

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.08.2017

Pronounced on : 22.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.17777 of 2016
and Crl.M.P.No.8452 & 12163 of 2016

B.Velmurugan

.. Petitioner

Vs.

1.State rep. by
 The Inspector of Police,
 T 4, Maduravoyal Police Station,
 Maduravoyal,
 Chennai - 600 095.

2.R.Chandrasekaran

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.
 praying to call for the records in P.R.C.No.13 of 2016 on the file of
 the Judicial Magistrate No.II, Poonamallee and to quash the same.

For Petitioner : Mr.P.H.Manoj Pandian

For Respondent-1 : Mr.P.Govindarajan
 Additional Public Prosecutor

For Respondent-2 : Mr.G.Pugazhenth

ORDER

Heard Mr.P.H.Manoj Pandian, learned counsel for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the first respondent as well as Mr.G.Pugazhenthii, learned counsel for the second respondent.

2.The brief facts of the case is as follows:

The petitioner herein got married to one Kanimozhi on 16.09.2013 at Swami Malai, Kumbakonam. After marriage, the petitioner along with his wife stayed in a rental house at Maduravoyal, Chennai. On 14.07.2014, the petitioner's wife was found dead by hanging, owing to which, the respondent had initially registered a case under Section 174 (3) of the Cr.P.C., and after enquiry, had registered the case under Section 304 (B) and 306 of IPC in Cr.No.993 of 2014 on the file of the first respondent herein. After investigation, the first respondent had filed a charge sheet which culminated in P.R.C.No.13 of 2016 on the file of the learned Judicial Magistrate-II, Poonamallee. It is the case of the prosecution that the death of Kanimozhi was one of culpable homicide not amounting to murder and that the petitioner herein, being the husband of the deceased is liable for the offence under

Section 306 IPC.

3.I have given careful consideration to the submissions made by the respective counsels and had perused the documents filed along with the petition.

4.The second respondent is the father of the deceased and the defacto complainant. When the case was registered under Section 174(3) Cr.P.C., an enquiry came to be conducted by the Revenue Divisional Officer. During the course of enquiry, the deceased's father, mother, cousin and sister were examined by the Revenue Divisional Officer and after analysing the statements and other materials, the Revenue Divisional Officer had submitted a report to the effect that there was no evidence to show that there was a demand of dowry from the petitioner herein. The first respondent had examined 11 witnesses out of which, L.W.1 to L.W.4 are father, mother, cousin and sister of the deceased. The other witnesses namely, L.W.5 to L.W.11 were the house owner and neighbours of the petitioner's family. The entire case of the prosecution lies on the averments that there was demand of dowry by the petitioner herein, which resulted in the death of his wife.

What is required under Section 306 IPC is that there must be an intention on the part of the accused to aid or instigate or to abet the deceased to commit suicide. This proposition is well laid down in a series of judgments of the Hon'ble Supreme Court of India as well as various other High Courts. With this legal proposition in background, what is required by the prosecution to establish is as to whether the petitioner had instigated or abetted the deceased to commit suicide.

5.The enquiry of the Revenue Divisional Officer under Section 174(3) Cr.P.C., was made after detailed enquiry in which he had examined the father, mother, cousin and sister of the deceased and he had come to the conclusion that the death of Kanimozhi was not due to dowry harassment. However, the Investigating Officer after enquiry with the same witnesses had charge sheeted the petitioner on the ground that there was dowry harassment. In this background, the statements of the witnesses before the Revenue Divisional Officer were examined for the purpose of ascertaining as to whether there was any material to show that it was the intention of the petitioner to aid or instigate or to abet the deceased to commit suicide. The second respondent's complaint dated

14.07.2014 before the first respondent does not speak anything about demand of dowry and other harassment by the petitioner herein. Likewise, the oral statements deposed by the deceased's father, mother, cousin and sister before the Revenue Divisional Officer during the enquiry under Section 174(3) of Cr.P.C., does not speaks about demand of dowry at all. Even the neighbours who had given the statement before the Revenue Divisional Officer had not deposed to the effect that there was dowry harassment. It is on the basis of these statements that the Revenue Divisional Officer had come to the conclusion that there was no dowry harassment.

