



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.09.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASANCrl.R.C.(MD) No.843 of 2016and

Crl.M.P(MD)No.12256 of 2016

1.P.Selvakumar

2.Thangapoo

: Petitioners/Petitioners/
Accused No.1 & 3

Vs.

The State of Tamil Nadu,
Rep. by Deputy Superintendent of Police,
Srivaikundam Sub Division,
Thoothukudi District.
(Srivaikuntam PS Cr. No.250/2012)

: Respondent/Respondent/
Complainant

PRAYER: Revision filed under Section 397 r/w 401 of Cr.P.C.,
praying to call for the records in connection with the order
passed by the Learned Sessions Judge, Mahalir Neethimandram (Fast
Track Mahila Court), Thoothukudi in Cr.M.P.No.146 of 2016 in
S.C.No.282 of 2015 dated 07.09.2016 and set aside the same.

For Petitioners : Mr.M.S.Jeyakarthik
For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

ORDER

This Criminal Revision has been filed challenging the order
passed in Cr.M.P.No.146 of 2016 by the learned Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

2.The petitioners are arrayed as accused Nos.1 & 2 in
S.C.No.282 of 2015, on the file of the learned Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi. The
petitioners were charged with for an offence under Section 306 of
IPC. The deceased Uma Maheswari is the wife of the first
petitioner and the daughter-in-law of the second petitioner.



3. According to the prosecution, the marriage between the deceased and the first petitioner was solemnized on 07.03.2012. After the marriage, both the deceased and the first petitioner were settled down in Chennai. Later cyst was found near the neck of the first petitioner and the deceased asked him to consult a doctor, but he refused and he told the deceased not to disclose it to anybody, but the deceased informed to the same to her parents. Due to the same, there was a quarrel arose between them. Then on 25.08.2012, both the deceased and the first petitioner/A1 came to their native place and the deceased gone to her parental house and stayed there. At the time, the deceased mother took the medical records of the first petitioner/A1, and consulted a doctor at Tirunelveli, and the doctor informed that it is a curable disease, when the same was informed by the deceased to the first petitioner, he quarreled with the deceased, stating that she has insulted him before her parents, and told him that he is not willing to live with the deceased. The deceased questioned him and he stated that he will not even bother if she dies, and he will live happily after getting second marriage.

4. Thereafter, on 04.09.2012 the deceased called the first petitioner on the mobile phone at that time, there was a quarrel, thereafter on 05.09.2012, while the deceased was alone in her parental house, she poured engine oil and set fire on her. Thereafter, she was taken to Tirunelveli Medical College Hospital, where she has given a statement before the respondent police and based on her statement, the case has been registered against the petitioners. A Dying Declaration was also recorded by the learned Judicial Magistrate. Subsequently, the deceased succumbed to injuries on 27.09.2012 at about 4.30 a.m., then the case was altered into 174 Cr.P.C., and on 04.10.2012, the FIR again altered into 306 of IPC. After investigation a final report has been filed against the petitioners and the trial Court has also taken cognizance. Thereafter, the petitioners filed a petition to discharge them from the charges. The trial Court has dismissed the above application. Challenging the order of dismissal, the petitioners filed the present Criminal Revision.

5. I have heard Mr.M.S.Jeyakarthik, learned counsel appearing for the petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent.

6. The learned counsel for the petitioners would submit that from the materials available on record no prima facie case is made out against the petitioner for an offence under Section 306 of IPC. Even from the statement given by the deceased before the respondent police and also in the Dying Declaration, there is no incriminating material to show that the first petitioner abetted the deceased to commit suicide. Even in the Dying Declaration given by the deceased before the learned Judicial Magistrate she has stated that since the first petitioner stated that he is not



willing to live with her, a week before the occurrence, she has committed suicide and before that she has given a statement before the respondent police, wherein she has explained the entire occurrence in detail.

7. From the statement of the deceased, there was a wordy quarrel between the deceased and A1 and due to the same, she has committed suicide and there is no *mens rea* on the part of the petitioners to instigate the deceased to commit suicide. Apart from that absolutely, there is no material available on record against the second petitioner, the mother-in-law of the deceased. She has been falsely implicated in this case. Since no *prima facie* case is made out against the petitioner and the petitioners are entitled to be discharged from the offences and the court below without considering the materials in proper perspective, dismissed the application.

