

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2018

PRONOUNCED ON : 13.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.3278 of 2016
and Crl.M.P.No.1702 of 2016

1.Sridhar
2.Shenbagavalli
3.Devisri
4.R.Venkataraman
5.Vanishree
6.Karthick
7.Pushkalashree

... Petitioners

Vs.

1.The Inspector of Police
B3 Taluk Police Station
Kancheepuram
Kancheepuram District.

2.K.Suresh

... Respondents

(R2 impleaded as per order of the Court dated 07.03.2016)

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records in S.C.No.9 of 2016 on the file of the Assistant Sessions Judge, Kancheepuram and to quash the charge sheet under Section 306 IPC.

For Petitioners	:	Mr.R.Sankara Subbu
For R1	:	Mrs.Kritika Kamal, P. Government Advocate (Crl.Side)

ORDER

This petition has been filed to call for the records in S.C.No.9 of 2016 on the file of the Assistant Sessions Court, Kancheepuram and to quash the charge sheet under Section 306 IPC.

2. The deceased Dinesh was married to Pushkalashree [A7] on 15.09.2013. Their marriage ran into rough weather, because the couple was not able to have conjugal relationship. The misunderstanding between them widened, resulting in Pushkalashree [A7] going back to her parental home. It is alleged that on 10.11.2013, Pushkalashree [A7], along with her family members, viz., A1 to A6 came to the residence of the deceased Dinesh and started abusing him in filthy language and also publicly insulted him, by calling him impotent. On 09.12.2013, Dinesh committed suicide by hanging, pursuant to which, the police registered a case in Cr.No.839 of 2013 under Section 174 Cr.P.C. and took up investigation of the case.

3. During the course of investigation, it came to light that from 10.11.2013 to 09.12.2013, Dinesh was subjected to continuous harassment by A1 to A7, which had resulted in his suicide. A diary that was maintained by the deceased Dinesh was recovered by the police, which vividly disclosed the harassment that was undergone by him continuously at the hands of A1 to A7. Therefore, the police altered the case in Cr.No.839 of 2013 from Section 174 Cr.P.C. to Section 306 IPC

and after completing the investigation, filed a charge sheet against A1 to A7 in PRC No.50 of 2015 before the Judicial Magistrate No.I., Kancheepuram. Now, the case has been committed to the Court of Sessions in S.C.No.9 of 2016 and the trial is pending on the file of the Assistant Sessions Court, Kancheepuram. Challenging the prosecution, the accused have filed the present quash application.

4. Heard Mr.R.Sankara Subbu, learned counsel for the accused and Mrs.Krithika Kamal, learned Government Advocate (Crl.Side) for the State.

5. Mr.R.Sankara Subbu, learned counsel submitted that, after the FIR was registered, the police went to the place of occurrence and seized only a nylon rope, as could be seen from the seizure mahazar dated 10.12.2013. He submitted that the diary containing the suicide note was not recovered by the police on 10.12.2013 and therefore, no reliance can be placed upon it for fastening criminal liability on the accused. He further submitted that the suicide note was not sent to the handwriting expert for expert opinion. He placed strong reliance upon the following judgments of the Supreme Court to drive home the point that the accused had not done any of the acts that are required for abetment of the suicide of the deceased.

1	<i>Netai Dutta vs. State of West Bengal [(2005) 2 SCC 659]</i>
2	<i>Pawan Kumar Bhalotia vs. State of West Bengal [(2005) 2 SCC 661]</i>
3	<i>Sanju @ Sanjay Singh Sengar vs. State of M.P. [2002 AIR SCW 2035]</i>
4	<i>Manikandan vs. State rep by the Inspector of Police, Thiruneelakudi Police Station, Thanjavur District [Crl.A.(MD).No.142 of 2016]</i>

5	Madan Mohan Singh vs. State of Gujarat and another [2010 (6) Supreme 376]
6	S.S.Chheena vs. Vijay Kumar Mahajan and another [2010 (6) Supreme 548]
7	Gangula Mohan Reddy vs. State of Andhra Pradesh [(2010) 1 SCC 750]
8	Mahendar Singh and another vs. State of M.P. [1995 Supp (3) SCC 731]
9	Bhagwan Das vs. Kartar Singh and others [(2008) 1 SCC 664]
10	Tulsiram vs. State of Madhya Pradesh [II (2000) DMC 420]

Therefore, he submitted that the entire prosecution is an abuse of process of law.

