

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.22309 of 2016

and

M.P.No.10378 of 2016

Padma

... Petitioner

Vs.

1. The State rep by  
Inspector of Police,  
B-2, Police Station,  
R.S.Puram, Coimbatore,  
(Crime No.470 of 2016)

2. Rajeswari

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C, prayed to call for the record in Crime No.470 of 2016 dated 24.07.2016 on the file of the Inspector of Police, B-2 R.S.Police Station, Coimbatore and quash the same.

For Petitioner : Mr.T.S.Venkateshan

For Respondents : Mr.T.Shunmuga Rajeswaran  
Government Advocate (Crl.Side)  
for R1  
No Appearance for R2

ORDER

This petition has been filed by the accused to quash the F.I.R in Crime No.470 of 2016 on the file of the first respondent.

2. The learned counsel for the petitioner has submitted that the petitioner is the landlord and the deceased Loganathan was the tenant under the petitioner. He further submitted that the deceased Loganathan died under suspicious circumstances on 23.07.2015 and hence, the first respondent has registered the case in Crime No.470 of 2016 under Section 174 Cr.P.C. Subsequently, the case was altered into under Section 306 I.P.C stating that the petitioner has abetted the deceased Loganathan

to commit suicide. He further submitted that the allegations made in the F.I.R would not attract Section 306 I.P.C. He further submitted that in the F.I.R., it is stated that since the petitioner herein has insisted the deceased to pay the arrears of rent and also used the obscene words, the deceased consumed pesticide and committed suicide on 20.07.2016 at 5.30 p.m. He further submitted that even assuming that the petitioner has used obscene words and also uttered words " to go and die ", it could not be said that the petitioner has abetted the deceased to commit suicide. He further submitted that the petitioner has not played any active role or facilitate the commission of suicide and therefore, the Section 306 I.P.C will not attract.

3. In support of aforesaid conditions, the learned counsel for the petitioner relied upon the following decisions:

(i) Swamy Prahaladdas /vs/ State of Madhya Pradesh and another, 1995 Supp (3) Supreme Court Cases 438

(ii) Sanju Alias Sanjay Singh Sengar /vs/ State of Madhya Pradesh, (2002) 5 Supreme Court Cases 371

(iii) Arokiasamy /vs/ State, rep by Inspector of Police, Tuticorin South , Cr.No.808/2002, Tirunelveli District, 2014(3) CTC 404

(iv) Manikandan /vs/ State, rep. by the Inspector of Police, Thirunelakudi Police Station, Thanjavur District. (Crime No.215 of 2011), (2016) 4 MLJ (Cr1) 240.

4. The learned Government Advocate (Criminal Side) who is appearing for the first respondent has submitted that the deceased Loganathan and his family members were residing in the house belonging to the petitioner herein as tenants. He further submitted that initially rent for the said house was fixed at Rs.5,000/- per month. He further submitted that the said Loganathan has paid rent up to May 2016 promptly, and thereafter he could not pay rent for two months and hence the petitioner herein has lodged a complaint before the B-2 R.S.Puram Police Station, Coimbatore on 28.04.2016 and on receipt of the said complaint, C.S.R.No.266 of 2016 has been issued. During enquiry on the said complaint, the deceased has undertaken that he will pay the arrears of rent and vacate the house in the month of July 2016. Accordingly, he has paid Rs.3,000/- towards arrears of rent. He further submitted that the petitioner without waiting till the end of July 2016, gave torture to the deceased Loganathan demanding arrears of rent. The petitioner has already disconnected the water connection and electricity connection and also threatened that she will lock the door and hence, the deceased Loganathan consumed poison i.e., pesticide and committed suicide. He further submitted that the case is at investigation stage and only in the investigation, the necessary material evidence could be collected and therefore, he requests this Court to allow the

first respondent to complete the investigation and hence, he prayed to dismiss this petition.

