



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2018

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CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P. (MD) .No.19293 of 2014

and

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

P.Rajamohan

..Petitioner

Vs.

1.State represented by
The Inspector of Police,
Gudalur Circle,
Gudalur South Police Station,
Theni District.

2.Kavitha

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the Charge sheet in P.R.C.No.28 of 2014 in crime No.21 of 2014 on the file of the Judicial Magistrate, Uthamapalayam and quash the same.

For Petitioners: Mr.S.Venkatasubramaniyan

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
G.A. For R1
No Appearance for R2

O R D E R

This petition is filed to quash the criminal proceedings in P.R.C.No.21 of 2014 on the file of the Judicial Magistrate, Uthamapalayam, having been taken taken cognizance for the offence under Section 306 of I.P.C.

2.The case of the prosecution is that the petitioner was charged for the offence under Section 306 of I.P.C. alleging that on 19.12.2014, the deceased Vignesh Kumar, who was studying 9th standard, came to the school without maths book. Therefore, the petitioner, who was the maths teacher, directed the student to stand outside of the class room till the completion of maths period and further directed him to see the Headmaster along with his parents. Due to the said act, the deceased ashamed and hence,



on 19.12.2014 at about 06.10 p.m., he himself poured kerosene and set fire on him. Thereafter, on 24.02.2018 he succumbed to the burn injuries. Hence the charge.

3.The learned counsel appearing for the petitioner would submit that the petitioner is working as maths teacher in NSKP Higher Secondary School at Gudalur. The deceased, who was the 9th standard boy has immolated at his residence, following which, a complaint has been lodged by the victim. After the occurrence, the petitioner was suspended from service and thereafter, his suspension was revoked and he is continuously carrying on his service as a teacher in the same school.

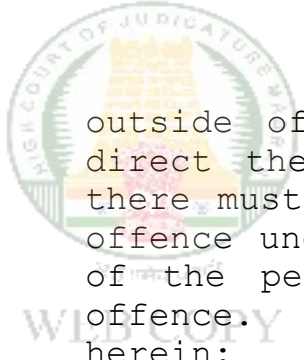
4.He would further submit that even as per the case of the prosecution, there are absolutely no averments as against the petitioner to sustain charge under Section 306 of I.P.C. There is no abetment for the commission of crime by the petitioner herein. Even as per the case of the prosecution, the petitioner directed the deceased to stand outside the class room and meet his Headmaster for non bringing the maths book on 18.02.2014 along with his parents. The said words are just of bonafide expectation and professional concern of a teacher and he had acted in good faith in making the student to mend his mistake of not bringing his maths book. Further, he would contend that the said words or advise are normally used by all the teachers while monitoring their students for the academic interest of the students. Therefore, the charge under Section 306 of I.P.C. is not at all attracted as against the petitioner and he sought for quashing the entire proceedings.

5.The learned Government Advocate (criminal side) would submit that the petitioner is the sole accused and because of his abetment, the deceased aged 15 years committed suicide and there is no other reason except the words uttered by the petitioner for the deceased to commit suicide and there are clinching evidence to rope the accused into the crime.

6.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the respondent and perused the materials available on record.

7.Admittedly, the petitioner while he was working as maths teacher in NSKP Higher Secondary School, Gudalur, the deceased was studying in 9th standard. On 18.02.2014, the deceased attended the class without maths book. Therefore, the petitioner asked the victim to bring his father on the next day to meet the Headmaster for not bringing the maths book to the school. Further, he was directed to stand outside the class.

8.It is quite natural that many of the teachers only on the academic interest of the students used to direct them to stand



outside of the class room. Further, all the teachers used to direct them to meet the Headmaster of the school to show that there must be some control over the students. In respect of the offence under Section 306 of I.P.C. is concerned, whether the act of the petitioner herein would attract the ingredients of the offence. For convenience, the Section 306 of I.P.C. is extracted herein:

"306. Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

9. It is seen from the records that the deceased is aged about 15 years at the time of occurrence. Therefore instead of charge under Section 306 of I.P.C., charge under Section 305 of I.P.C. only would attract as against the petitioner. Section 305 of I.P.C. is extracted herein:

"305. Abetment of suicide of child or insane person - If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine."

10. From the above definition, there should be direct act of instigation by the accused. Further, the accused should have intentionally aided the deceased to commit suicide. In the case on hand, as per the available evidence, there is nothing to show that there was any intentional act by the petitioner for the deceased to commit or intentionally aided or there was no illegal omission on the part of the petitioner for the deceased to commit suicide. The words used by the petitioner were that without maths book he do not attend the class and stay away from the class room. Further, he has stated that he should meet the Headmaster along with his parents for not bringing the maths book. These words are normally used by all the teachers and it do not instigate or abet any person to commit suicide.

11. The learned counsel appearing for the petitioner relied upon the unreported judgment passed in **Crl.O.P. (MD) No.24858 of 2006 dated 28.07.2009 - N.Anjali Devi and V. Veeran Vs. The Superintendent of Police and Inspector of Police**, wherein, this Court has held as follows:



"9. In the case of Swamy Prahaladdas Vs. State of MP and another [1995-Supp-3-SCC-438], the accused was charged for an offence under Section 306 of IPC on the ground that the accused during the quarrel is said to have remarked to the deceased to go and die and the Honourable Supreme 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.