6. During the course of investigation, the second respondent who is the father of the deceased in his statement under Section 161(3) for the first time had deposed that there was a demand of dowry of 50 sovereigns of gold, out of which the second respondent had given only 25 sovereigns and the petitioner had been demanding the balance of 25 sovereigns along with Rs.2 lakhs cash. It is further stated therein that the petitioner did not permit the deceased to visit her parents or any other person. The four witnesses namely, the father, mother, cousin and sister had

reiterated that a day before the deceased died, they had requested the petitioner to send his wife to their village for the purpose of attending a temple festival which the petitioner had denied stating that he required the balance of dowry amount. Apart from these four witnesses, neighbours who had given the statements before the Investigating Officer have not spoken anything about the dowry demand. It is only on the evidence of these four witnesses' statements, the Investigating Officer has come to the conclusion that the petitioner could be charged under Section 306 IPC.

7. The crucial question for determination is as to whether the evidence available from the statements of the witnesses would attract Section 306 IPC. What is clear from the statement is that the petitioner had not permitted his wife to go to her native place for the purpose of attending the temple festival. The witnesses have also spoken about the conduct of the petitioner in not sending his wife to any other houses of their relatives. There are some contradictory statements made by the sister of the deceased that she was not aware of the harassment made by the petitioner. None of the witnesses have spoken of any harassment been caused by the petitioner to the deceased. The only statement which could be

deemed to be a harassment was the petitioner's conduct in refraining his wife from attending the temple festival at her native place. While that being so, it would only be concluded that there was no intention of the petitioner to aid, or instigate or to abet his wife to commit suicide. The incident of not allowing his wife for attending the temple festival has been spoken to by all the family members of the deceased in their statements. In all probabilities and from the statement of these witnesses, it can be inferred that the conduct of the petitioner in not permitting the deceased to attend the festival, could have caused depression to the deceased. In the absence of any specific allegations or definite material to prima facie sustain the allegations of dowry harassment leading to the commission of suicide, the petitioner cannot be held liable for an offence under Section 306 IPC. The mere statements of immediate relatives of the deceased that there was a demand of dowry by the petitioner cannot be said to have instigated the deceased to commit suicide or that the petitioner had abetted and aided the suicide. Incidentally these same witnesses had not spoken about the demand of dowry in the enquiry before the Revenue Divisional Officer. Hence, in my considered view, the petitioner has made out a valid case for invoking the inherent

powers of this Court under Section 482 of the Code of Criminal Procedure.

8.The above observations are supported by the following judgments, which were relied by the learned counsel for the petitioner:

1)In **Sanju @ Sanjay Singh Sengar V. State of M.P., [AIR 2002 Supreme Court 1998]**, in para 13, the Hon'ble Supreme Court has held as follows:

"13.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 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the 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 him 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 unadvisable 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 in a spur of the moment cannot be taken to be uttered with *mens rea*. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 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 25th July, 1998 drove the deceased to commit suicide. Suicide by the

deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 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."

2) In **Netai Dutta Vs. State of West Bengal [2005 (2) SCC 659]**, the Hon'ble Supreme Court of India held as under:

An offence under **Section 306 IPC** would stand only if there is an abetment for the commission of the crime. The parameters of the "abetment" have been stated in **Section 107** of the Indian Penal Code. **Section 107** says that a person abets the doing of a thing, who instigates any person to do that thing; or 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, or the person should have intentionally aided any act or illegal omission. The explanation to **Section 107** says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".

3)In **M.Mohan V. State rep. by the Deputy Superintendent of Police [2011 (3) SCC 626]**, wherein the Hon'ble Supreme Court in paras 22, 35 & 44 has observed as follows:

22. Again in the said Report the R.D.O. concludes as under :

"From the inquest it can be found that the death did not happen due to dowry harassment. The reason is that even the father and mother of the deceased girl said the death has not happened due to dowry harassment. Therefore, I inform that the death is not caused due to dowry harassment. Further, the father and mother of the deceased girl said that the death is caused due to the torture of Smt.Easwari. Therefore, the police may take up the case for investigation and on proper investigation the cause for the death may be found out."

35.The main substantial questions of law which arise in this appeal are whether the conviction of the appellants under [Section 306 I.P.C.](#) is sustainable and whether in the facts and circumstances of this case, the High Court was justified in not quashing the proceedings against the appellants under its inherent powers.

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

4) In **P.Senthil Kumar V. State rep. by Revenue Divisional Officer [CDJ 2015 MHC 4681]**, this Court in para 12 has held thus:

"12. When the driver and the police party were drinking tender coconut, Rasthi jumped into anearby well and committed suicide. For sustaining a charge under Section 306 IPC, the accused should have committed any of the overtacts adumbrated in Section 107 IPC. Section 306 & 107 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.

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 act or illegal omission, the doing of that thing."

