

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.11.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.21488 of 2012

and

CRL.M.P.No.1 of 2012

1.K.R.Raji, S/o Ramasamy

2.K.R.Kathir, S/o.Ramasamy

3.R.Velu, S/o.Ramasamy

All are residing at
No.7/4, Viswanathapuram
2nd Street,
Kodambakkam
Chennai-24.

... Petitioners

vs

1.The State rep by its
Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai.

2.G.Parthasarathy
No.240, Choolaimedu High Road,
Choolaimedu,
Chennai-94.

... Respondents

PRAYER: This Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to call for the
records in of the respondent in Crime No.251 of 2012 and such
quash the same.

For Petitioners : M/s.D.Prasanna

For Respondents : Mr.T.Shunmugarajeswaran
Government Advocate (Crl.side)
For R1

For R2 : Party appeared in person

O R D E R

This Criminal Original Petition has been filed by the accused Nos.1 to 3 to quash the FIR registered in Crime No.251 of 2012 on the file of the first respondent.

2.The second respondent herein gave a complaint to the first respondent on 24.02.2012 alleging that his brother Vijayan was running a library and due to the problem arose with regard to money transactions between his brother Vijayan and K.R.Raji (1st petitioner), the said Vijayan had consumed poison on 22.02.2012 at 03.30 a.m., and immediately he was taken to the Government hospital and admitted there and when he was under treatment on 24.02.2012 at 05.30 a.m., he died. Based on the said complaint, the first respondent has registered a case on 24.02.2012 at 09.00 a.m., in Crime No.251 of 2012 under Section 174 Cr.P.C and took the matter for investigation. On 01.03.2012 at 09.00 a.m., the wife of the deceased namely Mrs.Jamuna appeared before the first respondent and handed over a suicide note said to have been written by the deceased and the same was found by her only on 01.03.2012 at 08.00 a.m., when she checked her husband's hand bag. In the said suicide note, the deceased has stated that because of the torture given by the petitioners herein, he decided to commit suicide and based on the said suicide note, the first respondent has altered the case into under Section 306 IPC. Hence, the petitioners herein have filed the present petition to quash the said F.I.R.

3.The learned counsel for the petitioners has submitted that in the complaint which was given by the second respondent, he has not stated that these petitioners have indulged in any harassment and on the contrary he has stated that only on fearing that his family members may scold him, the deceased consumed poison. She further submitted that even in the said suicide note, it is not specifically stated that where it was written. She further submitted that in the Handwriting Expert's report, it is stated that certain admitted documents were compared with the hand writing found in the said suicide note but those admitted documents contain signatures in English whereas the suicide note was written in Tamil and therefore Handwriting Expert's opinion cannot be relied on by the prosecution.

4. She further submitted that admittedly the deceased has admitted in the Government Hospital on 22.02.2012 itself and he died only on 24.02.2012 at 05.30 a.m. and in the mean time the first respondent could have taken steps to get dying declaration from the deceased, but for the reasons best known to him, the

first respondent had not taken any such efforts. She further submitted that even if the allegations made in the FIR at the face value are taken as true, offence under Section 306 will not attract. She further submitted that already the first petitioner has lodged a complaint on 19.02.2012 against the deceased and based on the same, the police conducted enquiry and that being so, the deceased could not have committed suicide due to the action taken by the petitioners. In support of her contentions, she relied upon the following decisions:

- (i) S.S.Chheena vs Vijay Kumar Maharjan and another (2010) 12 SSC 190;
- (ii) Madan Mohan Singh vs State of Gujarat and another (2010) 8 SCC 628;
- (iii) State of Kerala and Others vs S.Unnikrishnan Nair and Others (2015) 9 SCC 629;
- (iv) Netai Dutta vs State of W.B (2005) 2 SCC 659;

5. The learned Government Advocate(Crl.Side) has submitted that the complaint which has been lodged by the second respondent would clearly disclose that only due to the harassment made the petitioners herein, the deceased committed suicide. He further submitted that the suicide note also discloses that these petitioners have indulged in harassment of the deceased. He further submitted that, the said suicide note has been sent to the handwriting expert and obtained report wherein the handwriting expert clearly stated that the suicide note might have been written by the deceased and hence there are materials to prosecute the petitioners under Section 306 of IPC and therefore he prayed to dismiss the petition.

6. Since the notice which has been sent through the Court and also private notice which was sent by the learned counsel for the petitioners were not served on the second respondent, this Court directed the first respondent to serve the notice to the second respondent. Accordingly the first respondent has served the notice to the second respondent. After receipt of the notice, the second respondent also appeared in person and submitted that only due to the harassment made by the petitioners herein, his brother Vijaiyan has committed suicide.

7. In the complaint which was lodged by the second respondent before the first respondent, he has stated that due to the money transactions which took place between his brother Vijaiyan and the first petitioner herein, the said Vijaiyan fearing that his family members may scolded him he consumed poison on 22.02.2012 at 03.30 a.m.,. So, based on the aforesaid averment, it cannot be said that only due to the act of the petitioners, the deceased committed suicide.

