

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.27471 of 2015

and

M.P.Nos.1 and 2 of 2015

Jaga Vinayagam@Vinayagam ... Petitioner/3rd Accused

Vs

1.State of Puducherry

Rep. by Sub Inspector of Police,
Mudaliyapet Police Station,
Puducherry (Cr.No.101/2010)

2.Tmt.Chitra Ramesh

... Respondent/Complainant

(2nd respondent is impleaded as per
the order of this Hon'ble Court dated
10.10.2018 made in Crl.M.P.No.13585
of 2018 in Crl.O.P.No.27471 of 2015)

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to quash the proceedings in S.C.No.44 of 2014 on the file of the Hon'ble District Sessions Judge, Puducherry initiated in Crime No.101 of 2010, Mudaliarpur Police Station, in so far as it relates to the petitioner / 3rd accused herein.

For Petitioner : Mr.K.Govindaraj

For R1 : Mr.V.Balamurugane
Additional Public Prosecutor,
Puducherry

For R2 : No Appearance

O R D E R

This petition has been filed by the accused No.3 to quash the proceedings against him in S.C.No.44 of 2014 on the file of the District and Sessions Judge, Puducherry.

2. The learned counsel for the petitioner has submitted that the second respondent herein has lodged a complaint stating that she borrowed a sum of Rs.70,000/- from one Kalaiarasi because of her husband's ill health. she could not pay interest for the past three months. Hence, on 31.03.2010 at about 4.00 p.m., the accused persons came there and asked her husband as to why he has not repaid the loan amount and further they criminally intimidated that if he failed to pay the amount with interest on the same day, it is better to die by hanging. She further stated that because of the conduct of the accused persons, her husband Ramesh committed suicide by hanging himself in the fan. He further submitted that in the said complaint nothing has been stated that the petitioner herein has used any word directing the deceased to die himself, whereas in the statement recorded under 161 (3)Cr.P.C. she has improved the version and stated that if you are not able to repay the loan it is better to die by hanging. He further submitted that even if it is assumed that the petitioner herein has uttered the aforesaid words, it cannot be said that the petitioner has abetted him to commit suicide.

3. In support of the said contentions, he relied upon the following decisions:-

1.V.Vijayalakshmi Vs. State rep. by Inspector of Police (2013) 2 MLJ (Cr1) 463.

2.S.A.Margaret Angel and another Vs. State rep. by the Inspector of Police (Cr1.O.P.(MD)No.15407 of 2016, dated 05.10.2018).

3.Santhosh Vs. The Inspector of Police (Cr1.O.P.(MD) No.12462 of 2014, dated 12.10.2018).

4. Gurcharan Singh Vs. State of Punjab (2017) 1 SCC 433.

4. The learned Additional Public Prosecutor, Puducherry, who is appearing for the first respondent has submitted that in the complaint as well as in the statement recorded under Section 161 (3) Cr.P.C., the defacto complainant has categorically stated that she borrowed a sum of Rs.70,000/- from the accused No.1 and since her husband not doing well, she could not pay interest for the past three months. That being so, on 31.03.2010 at about 4.00 p.m., the accused persons came to her house and scolded her husband and the petitioner herein has specifically uttered the words that if you are not able to repay the loan, it is better to die by hanging and because of the said

words uttered by the petitioner, the deceased has become mentally depressed and committed suicide at about 7.30 p.m., by hanging himself in his house and therefore, there a prima facie case is made out against the petitioner herein to proceed further and hence he requests to dismiss the petition.

5. In V.Vijayalakshmi Vs. State rep. by Inspector of Police, (supra), this Court in paragraph Nos.11 and 12 has observed as follows:-

'11.The words attributed by the petitioner are only to the extent that 'instead of committing theft, the deceased should go and die'. By attributing those words, it cannot be said that the petitioner being a teacher intentionally wanted her student to commit suicide. Of-course, she should have been more careful in using words.

12.In the decision of the Hon'ble Supreme Court reported in 2002 SCC (Cr1.) 1141 (Sanju @ Sanjay Singh Sengar Vs. State of M.P.) in paragraph Nos.12 to 15, it is observed as follows;

"12.Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25.7.1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased, "to go and die". For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under section 161 Cr.P.C., when reportedly, the deceased after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under section 161 Cr.P.C., is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told that the appellant had asked him "to go and die". Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25.7.1998 ensued

by a quarrel. he deceased was found hanging on 27.7.1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25.7.1998 drove the deceased to commit suicide. Suicide by the deceased on 27.7.1998 is not proximate to the abusive language uttered by the appellant on 25.7.1998. The fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25.7.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

6. From the aforesaid decision it is clear that mere telling "to go and die" itself does not constitute the ingredient of "instigation". Presence of mens rea is the necessary concomitant of instigation.

7. In S.A.Margaret Angel and another Vs. State rep. by the Inspector of Police (supra), this Court in paragraph No.21 has observed as follows:-

"21. In State of Gujarat v. Sunilkumar Kanaiyalal Jain (1997 CrL.J.2014) a Division Bench of the Gujarat High Court considering the scope of Section 306 IPC elaborately dealt with abetment, realising the responsibility of the Court also has observed, "better die today than tomorrow" if had been uttered cannot be said to be the abetment in the eye of law since the words might have been uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge or might be the rude or insulting, not with desire to instigate the person to commit suicide, which principle also could be extended to the above case on hand. By applying the law settled by the Supreme Court to the facts of the case on hand, as well as analysing the evidence available on record and taking into consideration the over all circumstances of the case also after deep consideration, I am of the considered opinion, no offence has been made out under Section 306 IPC."