From a bare reading of the above provisions, it is clear that to sustain a charge under Section 306 IPC, the accused should have either instigated the person or engaged in a conspiracy or aided the person for committing suicide. Here, even going by the averments in the complaint, it is clear that in a fret of emotion, Rasathi got down from the car after quarrelling with Rajeswari and she went and jumped into a nearby well. There is no material to show that any of the accused had done anything as required under Section 107 IPC for abetting the suicide of Rasathi."

5)In N.Rajesh V. The sub-Inspector of Police & Another [CDJ 2015 MHC 5847], this Court has held as follows:

"6.This Court has perused the records including the suicide note. The said note

merely states that for his death, the accused are responsible and therefore, the police should take necessary action. To apply Section 306 IPC, that the accused must involve themselves in mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide. What is the importance of elements of mens rea.

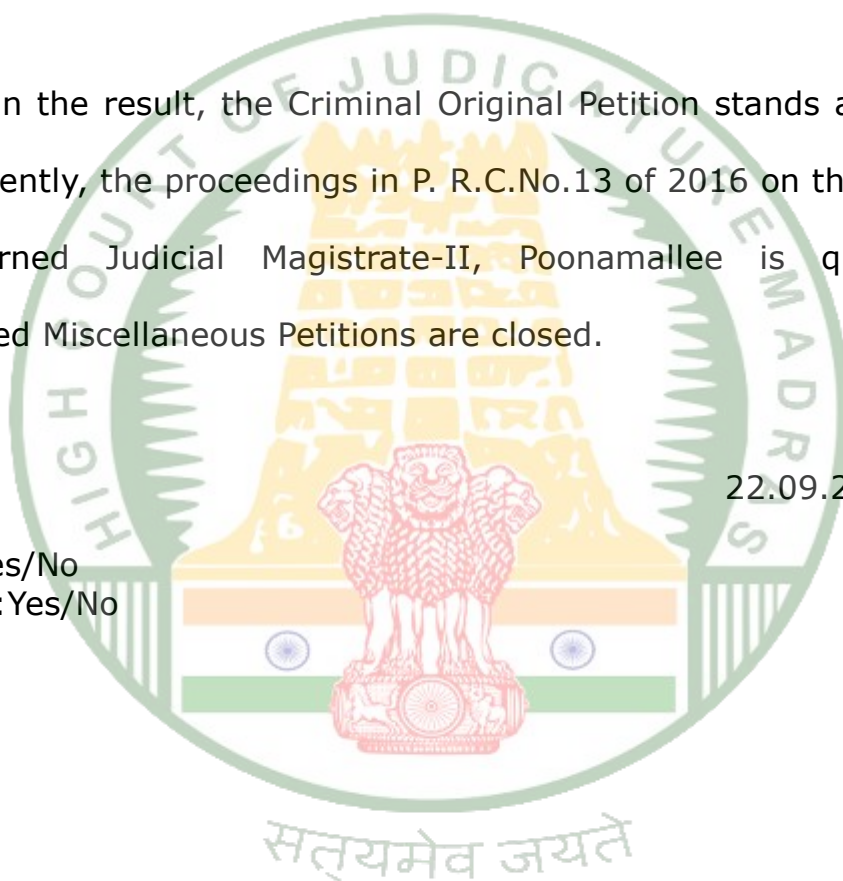
7. Considering the scope and ambit of Sections 306 & 107 IPC, the Hon'ble Apex Court in Madan Mohan Singh V. State of Gujarat and another reported in 2010 (8) SCC 628 was pleased to hold as follows: 12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section

306 IPC either in the FIR or in the so-called suicide note".

9. In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in P. R.C.No.13 of 2016 on the file of the learned Judicial Magistrate-II, Poonamallee is quashed. Connected Miscellaneous Petitions are closed.

