

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P Nos.14892, 15932 and 15959 of 2010

and

M.P.Nos.1, 1 and 1 of 2010

1.Kumar @ Praveen Kumar
...1st Petitioner in Crl.OP.14892/2010
2.Prasad @ Ramakrishna Prasad
...2nd Petitioner in Crl.OP.14892/2010
3.Perumal @ Solvilangu Perumal
.. Sole Petitioner in Crl.OP.15932 of 2010
4.Senthur Pondy
..Sole Petitioner in Crl.OP.15959 of 2010
vs.

1.State by Inspector of Police (Law & Order)
F-2, Egmore Police Station,
Egmore, Chennai 600 008.
(Crime No.961 of 2008).

2.S.Anthony Raj
(Impleaded as per order dated 10.04.2017
in Crl.MP.Nos.4956, 4957 & 4958/2017
in Crl.OP.Nos.14892, 15932 & 15959/2010)

Common Prayer: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records in P.R.C.No.183 of 2009 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai 600 008 and quash the same.

(in all the Crl.O.Ps)
For Petitioners :Mr.Adi Narayana Rao
For Respondents :Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)
No Appearance (for R2)

COMMON JUDGMENT

All the three criminal Original petitions have been filed by the petitioners with a prayer to quash the proceedings in P.R.C.No.183 of 2009, on the file of the XIV Metropolitan Magistrate, Egmore, Chennai. The 1st and 2nd accused are the petitioners in Crl.O.P.No.14892. The 3rd accused is the petitioner in Crl.O.P.No.15959 and the 4th accused is the petitioner in Crl.O.P.No.15932 of the year 2010. Since all the three original petitions are filed as against the charge sheet in P.R.C.No.183 of 2009 in Crime No.961 of 2008 on the file of Egmore Police Station, all of them are clubbed together and the common order is passed.

2.It is the allegations of the prosecution are that one Arulraj committed suicide at Victoria Lodge, Egmore on 21.10.2008 by leaving suicide notes. The Manager of the said lodge namely Harish Gowda lodged a complaint before the 1st respondent by alleging that the victim namely Arulraj came to the lodge on 20.10.2008 and stayed there in room No.217. At about 11.00 a.m., he informed that he would vacate the room within half an hour, but he did not vacate the room, hence he was contacted through his cell phone. As no response was received, the door of the room was knocked but it was not opened. So, through the master-key, the room was opened and found the said Arulraj hanging in the ceiling fan. Immediately, the incident was informed to the police. Subsequently, the police came to the occurrence spot, prepared Observation Mahazar and found 5 letters were written and left in the cot.

3.It is the further case of the prosecution that on 23.10.2008, the brother of the said Arulraj namely Anthonyraj, who has been arrayed as 2nd Respondent as per the order passed in the impleading petitions in Crl.M.P.No.4956 of 2017 dated 10.04.2017 in the Crl.OP.No.14892 of 2010, Crl.M.P.No.4959 of 2017 and Crl.M.P.No.4958 of 2010 respectively, he lodged another complaint before the police, alleging that his brother after the completion of his Engineering graduation running a software company in the name of Amtex Technologies. He obtained loan from one Kumar, Prasath, Senthoorpandiyan and Perumal to run the business. Further, the 2nd respondent was contacted by the victim on 20.11.2008 through his cell phone and informed that the aforesaid persons disturbed and threatened him as the victim did not repay the money. Hence, the 2nd respondent consoled him that he would give money and instructed him to come to Otapidaram where the 2nd respondent was residing. In turn, the victim

informed him that he would come to Tuticorin on the next day. As the victim did not come to Tuticorin, he was contacted through his cell phone, but he informed that he was unable to come out due to the threat of the aforesaid persons. Further, he also informed that prior to two days, he was confined in a room and was assaulted by one Kumar and also was intimidated. Further, the victim informed that the sale deed of the house property of the mother-in-law of one Kannan, who is the friend of the victim was handed over to the said Kumar and Prasath and loan was given to the victim. After the receipt of money only, the victim came to know that they are the persons charged exorbitant rate of interest namely speed interest and meter interest. Apart from that his brother the victim was cheated by one auditor Mohanraj in not arranging bank loan, but received money from the victim. So, as per his complaint, due to the incessant harassment, his brother was committed suicide.

