

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9213 of 2017

ORDER

The petitioner to the quash petition is A.4 of Cr.No.142 of 2017 of Mangalagiri Town Police Station registered initially for Woman burns on the report of T.Bhuvaneswari(died)and subsequently on receipt of death intimation from Hospital altered as punishable u/sec.498-A and 306 of IPC.

2. The complaint of the deceased T.Bhuvaneswari Devi (shown as quash petition 2nd respondent) speaks that she was residing near Jenda Chettu, Mangalagiri and her marriage with Pavan Kumar(A.1) of Tummapudi of Duggirala Mandal was performed in the year 2013. During their wedlock, when they were living at Chilukuru, Suryapet District, they were blessed with a boy by name Vasanta Gopala Krishna. Her husband-A.1 was working as Priest in a temple and used to harass her physically and mentally and due to disputes between them she used to reside at her parents' house at old Mangalagiri along with her son. On 12.06.2017, her husband and her father-in-law at the instigation of her mother-in-law came to Mangalagiri to her house in the absence of her mother and asked her to come to Danbasco Church stating that there is no possibility of continuing marital life and wants to give divorce and take her child along with them. On 17.06.2017 as she was under depression, in order to end her life she poured kerosene and lit herself in her house. On hearing her cries, neighbours gathered there and shifted her to Government Hospital, Guntur with burns on her body. While undergoing treatment, the Police recorded her statement. The police after investigation, altered Section of law from Woman burns to Sections 498-A and 306IPC after receiving death information from hospital.

3. Impugning the same, the petitioner filed the quash petition with the contentions in the grounds of petition are that he has not committed

any offence much less the alleged offence and the entire statement of the deceased nowhere shows his name as spoken by her or any incident involving him in the alleged offence. He has nothing to do with the alleged disputes between the deceased and the A.1. He is not a family member or relative of the husband of the deceased. There was no abatement or anything alleged against him. The ingredients of Section 498-A or 306 IPC are not applicable against him and he is falsely implicated in the offence for the reasons best known to the police. The family members of the deceased might have developed the thought of impleading him in the case only to get wrongful gain and to harass him and defame him in the society. Even if trial takes place, there is no possibility for conviction against the petitioner. As such continuation of proceedings against him are clear abuse of process of law. Hence, this quash petition.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the 1st respondent-State and also the learned counsel for the 3rd respondent-mother of the deceased and perused the grounds urged in the quash petition and contents of the FIR and other material on record.

5. The police final report besides the above facts discloses as true that since the complainant refused for divorce, her husband-Pavan Kumar, Gopalakrishna, Radha and Sahadevudu-the petitioner herein, used criminal force against her and took away her son along with them and later when she paid Rs.17,000/- to Sahadevudu and requested him and Pavan Kumar to return her son but they refused, due to the above reasons, the complainant disgusted with her life and attempted to die.

6. Even Section 39 CrPC did not mention Section 306IPC for non-disclosure of the information having aware of the committing of such offence intentionally to make the accused liable for the abatement of the deceased to

commit suicide but for that the chargesheet no way links the accused to the cause of death of the deceased as outcome of her abatement.

7. In this regard, the very recent expression of the three Judge Bench of the Apex Court in Pawan Kumar v. State of H.P.¹ lays down what abetment is in which it speaks referring to several expressions, in particular, the three Judge Bench expression of Ramesh Kumar v. State of Chhattisgarh², what is laid down is that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 I.P.C. is not sustainable and there has to be positive action that creates a situation for the victim to put an end to life of the victim. The word 'abetment' is not explained in Section 306 I.P.C. The definition of abetment provided in Section 107 I.P.C. has to be considered. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused involving his mental element. Such a requirement can be perceived from the reading of Section 107 I.P.C. which speaks abetment of a thing either by 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, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing. The meaning of 'instigates' considered by the three Judge Bench of the Apex Court in Ramesh Kumar (supra), referring to the dictionary meaning of it literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him

¹ 2017 SCC Online SC 509

² (2001) 9 SCC 618

to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or may be by (implied) conduct. The word 'Urge forwards' means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with the intention to provoke, incite or encourage the doing of an act with a latter. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment". As held in *Randhir Singh v. State of Punjab*³ at para-12 that "abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In *Praveen Pradhan v. State of Uttaranchal*⁴, it was held at para-18 that instigating has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Referring to *Amalendu Pal alias Jhantu v. State of West Bengal*⁵ which referred *Randhir Singh*(supra) and *Kishori Lal v. State of M.P.*⁶ and *Kishangiri Mangalgiri Goswami v. State of Gujarat*⁷, it was held at para-12 that the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end

³ (2004) 13 SCC 129

⁴ (2012) 9 SCC 734

⁵ (2010)1 SCC 707

⁶ (2007) 10 SCC 797

⁷ (2009) 4 SCC 52

to her life. Also referring to *Netai Dutta v. State of W.B.*⁸, it was at para-6 observed that 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. Referring to *Chitresh kumar Chopra v. State (Government of NCT of Delhi)*⁹ which referred *Ramesh Kumar (supra)* holding that to satisfy the requirement of “instigation”, though it is not necessary that actual words must be used to that effect of what constitutes “instigation” must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

8. At para-45 of *Pawan Kumar (supra)*, it is observed referring to para-20 of *Chitresh kumar Chopra (supra)* that the question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual’s suicidability pattern depends on his

⁸ (2005) 2 SCC 659

⁹ (2009) 16 SCC 605

inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self. This is the principle of law scanning the same referring to the several expressions ultimately laid down by the latest three Judge Bench expression of the Apex Court in Pawan Kumar (supra).

9. Except the allegation of the petitioner/ A.4 abetted her saying that for her refusing for divorce, the act of the petitioner/ A.4 alleged as used criminal force against her and took away her son, made her disgust and drove to commit suicide, there is no other material including from entire prosecution case on face value of he abetted her which attracts the offence.

10. In view of the above discussion and the expressions, this Court found nothing to continue proceedings in the crime supra against the petitioner.

11. In the result, the Criminal Petition is allowed by quashing the proceedings in Cr.No.142 of 2017 of Mangalagiri town Police Station, Guntur district, against the petitioner/ A.4 and he is acquitted and his bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, pending in this Criminal Petitions, shall stand closed. Needless to say during trial if there is any role of the petitioner came in evidence for any offence, the trial Court is at liberty to invoke Section 319 CrPC, to add him in respect of it.

Dr. B.SIVA SANKARA RAO J,

Date:14.11.2017

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