6. Per contra, learned Government Advocate (Crl.Side) refuted the contentions.

7. This Court gave its anxious consideration to the rival submissions.

8. As regards the first contention of Mr.Sankara Subbu, that the diary was not seized by the police on 10.12.2013 and therefore, the same cannot be relied upon, this Court is of the view that remiss in investigation by the police can, by no stretch of imagination, make a piece of evidence which is otherwise relevant, irrelevant. Just because the diary was submitted to the police subsequently and was not recovered by the police in the search of the room in which the deceased committed suicide, the said diary will not become inadmissible in evidence.

9. As regards the contention that the diary should have been sent to the handwriting expert for opinion, it is a trite law that handwriting of a person can be proved through the evidence of a person who is acquainted with the handwriting, vide Section 47 of the Evidence Act. The opinion of an expert is relevant under Section 45 of the Evidence Act, whereas, the evidence of a person who is acquainted with a certain handwriting is relevant under Section 47 of the Evidence Act and it is always open to the accused to impeach his testimony in the cross-examination.

10. In *S.S.Chheena* (supra) that has been relied upon by Mr.R.Sankara Subbu, the Supreme Court has held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. However, in the same judgment, the Supreme Court has held as under:

"28.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."

11. In this case, on a reading of the suicide notes and the statements of witnesses recorded by the police, it is seen that A1 to A7 laid seige of the house of the deceased on 10.11.2013 and publicly abused him by calling him impotent and thereafter also, they continued their harassment on a day-to-day basis by threatening him and saying that they will have his family members sent to prison. The deceased has not left behind an isolated suicide note, but had recorded his

inner feelings over the incidents that have been taking place continuously in his diary. For example, in one of the pages, he has written as under:

"I came to know that Pushkalashree, her father and uncle are planning to put fake dowry case and torture cases against me and my mother. Till now I was silent to protect my mother, but now they are targeting on my mother too. Thus, to save my mother, I have revealed about the nude picture incident and about Pushkalashree's illegal relationship with Muthu for the first time to you sir. Please take necessary action against Pushkalashree, Muthukumar Raj, Srdhar and Venkat to protect my mother (Ambiga) and brother (Suresh) from fake cases...."

12. From a reading of the aforesaid suicide note, it appears that A7 has been having illegal relationship with one Muthukumar and the deceased seems to have got a nude photo of both of them, which he has handed over to the police and about which he has recorded in his diary. Perhaps, in order to cover it up, the accused have been continuously harassing the deceased and calling him impotent. In another page, the deceased has written in Tamil addressing his sister and brother asking them to take care of their mother and that, only if he commits suicide, the family can be safe.

13. In **Didigam Bikshapathi vs. State of Andhra Pradesh [(2008) 2 SCC 403]**, the Supreme Court has held as follows in paragraphs 8 and 9:

"8. The suicide note clearly refers to the background in which the victim took the extreme step of taking away his own life by committing suicide. It is not a case where there is no reference to any act by the accused. In *Netai Dutta case* [(2005) 2 SCC 659 : 2005 SCC (Cri) 543 : 2005 AIR SCW 1326] at para 6 it was observed as follows: (SCC p. 661, para 6)

“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 wilful 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.”

9. In the instant case the suicide note clearly refers to the acts of the appellant-accused and the roles played by them. Therefore, the High Court rightly rejected the prayer of exercise of power under Section 482 of the Code. We make it clear that any observation made by the High Court and by us while dismissing of the present appeal shall be construed to be determinative factor in the trial.”

14. Thus, the facts of this case are somewhat similar to the facts in **Didigam Bikshapathi** (supra). This Court cannot go into the disputed question of fact in a petition under Section 482 Cr.P.C. This Court finds *prima facie* materials against A1 to A7 and hence, the prosecution against them cannot be quashed.

15. In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed. However, the learned counsel submitted that the presence of the accused before the trial Court may be dispensed with. In a sessions case, such a blanket order cannot be granted, because the accused will have to be identified by the witnesses and for that, their presence is necessary. However, as and when an accused file an application under Section 317 Cr.P.C. giving an undertaking that he/she will not dispute his/her identity and that the counsel named by him/her in the affidavit will cross-examine the prosecution

witnesses on the day he/she is examined-in-chief, as held by the Supreme Court in **Vinod Kumar vs. State of Punjab**, [2015 (1) MLJ (CrI.) 288], the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his/her presence and remand him/her to custody as laid down by the Supreme Court in **State of Uttar Pradesh vs. Shambhu Nath Singh** [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against him/her u/s 229-A IPC.

13.04.2018

gms

To

1.The Inspector of Police
B3 Taluk Police Station
Kancheepuram
Kancheepuram District.

2.The Assistant Sessions Judge,
Kancheepuram.

3.The Public Prosecutor
High Court, Madras.

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P.N.PRAKASH, J.

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Pre-delivery order in

Crl.O.P.No.3278 of 2016

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