4.It is seen from the records that after the completion of the investigation, the 1st respondent has filed the final report for the offence under section 306 of IPC, as against the petitioners and the same has been taken cognizance on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai in PRC No.183 of 2009.

5.The case of the petitioners is that they advanced money to the victim on security to run his business on the request of the victim. They never used to collect exorbitant rate of interest at any point of time from anybody including the victim. Further, out of a sum of Rs.5,00,000/-, the victim repaid a sum of Rs.3,50,000/- is the due and the money transaction was very few months prior to the occurrence and the victim was never subjected under harassment either physically or mentally. Apart from that the petitioners are not aware about the transaction between the said Mohanraj, who is arrayed as 5th accused.

6.The further case of the petitioners is that all the allegations leveled against the petitioners are hearsay in nature and factually they have not committed any offence as alleged. The learned Counsel for the petitioners would submit that the case of the prosecution is doubtful and the manner of cooked up the same is also unbelievable. Further he also contended that in the first complaint lodged by the Manager of Victoria Lodge has not whispered anything about the suicide note, but only in the later point of time allegedly the suicide notes that is 5 letters were recovered by the 1st respondent from the cot of the room where the victim stayed. This would create serious doubt, if at all any suicide letters were written by the

victim, definitely it would have been noticed by the lodge manager and would have been informed in the complaint itself.

7.The further arguments advanced by the learned counsel for the petitioners would be that the close reading of the suicide notes/letters allegedly written by the victim have not disclosed any ingredients to attract the offence of 306 of IPC. Hence, he sought for the relief to quash the proceedings of the case.

8.The learned Government Advocate (Criminal side) would submit that the proceedings of the instant case is based on the final report filed by the 1st respondent and it was filed after investigation. The cognizance has been taken by the learned Metropolitan Magistrate after applied his mind into the documents. Hence he prays for the dismissal of the petitions.

9.I heard Mr.Adi Narayana Rao, learned counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and there is no representation on behalf of the 2nd respondent in all the Criminal Original Petitions. All the materials available on record are perused.

10.The case of the prosecution is that due to the incessant threat, harassment and intimidation only the victim committed suicide and the same is proved by the suicide notes written by the victim. On the other hand the case of the petitioners/accused is that they are no way connected to the suicide of the victim, but the occurrence had taken place due to the loss of the business run by the victim.

11.In order to ascertain whether the suicide was on his own or due to the harassment of the petitioners this court has paid its anxious consideration to the materials available on records.

12.The suicide notes written by the accused closely and carefully perused. The perusal would show that all the witnesses, in the investigation have stated before the Investigation officer what they have heard in respect of the offence as alleged as against the accused. As for as the case is like 306 of IPC is concerned it could be arisen out of hearsay witnesses. The present case is concerned it is not only resting upon the statement of witnesses but it is also resting upon the Suicidal note/letters written by the victim. At this juncture

the genesis of the letters written by the victim has assumed much importance. So this court anxiously puts its consideration upon the letters written by the victim. The letters are written to the superintendent of the police and another letter written to the mother of the victim. Another letter written to one Vijay, Paulraj and another letter was written to his wife. As for as the 1st letter is concern it was written with the general allegation stated that the petitioners namely Kumar, Prasanth, Senthur Pandian and Perumal have scolded intimidated the victim and because of their activities, he was constrained to take the extreme steps in his life and committed suicide. Further he made allegations as against one Mohanraj and left some account details. When the other letters are perused no allegations were made as against the petitioners but due to financial loss in his life, he committed suicide.