5. Though notice was served on the second respondent, she did not appear either in person or through counsel.

6. The F.I.R has been registered on 23.07.2016 based on the complaint given by the second respondent who is the wife of the deceased Loganathan. In the complaint, she has stated that they have occupied the petitioner's house as tenant one and half years prior to the date of complaint. She further stated that at that time, her husband has paid a sum of Rs.15,000/- as advance and they have agreed to pay a monthly rent of Rs.5,000/- and they have paid the rent regularly. She further stated that subsequently, the petitioner herein demanded to pay Rs.50,000/- as advance and the rent also should be paid at the enhanced rate of Rs.5,250/- per month, for which, they have not agreed. She further stated that her husband could not pay rent for two months and hence, the petitioner has disconnected water connection as well as electricity connection. Further, the petitioner gave a complaint before the Police Station on 28.04.2016 to direct the deceased to vacate the premises and the police enquired the matter and they advised to pay the arrears of rent and vacate the premises. But, subsequently the petitioner has stated that they need not pay advance at the rate of Rs.50,000/-, however, she informed them that they should pay rent at the rate of Rs.5,250/- per month. They did not pay the rent at the rate of Rs.5,250/-. They paid only Rs.3,000/- and made requests to grant ten days time for paying balance amount of Rs.2,250/- and for that, the petitioner has not agreed. She further stated that since the petitioner has disconnected the water connection as well as electricity service connection, their family suffered a lot. She further stated that on 09.07.2016, the petitioner came there and shouted that since they did not pay the rent, they should vacate the premises and also refused to restore the water connection and electricity service connection and hence, the deceased Loganathan consumed pesticide on 20.07.2016 at about 5.30 p.m and committed suicide.

7. A plain reading of the complaint does not disclose that the petitioner herein has played an active role by an act of instigation or she has facilitated the commission of suicide.

8. In Swamy Prahaladdas /vs/ State of Madhya Pradesh and another, (supra), the Hon'ble Supreme Court in paragraph Nos.2 and 3 has observed as follows:

" 2.Sushila Bai, respondent a married woman, is alleged to have had two paramours, one was the deceased and the other is the appellant. It is alleged that there was sexual jealousy between the



two. The deceased was a married man. The prosecution alleges that Sushila Bai had completely bewitched him but her heart was with the appellant. On the morning of 13.06.1992, all the three had a quarrel while sharing their morning tea. During that course, the appellant is said to have remarked for the deceased to go and die. The prosecution alleges that thereafter the deceased went home in dejected mood, whereafter he committed suicide. The suicide has been termed as the direct cause for the treatment meted out to the deceased by the appellant. It is Sushila Devi though, who alone stands out to the deceased by the appellant. It is Sushila Devi though, who alone stands committed to the Court of Session to face trial because of her preferential treatment to the appellant.

3. At the time of framing of charge, the trial court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Session was in error in summoning the appellant to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is appellant requiring rectification. The appeal is accordingly allowed. The Orders of the High Court and that of the Court of Session are thus upset. The appellant need not face the charge."

8. In Sanju Alias Sanjay Singh Sengar /vs/ State of Madhya Pradesh, (supra), the Hon'ble Supreme Court in paragraph Nos. 8 to 12 has observed as follows:-

"8. In *Swamy Prahaladdas v. State of M.P.*, 1995 Supp. (3) SCC 438, the appellant was charged for an

offence under [Section 306](#) I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

9. In [Mahendra Singh v. State of M.P.](#), 1995 Supp.(3) SCC 731, the appellant was charged for an offence under [Section 306](#) I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

10. This Court, considering the definition of 'abetment' under [Section 107](#) I.P.C., found that the charge and conviction of the appellant for an offence under [Section 306](#) is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In [Ramesh Kumar V. State of Chhattisgarh](#) (2001) 9 SCC 618, this Court was considering the charge framed and the conviction for an offence under [Section 306](#) I.P.C. on the basis of dying declaration recorded by an Executive Magistrate , in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were

not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

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 25-07-1998 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 Crpc 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 CrPc 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 him 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 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. The 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".