8. In Santhosh Vs. The Inspector of Police (supra), this Court in paragraph No.10 has observed as follows:-

"10. In the said decision, the Apex Court has held that the abetment involves 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, the charge cannot be sustained. But, in the present case, there is absolutely no material to prove the charge of abetment as against the petitioner. Further, as rightly pointed by the learned counsel for the petitioner, there is absolutely no link between the petitioner and the deceased. Merely in the charge sheet, the respondent added the petitioner as he demanded a sum of Rs.47,500/- from the petitioner, that too without any piece of evidence to connect the said charge. Further, the intention of the Legislature and the ratio of the cases decided by the Hon'ble Supreme Court of India are clear that in order to convict a person under Section 306 of 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 this act must have been intended to push the deceased into such a position that he committed suicide. Therefore, as far as the petitioner is concerned, he never acted upon, which lead the deceased to commit suicide. Therefore, the criminal proceedings against the petitioner is liable to be quashed.'

9. From the aforesaid decisions, it is clear that the abetment involves 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, the charge cannot be sustained.

10. In Gurcharan Singh Vs. State of Punjab (supra), the Hon'ble Supreme Court in paragraph Nos.28 and 29 has observed as follows:-

"29. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The

above view was reiterated in Amalendu Pal @ Jhantu vs. State of West Bengal (2010) 1 SCC 707.

30. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Chheena vs. Vijay Kumar Mahajan."

11. From the aforesaid decisions, it is clear that merely because the accused has uttered the words that if you are not able to repay the debt it is better to die by hanging it cannot be said that he has abetted the deceased to commit suicide. There must be a positive act on the part of the accused to instigate or aid in committing suicide. In this case in the complaint, the second respondent has not stated that the petitioner herein has uttered the words that if you are not able to repay the debt, it is better to die by hanging. Only in the statement recorded under 161 (3) Cr.P.C., she has stated that the petitioner herein uttered the aforesaid words. Even if the aforesaid statement is taken as true, in view of the aforesaid decisions, the said act would not attract Section 306 IPC., Therefore, the continuance of the proceedings against the petitioner would amount to abuse of process of the Court.

12. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioner herein in S.C.No.44 of 2014 on the file of the District and Sessions Judge, Puducherry are quashed. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registra

vsa

To

1.The District and Sessions Judge
Puducherry.

2.The Sub Inspector of Police,
Mudaliyapet Police Station,
Puducherry.

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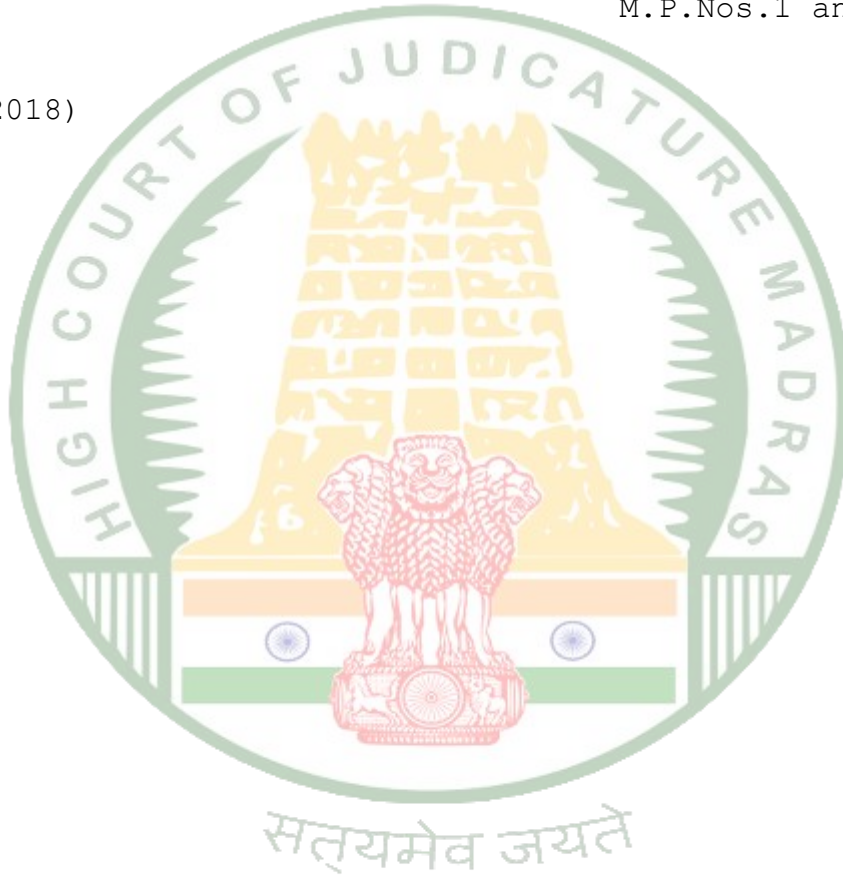
3.The Public Prosecutor,
Madras High Court,
Chennai. (Pondy)

+1 CC to Mr.K.Govindaraj, Advocate sr 74585.

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and
M.P.Nos.1 and 2 of 2015

SP(26/11/2018)



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