.1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.

15. In the result, this appeal succeeds. The charge-sheet dated 2.7.2001 framed by the Additional Sessions Judge, Sihora, in Sessions Trial No.469 of 1998 for an offence under section 306 IPC and the order of the High Court under challenge are hereby quashed."

14.Now coming to the case on hand, firstly it has to be seen as to whether the Charge as well as the averments made against the petitioner would attract an offence under Sections 498-A IPC and 306 IPC. In this regard this Court likes to refer and rely upon yet another decision of this Court made in the matter of Suresh Kumar Versus State reported in 2014 1 MLJ (Cri.) 303 explaining the scope of criminal liability Scope, as following that

"Section 498-A IPC reads as under

"498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-- For the purposes of this section, "cruelty" mean-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or



physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

15. It is clear from the explanation to Section 498A IPC that the husband or his relative can be prosecuted under Section 498A IPC for their willful conduct which is of such a nature as is likely to drive her to commit suicide.

16. Having discussed as to the scope and criminal liability over an alleged offence of 498-A IPC offence as above and while dealing with alleged offence of 306 of IPC against the petitioner/ husband therein for having allegedly scolded her wife and of which the respondent wife committed suicide, this Hon'ble Court held as following that

"4. A complete reading of the final report and the 161 Statements reveal that apart from scolding his wife for allowing the child to eat sour food, the petitioner has not done anything to instigate or aid the commission of suicide by his wife.

5. Section 306 IPC reads as follows:

"306. Abetment of suicide: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

17. The word "abetment" used in Section 306 IPC is defined in Section 107 IPC, which reads as under:

"107. Abetment of a thing: A person abets the doing of a thing, who- First: -Instigates any person to do that thing; or Secondly: -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly: -Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1: A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

18. To attract the offence of abetment of suicide under Section 306 IPC, the accused must have done any one of the overt acts enumerated in Section 107 IPC. Ignoring this salutary requirement, it is seen that frequently people are arrested and prosecuted indiscriminately under Section 306 IPC for the suicide of another person. When a person commits suicide, the whole neighbourhood rises in unison to clamour for the scalp of



another and the police, unable to withstand social pressure, look out for a scapegoat to arrest and prosecute under Section 306 IPC.

19. Now coming to the facts of the instant case, the records disclose that there is no averment as to instigation to suicide and there is no accusation of conspiracy and more so, there is no imputation of any illegal omission. So as to attract an offence under Section 306 IPC the suicide must be of the reason falling under Section 107 IPC. In other words the accused should have instigated the deceased or with an intention aided the deceased to commit suicide by his deeds.

20. Considering the Scope of Section 306 IPC and in the light of decisions stated above and facts involved in the case, absolutely there is no material to show that there was an intention and mens rea on the part of the petitioner to induce or instigate the deceased to commit suicide.

21. In view of discussion made above and in the light of the judgments cited supra, this court is of the considered opinion that the ordeal of trial in the above criminal case would defeat the rights of the petitioner. Hence to prevent abuse of process of law the charge sheet filed in P.R.C.No.76/2010 is liable to be quashed and accordingly quashed.

22. In the result, this Criminal Original Petition is allowed and the final report in PRC.No.76 of 2010 on the file of the Learned Judicial Magistrate, Tambaram stands quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate, Tambaram.

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.42448

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M.P.Nos.1 and 2 of 2011

RRK(13/03/2018)