



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2017

CORAM

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C (MD) .No.386 of 2013

and

M.P. (MD) .No.1 of 2013

1.Vijayalakshmi
2.C.Selvaraj
3.L.Arivanantham
4.P.Murugan

.. Petitioners/Accused Nos.1 to 4

-Vs-

1.State through
The Deputy Superintendent of Police,
Uthamapalayam Circle,
Odaipatty Police Station,
Theni District.
(Crime No.8 of 2011)

.. Respondent/Complainant

2.Rajeswari

.. 2nd Respondent/Defacto
Complainant

(R2 impleaded as per the order of
this Court, dated 20.12.2013 and
made in M.P(MD).No.3 of 2013 in
Cr1.R.C. (MD).No.386 of 2013.)

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, call for the entire records from the Lower Court and set aside the order passed in Cr.M.P.183/2013, dated 08.04.2013 in Spl.S.C.No.37 of 2012, on the file of the Principal District and Sessions Judge, Theni by allowing the revision.

For Petitioners : Mr.T.K.Gopalan

For R1 : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

For R2 : Mr.C.Muthusamy

**O R D E R**

Challenging the order dismissing the petition filed under Section 227 of Cr.P.C., by the petitioners to discharge them from the charges, the present revision has been filed.

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2. The case of the prosecution in brief is as follows:

(i) The deceased in this case, one Chinnaraj was working as a Pump Operator in Appipatti Panchayat. The first petitioner/A1 herein was the President of the Appipatti Village Panchayat. The second petitioner/A2 is the husband of the first petitioner. The third petitioner/A3 is working as a Clerk in the village panchayat and the fourth petitioner/A4 is the Pump Operator of the said village panchayat. There was a dispute between the first petitioner and the deceased for quiet some time. In the above circumstances, on 26.01.2011 at about 10.00 p.m. the petitioners along with two police officials came to the house of the deceased and abused him with filthy language and called him by his caste name and threatened him. The policemen instructed the wife of the deceased to ask her husband to appear before the police station on the next day for enquiry, at that time, the deceased was inside the house, on the next day morning at about 4.00 a.m. the deceased was found hanging. Then a complaint was given by his wife.

(ii) Based on the complaint, a case has been registered in Crime No.8 of 2011 for the offences punishable under Section 3(1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 506(ii) of IPC., and Section 174 of Cr.P.C. After investigation, a final report has been filed by the respondent police against the accused for the offences under Section 306 of IPC., read with Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter the petitioners filed a petition to discharge them from the above charges. After considering all the materials available on record, the trial court dismissed the petition. Now, challenging the order of dismissal, the present Criminal Revision Case has been filed.

3. I have heard Mr.T.K.Gopalan, learned counsel appearing for the petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the first respondent and Mr.C.Muthusamy, learned counsel appearing for the second respondent and perused the records carefully.

4. The learned counsel for the petitioners would submit that from the materials available on record, there is no material to show that the petitioners instigated or abetted the deceased to commit suicide. Even as per the statement of the other witnesses, the deceased had a quarrel with the village people in intoxicated mood. The first petitioner being the President of the village



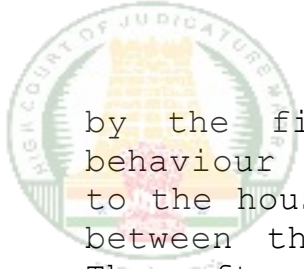
panchayat gave a complaint to the police and based on the complaint, the police came to the place and conducted enquiry, and asked the deceased to come to the police station on the next day for enquiry. Thereafter, the deceased committed suicide. In the above circumstances, there is no material to show that only on the instigation of the petitioners, the deceased committed suicide. Since there is no *prima facie* material available against the petitioners in the complaint given for the offence under Section 306 of IPC., and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they are entitled to get discharged from the charges.

5. The learned Additional Public Prosecutor appearing for the first respondent submitted that from the statement of the wife of the deceased, it could be seen that the petitioners came to her house along with the police officials and threatened the deceased and also abused him by using filthy language and called him by his caste name, being felt insulted and at the instigation of the petitioners, the deceased committed suicide. Hence, from the materials available on record, *prima facie* case for the offence under Section 306 of IPC., was made out. Apart from that, since the petitioners abused the deceased using filthy language and called him using his caste name, another offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is also attracted. Since the matter is at the stage of framing charges, there is all possibility for the Court below for framing charges under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also. In the above circumstances, after considering all the materials available on record, the trial Court rightly dismissed the application.

6. The learned counsel for the second respondent/Defacto complainant would contend that the statement of the wife of the deceased and the neighbours, clearly shows a *prima facie* offence under Section 306 of IPC., and it is only on the instigation of the petitioners, the deceased committed suicide. Hence, the provision under Section 306 IPC., as well as various provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, will also be attracted. To support his contention, the learned counsel for the second respondent relying upon the Judgment of the Hon'ble Supreme Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)** reported in **AIR 2010 SCC 1446**.