8. Per contra the learned Additional Public prosecutor would submit that the occurrence took place on 05.09.2012, immediately she was taken to hospital where she has given a Dying Declaration before the learned Judicial Magistrate, wherein she has clearly stated that only because the petitioner is not willing to live with the deceased, she has committed suicide. From the statements of the deceased it could be seen that there is a frequent quarrel between the deceased and A1 and due to the same, the deceased has committed suicide and all the ingredients of Section 306 of IPC has been made out in this case and based on those materials, a final report has been filed. Now, the Court below considered the entire materials available on record, dismissed the discharge petition filed by the petitioners and there is no illegality or irregularity in the order passed by the court below.

9. I have considered rival submission.

10. Section 306 IPC prescribes the punishment for abetment of suicide and reads as follows:

"If any person commit 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."

The basic ingredients of this provision are the suicidal death and abetment thereof.

11. Section 107 IPC defines "abetment" and reads as follows:-

"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"

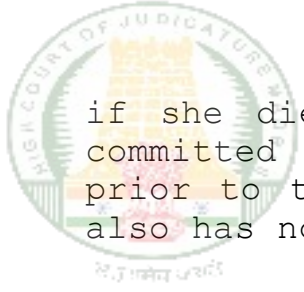
To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. To bring home an offence under Section 306 IPC, the prosecution has to establish that the person has committed suicide and the said suicide has been abetted by the accused, and the prosecution should also prove that the accused has a clear mensrea to commit the offence and that there ought to be an active or direct act leading the deceased to commit suicide.

12. In *S.S. Chheena v. Vijay Kumar Mahajan and Another* (2010) 12 SCC 190: LNIND 2010 SC 746: (2011) 1 MLJ (Cr1) 547, it is held as follows:-

"25. 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. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

13. Keeping the above principles in mind, now the Court consider the instant case.

14. The occurrence took place on 05.09.2012 and the deceased succumbed injuries on 27.09.2012. While the deceased was admitted in the hospital she was conscious and she has given a statement before respondent police and based on the statement, the case has been registered under Section 309 IPC. Subsequently, her Dying Declaration was also recorded by the learned Judicial Magistrate. On a perusal of statement given by the deceased and Dying Declaration would be seen that there was a quarrel between deceased and A1 regarding cyst formed in the neck of the first petitioner/A1, when the deceased asked the first petitioner/A1 to take a treatment, he refused and asked the deceased not to disclose the same to anyone. But the deceased disclosed it to her parents, being upset over the same, A1 has told him that she has insulted him and hence, he is not willing to live with him, when the deceased questioning him, he told her that he will even bother



if she dies. In the Dying Declaration she has stated that she committed suicide because A1 is not willing to live with her, prior to the occurrence. The other materials available on record also has not disclosed any other dispute between deceased and A1.

15. A careful consideration of the statement of deceased, it could be seen that A1 has no mensrea to abet the deceased to commit suicide. A petty quarrel between the husband and wife cannot be considered as an abetment which leads the deceased to commit suicide. In this case, there was a petty quarrel between the husband and wife and during the quarrel the husband casually told her that he is not willing to live with her and even if she dies he will not bother about. It can not be consider as an positive act on the part of A1 to instigate or aid the deceased to commit suicide and A1 has a mensrea to commit the offence.

16. In the above circumstances, considering the Dying Declaration and the statement of the deceased in the light of principles governing the abetment under Section 306 IPC read with 107 IPC, I am of the considered view that there is no prima facie case is made out against the first petitioner. So far as the second petitioner is concerned absolutely there is no material available against her, she has been implicated in this case as there is no material available on record to show that the second petitioner has also abetted deceased to commit suicide. She is also entitled to discharg from the offence.

16. In the result, the Criminal Revision Case is allowed Cr.M.P.No.146 of 2016 on the file of the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi is set aside and the petitioners are discharged. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

1. The Sessions Judge,
Mahalir Neethimandram,
(Fast Track Mahila Court), Thoothukudi.
 2. The Deputy Superintendent of Police,
Srivaikundam Sub Division, Thoothukudi District.
(Crime No.250/2012)
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- +One cc to M/s.M.S.Jeyakarthik, Advocate, SR.No.78634