10. In the case of Mahendra Singh Vs. State of MP [1995-Supp-3-SCC-731], the accused was charged for an offence under Section 306 of IPC 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 those reasons and being harassed I want to die by burning."

The Honourable Supreme Court, considering the definition of abetment under Section 107 of IPC, found that the charge and conviction of the accused in the above said case for the offence under Section 306 of IPC is not sustainable merely on the allegation of harassment to the deceased. The Apex Court further held that none of the ingredients of abetment were attracted on the statement of the deceased.

11. In yet another case of Ramesh Kumar Vs. State of Chhattisgarh [2001-9-SCC-618], the Honourable Supreme Court, while considering the charge framed and conviction for the offence under Section 306 of IPC on the basis of the dying declaration recorded by the 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, the said:-



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"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 difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference 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, the statement of the witnesses made under Section 161 Code of Criminal Procedure would reveal that the stolen money had been recovered from the deceased girl and she was reprimanded by the Teachers more particularly by the Petitioners herein for stealing the money. In the dying declaration, the deceased girl had stated that the 2nd Petitioner remarked her to go and die and the 1st Petitioner slapped on her cheek and scolded her in harsh words. Even assuming that the Petitioners have acted in the above said manner and uttered the above words as projected by the Prosecution, it is to be seen as to whether the said utterance would by itself constitute the ingredients of 'instigation'.

13. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. The 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. Secondly, the said abusive words is said to have been uttered to the deceased by the Petitioners, when they had come to know that the deceased had stolen the money from the bag of the Anganvadi Teacher and money was also recovered from her. Thirdly, the deceased had her lunch in the School and attended the post lunch session classes and left the School only after it was over and she had



committed suicide only after reaching the home. All these factors would clearly point out that it could not be a direct result of the utterances made by the Petitioners.

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14. In the case of Sanju aliss Sanjay Singh Sengar Vs. State of MP {AIR-2002-SC-1998}, it is held that the accused telling the deceased to go and die would by itself not constitute the ingredients of instigation and presence of mens rea is necessary concomitant of instigation. Holding so, the Honourable Supreme Court quashed the charge sheet framed under Section 306 of IPC on the ground that the ingredients of abetment is totally absent.

15. One important thing to be noted in this case is that the Petitioners being the Teachers of the Government School in the interest of the Institution correct any mistake done by the student in order to cultivate good habits and get rid of bad habits, such as stealing money. In fact, the father of the deceased girl had been summoned and it is stated that he gave a letter of apology for the conduct of his daughter and also undertook that the same would not recur again. In such view of the matter, the act of the petitioners cannot be said that it would amount to abetment of suicide.

16. In the case of Sashi Prabha Devi Vs. State of Assam [2006-Cri.LJ-1762], the allegation is that the accused, a Head Mistress of a School wrongly struck off the name of the deceased from the Register of the Students in Class X, which induced the deceased to commit suicide and the High Court of Gujarat has held that there was no evidence showing that the accused had acted at any point of time, suggested or hinted for commission of suicide and when the accused was entitled to correct any wrong order, as in fact deceased had not passed her class IX examination, no case of instigation or abetment of suicide was made out against the accused.

17. In the case of Nettai Dutta Vs. State of will be [2005-2-SCC-659], the Honourable Supreme Court upholding the order of the High Court, quashed the charge sheet filed under Section 306 of IPC on the ground that the offence under Section 306 of IPC is a specific offence and only if there is an abetment for the commission of crime.



18. In a very recent decision rendered in the case of Sonti Ramakrishna Vs. Sonti Shanthi Shree and another [2009-1-SCC-554], the Honourable Supreme Court has held that though normally threshold interference should not be made under Section 482 Code of Criminal Procedure, quashing of the complaint on facts was just and necessary. It has also held that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation."

12. By applying the above said well settled principles guided by the Hon'ble Supreme Court of India, in a catena of decisions cited supra to the present case, on looking into the words uttered by the petitioner cannot be said to be instigation. In the said circumstances, certainly it cannot be said that the petitioner had in any way instigated the deceased to commit suicide or was responsible for the commission of suicide by the deceased boy.

13. Taking into consideration of the totality of the materials on record and facts and circumstances of the case, this Court is of the view that the petitioner cannot be held responsible for the commission of suicide committed by the deceased boy as there was no instigation or abetment on the part of the petitioner in the commission of suicide by the deceased boy.

14. In view of the above, this criminal original petition is allowed and P.R.C.No.28 of 2014 on the file of the Judicial Magistrate, Uthamapalayam is quashed as against the petitioner herein. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1. The Judicial Magistrate,
Uthamapalayam.

2. The Inspector of Police,
Gudalur Circle,
Gudalur South Police Station,

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



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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+ 1 CC TO MR.S.VENKATASUBRAMANIYAN, ADVOCATE IN SR NO.88369

Arul

BU/PM/SAR-III:02.11.2018 : 8P/5C

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