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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.09.2018

Pronounced on : 12.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.(MD).No.12462 of 2014

and

M.P.(MD) No.1 of 2014

Santhosh

..Petitioner/Accused No.2

Vs.

The Inspector of Police,  
Kovilpatty West Police Station,  
Tuticorin District.

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in P.R.C.No.30 of 2013 on the file of the Judicial Magistrate No.II, Kovilpatti and quash the same as illegal.

For Petitioner : Mr.S.Muthukrishnan

For Respondent :Mr.K.Dinesh Babu, APP

#### O R D E R

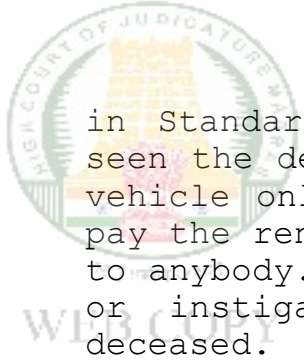
This quash petition is filed to quash the criminal proceedings in P.R.C.No.30 of 2013 on the file of the Judicial Magistrate No.II, Kovilpatti.

2.The respondent laid charge sheet for the offence under Sections 406, 420 and 306 of I.P.C. as against two accused persons, in which, the petitioner is arraigned as A2. The charges are that the deceased Gnanaraj was a Taxi driver and plying taxi in Chennai. The first accused viz., Senthil Kumar was running a Travels in the name and style of Sabari. The deceased Gnanaraj plied his taxi under the first accused, for which, a sum of Rs.45,000/- was balance to him. Further, in the year 2011, the deceased handed over jewels for purchasing of car by pledging jewels to the tune of Rs.1,60,000/- and the first accused cheated him by not purchasing any car. Further, the deceased also plied taxi for the marriage of the second accused to the tune of Rs.47,500/-, in which also the second accused failed to pay the said amount to the deceased. When the deceased asked for payment from the first accused, he threatened with dire consequences to his life and also since the second accused did not pay the amount, the deceased suffered with mental agony and committed by consuming poison on 07.09.2011 at about early morning 01.30 a.m. Hence the charges.

3.The learned counsel appearing for the petitioner would raise the following grounds to quash the criminal proceedings against the second accused/petitioner herein:

<https://hcservices.ecourts.gov.in/hcservices/>

The petitioner/second accused is a MCA graduate and working



in Standard and Chartered Bank, Nungampakkam, Chennai. He never seen the deceased Gnanaraj at any point of time and he used to hire vehicle only through the first accused Travel agent and he used to pay the rent to the same tourist car agent. There is no payment due to anybody. Even as per the charge, there is absolutely no abetment or instigation from the petitioner to commit suicide by the deceased. No piece of evidence to show that soon before death of the deceased, the petitioner abetted or instigated the deceased to commit suicide. There is also no piece of evidence to show that when the petitioner or the first accused abetted or instigated the deceased to commit suicide and also when the deceased was threatened by the accused persons and when asked payment for the hire car. The complete charges are bereft of any evidence. Thus, he prayed for quashment of the criminal proceedings against the second accused/petitioner herein.

4.The learned Additional Public Prosecutor would submit that there is clinching evidence to proceed for trial as against the petitioner. There is a specific charge that the deceased plied tourist car for the marriage of the petitioner/second accused, in which, he has to pay a sum of Rs,47,500/- as balance due, for which the deceased was threatened by the petitioner/As and as such, he committed suicide on 07.09.2011 by consuming poison and hence, he prayed for the dismissal of the quash petition.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State.

6.Admittedly, the petitioner/A2 was working in the Standard Chartered Bank, Nungampakkam, Chennai. He used to take car from the travel agent viz., the first accused and no direct link or contact between the petitioner and the deceased. All the payment made through only by A1 to the tourist car driver. As per the case of prosecution, the deceased came from Chennai on 04.09.2011 and thereafter, on 07.09.2011, at the early morning, he committed suicide by consuming poison. Even assuming that there was a threat by the accused, he came from Chennai even as early as on 04.09.2011. Only after three days, on 07.09.2011, he committed suicide. Therefore, soon before death, there is absolutely no instigate or abetment by the accused to commit suicide by the deceased.

7.In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in (2002) 5 Supreme Court Cases 371 - *Sanju V. State of M.P.*, wherein, the Hon'ble Supreme Court of India has held as follows:

"6.Section 107 I.P.C defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, If an act or illegal omission takes place in pursuance of that conspiracy, and in order to the



doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

7. Before we advert further, at this stage we may notice a few decisions of this Court, relevant for the purpose of disposal of this case.

8. In *Swamy Prahaladdas v. State of M.P. & Anr.*, 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 while 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



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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."

8. In the said decision, the Hon'ble Supreme Court held that even the word "to go and die" were not even prima facie enough to instigate the deceased to commit suicide. Further, considering the definition of "abetment" under Section 107 of IPC found that the charge for the offence under Section 306 is not sustainable merely on the allegation of threat of the deceased. Further, the ingredients of the offence of abetment are not at all attracted as per the statement of the witnesses. Therefore, the charges, as against the petitioner are concerned, cannot be sustained.

9. The learned counsel appearing for the petitioner would further rely upon the decision of the Hon'ble Supreme Court India reported in *AIR 2010 Supreme Court 317 - Gangula Mohan Reddy V. State of Andhra Pradesh*, wherein, the Apex Court has held as follows:

"20. 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.

"21. The intention of the Legislature and the ratio of the cases decided by this 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 this act must have been intended to push the deceased into such a position that he committed suicide.

22. In the light of the provisions of law and the settled legal positions crystallised by a series of judgments of this Court, the conviction of the appellant cannot be sustained. Consequently, the appeal filed by the appellant is allowed and disposed of."



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.

11..Accordingly, this criminal original petition is allowed. The criminal proceedings in P.R.C.No.30 of 2013 on the file of the Judicial Magistrate No.II, Kovilpatti is quashed as against the petitioner/A2 alone. Consequently, connected miscellaneous petition is closed.

Sd/  
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Judicial Magistrate No.II,  
Kovilpatti.
- 2.The Inspector of Police,  
Kovilpatty West Police Station,  
Tuticorin District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to M/S.A.BALAMANI, Advocate, SR.No.90885

CrI.O.P. (MD) .No.12462 of 2014  
and

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12.10.2018

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