7. I have considered the rival submissions.

8. From the perusal of records, it could be seen that there was a dispute between the deceased and the first petitioner. The first petitioner was the President of the village panchayat and the deceased was working a pump operator, a complaint has been given



by the first petitioner against the deceased for his unruly behaviour and for investigation purpose two police officials came to the house of the deceased. At that time there was some argument between the wife of the deceased and the petitioners 1 and 2. Thereafter, the police officials instructed his wife to ask the deceased to come to the police station on the next day for the purpose of enquiry and at the same night, the deceased said to have committed suicide.

9. The question is whether, there is any material available on record to show a *prima facie* case, the offence under Section 306 of IPC, is made out?

(i) Section 306 of IPC., prescribed the punishment for abetment of suicide and reads as follows:

"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."

(ii) The basic ingredients of this provision are suicidal death and abetment thereof.

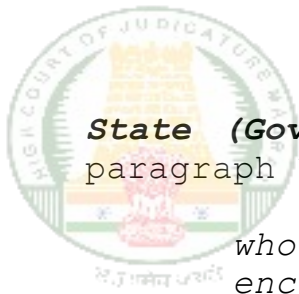
(iii) Section 107 of IPC., defines "abetment" and reads as follows:

" 107. 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 *mens rea* to commit the offence and that there ought to be an active or direct act leading the deceased to commit suicide."



State (Govt. of NCT of Delhi) reported in **AIR 2010 SCC 1446** at paragraph No.15 has held as follows:

"15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (Sec: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary- 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urging forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (2001 AIR SCW 4282) (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

11. The Hon'ble Supreme Court in yet another case in **S.S.Chheena v. Vijay Kumar Mahajan and another**, reported in **(2010) 12 SCC 190** at paragraph No.25 has 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

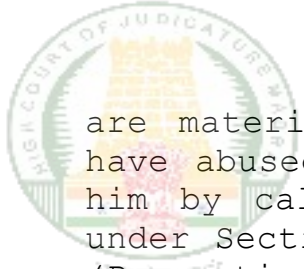


commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

12. Keeping the above principle in mind, considering the material available and the statement of the wife of the deceased/the defacto complainant, it could be seen that on 26.01.2011 at about 10.00 p.m., while the deceased was sleeping inside the house, all the petitioners along with two police officials came to his house and called the deceased to come out and the second petitioner scolded him with filthy language by using his caste name and intimidated him that they would finish him and at that time, the police officials intervened and advised them and asked the deceased to come to the police station on the next day for enquiry. On the next day morning at about 04.00 a.m., the deceased was found hanging. Likewise, some other witnesses and the neighbours of the deceased have also given a similar statement. Whereas from the statement of the Special Sub Inspector of Police, who came to the house of the deceased for the purpose of investigation, it could be seen that the first petitioner has given a complaint to the respondent police that the deceased has created so many problems in intoxicated mood and requested them to take action. Based on that, both the Special Sub Inspector and the Head Constable went to the house of the deceased for enquiry, at that time there was some argument between the petitioners 1 and 2 and the wife of the deceased. Then, both the police officials advised them and instructed his wife to tell the deceased to come to the police station for enquiry on the next day.

13. The Head Constable also had given a similar statement that there was some arguments only between the wife of the deceased and the petitioners and the police officials advised both the parties and asked the deceased to come to the police station of enquiry. From their statements, it is clear that the deceased was not present at the time of the previous occurrence and only the wife of the deceased was present. Hence, the police people instructed the wife of the deceased to tell the deceased to come to the police station on the next day for enquiry, the deceased was not present at the time of the occurrence and only his wife was present and the argument was only between his wife and the second petitioner, in the above circumstances, there is no question of the petitioners abused the deceased and thereby instigated him to commit suicide.

14. Perusal of the records shows that absolutely there is no material available on record to make out a *prima facie* case for the offence under Section 306 IPC., and, the charge under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, also cannot be maintained. So far as the contention of the learned Additional Public Prosecutor that there



are materials available on records to show that the petitioners have abused the deceased by using filthy language and also abused him by calling his caste name, which would attract the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is concerned, from the statement of the independent persons and the police personnels, namely, the Special Sub Inspector of Police and the Head Constable, at the time of occurrence, the deceased was not present in the scene, and only his wife was present. In the above circumstances, there is no *prima facie* case made out for attracting the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Court below without considering the entire materials available on record in proper perspective, dismissed the petition.

15. Considering the facts and circumstances, since there is no *prima facie* case made out against the petitioners, the petitioners are liable to be discharged. Accordingly, this Criminal Revision Case is **allowed** and the order made in Cr.M.P.183 of 2013, dated 08.04.2013 in Spl.S.C.No.37 of 2012, on the file of the Principal District and Sessions Judge, Theni, is set aside and the petitioners are discharged. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Theni.

2.The Deputy Superintendent of Police,
Uthamapalayam Circle,
Odaipatty Police Station,
Theni District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

+ 1 cc TO Mr.T.K.Gopalan , Advocate in SR No. 71819

+ 1 cc TO Mr.C.Muthusamy , Advocate in SR No. 71924

PJL

AE/SKN RSK/SAR2/05.10.2017/7P/6C