9. In Arokiasamy /vs/ State rep. by Inspector of Police, Tuticorin South, Cr.No.808/2002, Tirunelveli District, (supra) this Court has observed in paragraph Nos.16 to 19 as follows:

" 16. No one has a right to commit suicide however difficult position he is in. Infact, an attempt to commit suicide by itself is an offence under Section 309, I.P.C. If the three had survived, then Sheeba would have been prosecuted for an offence under Section 309, I.P.C for attempting to commit suicide and also for an offence under Section 307, I.P.C for attempting to commit the murder of her two children. Had such a situation arisen, the Accused herein would never have been in the dock. Just because the three had died, he cannot now be put in the dock and made responsible for their deaths.

17. Through the evidence of Johnson(PW3) the prosecution made a faint attempt to implicate the Accused by arguing that on 29.10.2002 when P.W.3 went to Sheeba's house, he heard the Accused abusing her by saying " Why are you alive? Go and die. " The learned Senior Counsel for the Accused repelled this argument by rightly relying upon the Judgment of the Supreme Court in Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh, 2002 CDJ 371 (SC). The following passage from the said judgment will adequately answer the prosecution contention:

" 13. ... 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 unadvisable 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 in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional."

18. In Amalendu Pal alias Jhantu v. State of West Bengal, 2010 (1) SCC 707, the Supreme Court has held that:

" In order to bring a case within the purview

of Section 306, there must be a case of suicide and in the commission of the said offence, the person, who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abatement by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306, I.P.C.

The Principle laid down in the said judgment applies in all fours to the facts of this case.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed upon the Accused is set aside. The fine amount paid, if any, shall be refunded to the Appellant."

10. In Manikandan /vs/ State rep. by Inspector of Police, Thiruneelakudi Police Station, Thanjavur District, (supra) this Court has observed in paragraph No. 43 as follows:-

"It is not the wish and willingness nor the desire of the victim to die, it must be the wish of the accused, it is the intention on the part of the accused that the victim should die that matters such. There must be a positive act on the part of the accused. It need not be by words. It may be by deeds. It may be by letters. But, at the same time, the decision of a weak minded or a woman of frail mentality cannot be misunderstood as abatement. For one's foolish act another person cannot be made liable".

11. From the above said decisions, it is clear that mere uttering of the words would not constitute an offence under Section 306 IPC. In this case, in the complaint, the second respondent has not at all stated that the petitioner herein has used any obscene words or directing him to go and die. As already pointed out that in the complaint, she has stated that since the arrears of rent has not been paid, the petitioner has disconnected the water connection and service connection. If really, the deceased is having any grievance with regard to the disconnection of water connection and electricity connection, he could have a filed a petition before the Rent Controller for restoration of amenities, but he has not chosen to approach any such authority. Merely because the petitioner has demanded to pay rent, it cannot be said that the petitioner has played any active role instigating the deceased to commit suicide. The demanding of



rent is a common thing and it cannot be said that the said act has driven the deceased to take the extreme step of ending his life.

12. Even if it is assumed that the petitioner has threatened that she will lock the door for non-payment of rent, the deceased could have approached the Civil Court and obtained necessary orders. The said procedure also has not been followed by the deceased.

13. It is also to be pointed out that in the complaint, the second respondent has stated that since the petitioner has approached the police and the police also instructed them to pay the arrears of rent and vacate the premises, they have decided to vacate the premises and that being so, it is not known why the deceased has committed suicide. Therefore, the petitioner cannot be blamed for the suicide committed by the second respondent's husband namely Loganathan. Therefore, this Court is inclined to allow this petition.

14. In the result, this petition is allowed. F.I.R. in Crime.No.470 of 2016 on the file of the first respondent is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Inspector of Police,  
B-2, Police Station, R.S.Puram, Coimbatore.

2. The Judicial Magistrate Court,  
Bhavani, Erode District.

3. The Public Prosecutor, High Court, Madras.

4. The Judicial Magistrate No.I, Coimbatore.

+1cc to Mr.T.S.Venkateshan, Advocate, S.R.No.59687

Cr1.OP.No.22309 of 2016  
and  
M.P.No.10378 of 2016

SS(CO)  
CS/30/10/2018