13.It is relevant to hold that in the suicidal notes, the victim has not given much details or allegations or charge as against the petitioners to sustained the charge under sections 306 of IPC. Further the important aspect of abetment to commit suicide is not found in the letters. The victim has not pointed out or fixing the responsibility upon the accused that they alone are the instrumental for his suicide. When the victim himself has not fixed responsibility upon the persons who are allegedly causing the commission of his suicide, this Court is unable to fix the responsibility upon the petitioners for the commissions of suicide by the victim. The close perusal of the letters would show that mainly because the loss he suffered with business, he took the extreme decision in his life. Though it is unfortunate that some persons who involved in the offence of charging exorbitant interest rate for the money advanced as loan but that will not be show any material by merely utter in the allegation. The charging of collection of exorbitant rate of interest must be proved in clear terms. Though it is may be by way of suicidal note but the information left in the suicidal note must indicate that the abettors alone are responsible for the commission of suicide.

14.However, the considered opinion of this court the suicidal notes written by the victim have not fixed the responsibility upon the petitioners /accused as other reasons are also cited with by the victim for his suicide. Moreover the money transaction was admitted but to tackle the same several legal remedies are available including the getting assistance from the Law enforcing authorities. Further loss and profit in the business are very common that will not be taken as the deciding factor to the living life in any aspect the suicidal notes has not fixed the responsibility upon the petitioners

alone, this court unable to accepts the contention of the prosecution that the petitioners are responsibility for the suicide of the victim.

15.It is also necessary to this Court to consider the provision relating to abetment and abetment to commit suicide. Sections 107 and 306 of the Indian Penal Code are extracted hereunder:

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

306 of IPC-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."

Whether it is proved by the prosecution that the accused is guilty of abetment as contemplated under Sections 107 and 306 IPC, is the issue to be decided.

16.In the case of Pawan Kumar Bhalotia v. State of W.B. reported in 2005 SCC (Cri) 543, the Hon'ble Apex Court held that:

"6.In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag".

17.In the case of Sanju Alias Sanjay Singh Sengar v. State of M.P. reported in 2002 SCC (Cri) 1141, it is further held by the Hon'ble Apex Court:

"14.A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt.Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt.Neelam Sengar, wife of the deceased, made a statement under Section 161 Cr.P.C. before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26.07.1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25.07.1998 and if the deceased came back to the house again on 26.07.1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25.07.1998. 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 25.07.1998 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".

18. There is also no positive material to substantiate that these petitioners were harassing the deceased to the extent of driving the deceased to commit suicide. It is the considered opinion of this Court that the petitioners cannot be fix responsibility for the suicide committed by the victim. Considering the facts of the case and the rival submissions, this Court feels that this is a fit case to quash the charge sheet for offences under Section 306 IPC as against these petitioners. Therefore, the proceedings against these petitioners are liable to be quashed.

19.However, this Court hastens to add that it will be open for the respondent police to continue the proceedings as against the 5th accused.

20.In the result:

(a) all these Criminal Original Petitions are allowed and the charge sheet in PRC.No.183 of 2009, pending on the file of the learned XIVth Metropolitan Magistrate, Egmore, Chennai, is quashed in respect of the petitioners/A1 to A4;

(b) the proceedings in PRC.No.183 of 2009, pending on the file of the learned XIVth Metropolitan Magistrate, Egmore, Chennai, is may go on in respect of A5. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

vs

To

1 The XIV Metropolitan Magistrate,
Egmore, Chennai.

2 do thro the chief metropolitan Magistrate,
chennai.

3. The Inspector of Police, F2 Egmore Police station,
Egmore, chennai 600 008.

4 the public prosecutor,
high court, madras.

+1cc to Mr.ADINARAYANA RAO Advocate, S.R.No. 85973

Pre-Delivery Judgment in
Crl.O.P Nos.14892, 15959 and 15932 of 2010
and
M.P.Nos.1, 1 and 1 of 2010

MG(CO)
TR(20/12/2017)