8. Admittedly, the deceased was admitted in the Government Hospital on 22.02.2012 in the morning as he consumed poison so, the Hospital authorities might have sent an intimation immediately to the police. After receipt of the intimation from the hospital, the police should have rushed to the hospital and get complaint from the deceased or atleast they should have taken steps to record his dying declaration. Even though, the deceased was alive for two days, the police have not taken any steps to get dying declaration.

9. It is to be pointed out that the alleged suicide note has been written in Tamil, whereas, the handwriting expert has compared the documents which have been written in English. When the languages are different, the handwriting expert cannot compare the said documents and give his opinion.

10. It is also to be pointed out that in the said suicide note and also in the admitted documents the signatures have been made in English but the first respondent has not taken steps to get Expert's Opinion by comparing those signatures.

11. It is also to be pointed out that in the said suicide note, it is stated that the deceased does not want to take his body even to his house. Whereas, it is seen from the case diary, that the deceased has consumed poison in his house only. So the aforesaid fact also would lead to an inference that the deceased would not have written the said suicide note.

12. In *S.S.Chheena vs Vijay Kumar Maharjan and Another* (Supra) the Hon'ble Supreme has held as under:

"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 the Supreme 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. In *Madan Mohan Singh vs State of Gujarat and Another* (Supra) the Hon'ble Supreme has held as under:

"12. In order to bring out an offence under Section 306 IPC Specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306 IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A Criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netaji Dutta v. State of W.B, this Court had quashed the proceedings initiated against the accused."

14. In State of Kerala and Others vs S. Unnikrishnan Nair and Others (Supra) the Hon'ble Supreme has held as under:

"Suicide note really does not state about any continuous conduct of harassment- Where no prima facie case is made out against accused, then High Court is obliged in law to exercise Jurisdiction under S.482 Cr.P.C and quash the proceedings."

15. In *Netai Dutta vs State of W.B (Supra)* the Hon'ble Supreme has held as under:

"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.

7. Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned single Judge seriously erred in holding that the first information report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal."

16. From the aforesaid decisions, it is clear that for attracting Section 306 of IPC, some positive act might have been done by the accused to connect them with the offence. In this case, in the complaint, it is not stated that the petitioners herein have played any positive role instigating the deceased to commit suicide. Therefore, this Court is of the view that even if the allegations made in the FIR are taken as true at the face value, Section 306 of IPC will not attract. Hence, this Court is inclined to allow this petition.

17.In the result, this Criminal Original Petition is allowed. The FIR against the petitioners herein Crime No.251 of 2012 on the file of the first respondent alone is quashed. Consequently, connected miscellaneous petition is closed.

stm/jen

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

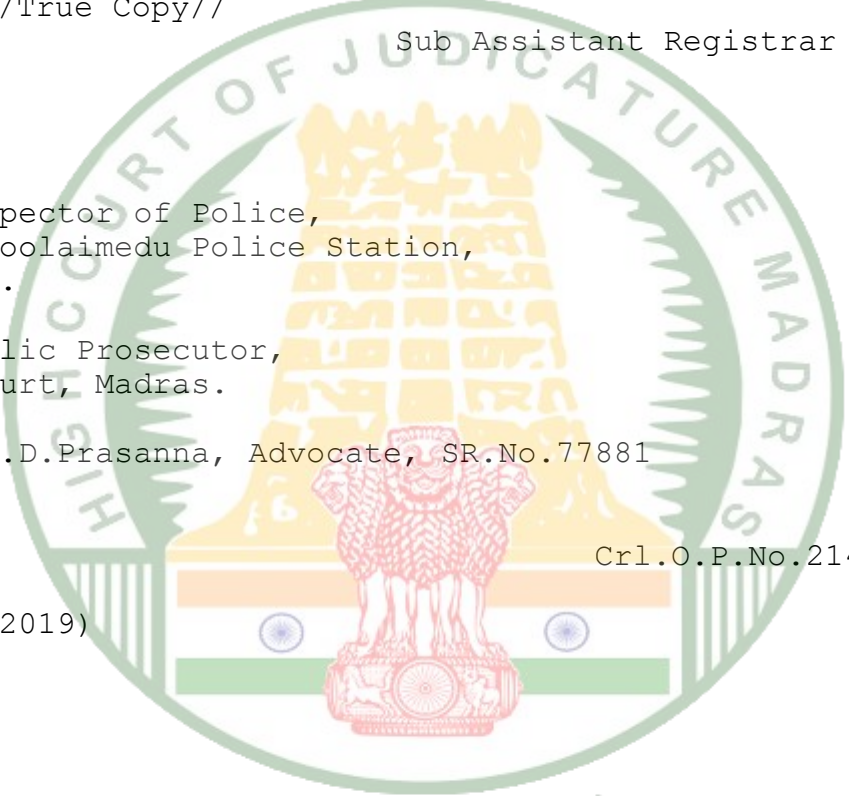
To

1. The Inspector of Police,
F-5, Choolaimedu Police Station,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.D.Prasanna, Advocate, SR.No.77881

Cr1.O.P.No.21488 of 2012

ks (CO)
kak (29/01/2019)



सत्यमेव जयते

WEB COPY