

The Hon'ble Sri Justice M.Satyanarayana Murthy

Criminal Petition No.822 of 2017

Dated 10.02.2017

Order:

This Criminal Petition under Section 439 Cr.P.C., is filed by accused No.1 in Crime No.265 of 2016 on the file of the Narsampet Police Station, Warangal District, registered for the offences punishable under Sections 498-A & 306 r/w Section 34 IPC seeking regular bail as he is in judicial custody since 06.01.2017.

The case of the prosecution is that the petitioner is the husband of one Vankudoth Rajeswari (hereinafter referred as 'the deceased') and their marriage was performed in the year 2016. They lived happily for some time and later, disputes arose between them. However, they were blessed with two daughters. Several panchayats were held. Despite advise by the panchayatdars, the petitioner did not change his attitude and continuously harassed the deceased by subjecting her to cruelty, which drove her to commit suicide.

It is the contention of the petitioner that there is no specific allegation in the complaint regarding his instigation and that

therefore, he cannot be roped with the offence punishable under Section 306 IPC. While further contending that the alleged cruelty does not amount to the offence punishable under Section 306 IPC, the learned Counsel has drawn the attention of this Court to a judgment of the Supreme Court in **Gangula Mohan Reddy vs. State of Andhra Pradesh**¹ wherein it was held that in the absence of *mens rea* to commit an offence, it is difficult to conclude *prima facie* that the accused has committed the offence punishable under Section 306 IPC.

As seen from the material on record, the marriage of the petitioner with the deceased took place in the year 2013. The allegations made in the complaint would show that the deceased was subjected to cruelty, due to which the matter was referred to panchayatdars and that despite their advice, the petitioner did not change his attitude. There is no specific allegation in the complaint that the deceased was subjected to cruelty for her failure to meet the illegal demand of the petitioner. In the absence of such allegation, it is difficult to conclude that the petitioner has committed the offence punishable under Section 498-A IPC. However, the unnatural death of the deceased at her in-law's house is not in dispute and if the allegations in the

¹ AIR 2010 SC 327

complaint are taken on their face value, the reason for suicide of the deceased would have been the alleged harassment.

In **Gangula Mohan Reddy** (cited supra), the word 'Instigation' is defined as under:

“Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or 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. The present one is not a case 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 been inferred. The word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

The material available on record goes to show that the petitioner along with his parents has allegedly subjected the deceased to cruelty and the matter was placed before the Panchayat elders, who advised him to take care of the deceased. In spite of the same, the petitioner continued the harassment, which drove the deceased to commit suicide. The above reported judgment can be applied only when the petitioner did not directly instigate or incite the deceased to commit suicide. Therefore, it is

of no assistance. On the other hand, it supports the case of the prosecution.

Coming to the petitioner's other contention regarding *mens rea*, it is an essential element to convict the accused for the offence punishable under Section 306 IPC. However, it is a question of fact, which has to be established during the trial and at this stage, it is difficult to conclude *prima facie* whether the petitioner has committed the offence or not as there is no material pointing out his mental element to commit the offence. On the other hand, on the basis of the circumstances preceding the offence, I find *prima facie* material against the petitioner to conclude that he drove the deceased to commit suicide.

Though it is stated that the petitioner has been in judicial custody since 06-01-2017, long period of languishing in jail is not a ground to enlarge him on bail. Moreover, the investigation has not yet been completed. Having considered all the circumstances, I find no ground to enlarge the petitioner on bail.

In the result, the Criminal Petition is dismissed.

(M.Satyanarayana Murthy, J)

Dt: 10th February, 2017
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