22.09.2017

Index:Yes/No
Internet:Yes/No
DP



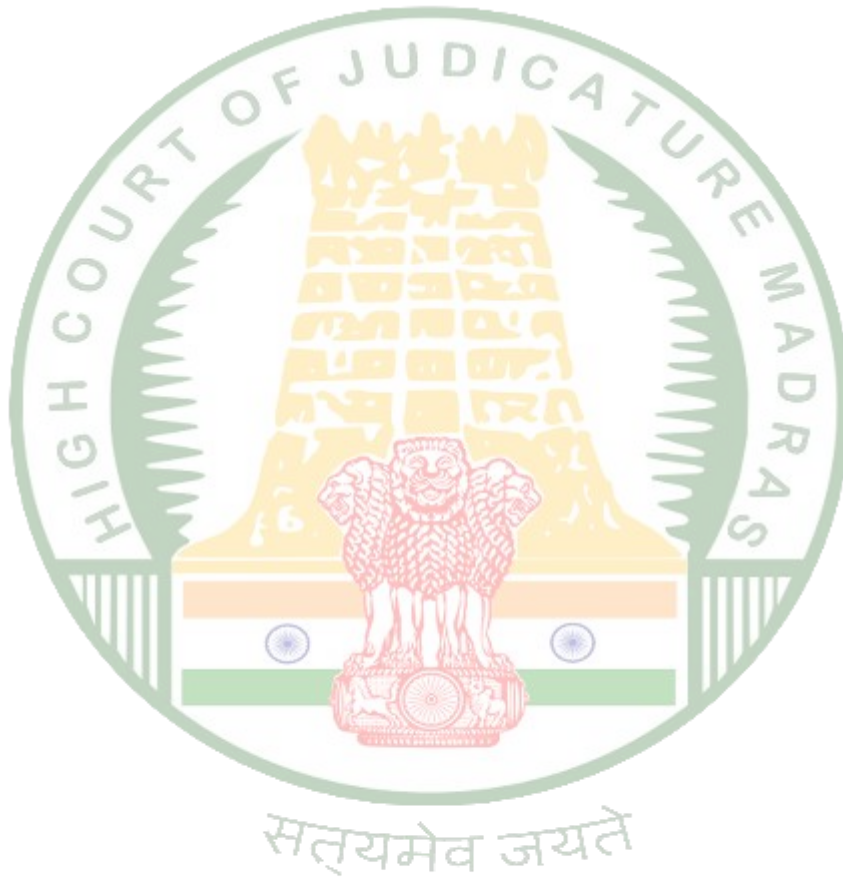
To

WEB COPY

1. The Judicial Magistrate No.II,
Poonamallee
2. The Inspector of Police,
T 4, Maduravoyal Police Station,

Maduravoyal,
Chennai - 600 095.

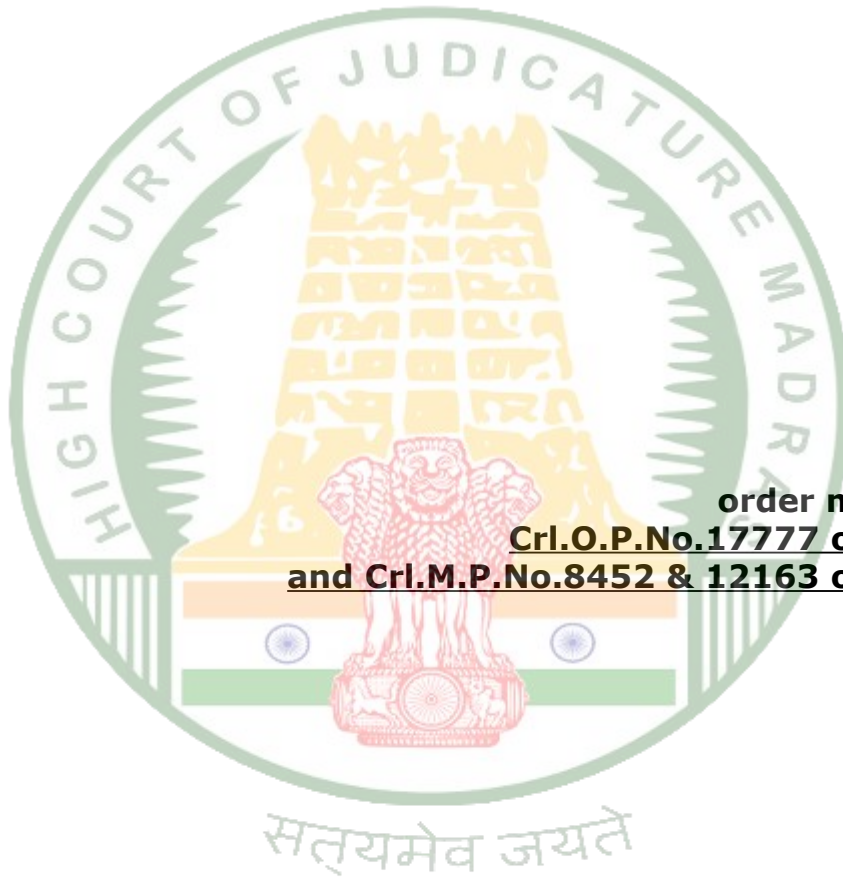
3.The Public Prosecutor,
High Court, Madras.



WEB COPY

M.S.RAMESH.J,

DP



**order made in
Crl.O.P.No.17777 of 2016
and Crl.M.P.No.8452 & 12163 of 2016**

WEB COPY 22.09.2017