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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.OP[MD]No.5069 of 2015

and

M.P.(MD)No.1 of 2015

... Petitioner/Accused No.1

Vs.

1.State represented by,
The Inspector of Police,
Pappanadu Police Station,
Thanjavor District and another. ... Respondent/Complainant

2.S.Pandia Rajan ... Respondent/Defacto Complainant

PRAYER: Petition is filed under Section 482 of Cr.P.C, to call for the records in Charge Sheet in P.R.C.No.47 of 2014 on the file of the Judicial Magistrate, Orathanad and quash the same.

For Petitioner : Mr.V.Kathirvelu

For R1 : Mr.A.P.G Ohm Chairma Prabhu
Government Advocate (Crl.side)

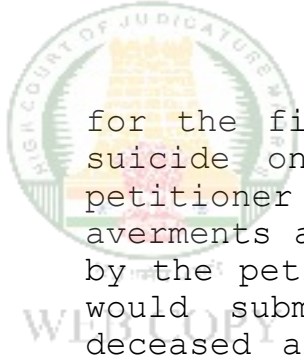
O R D E R

This petition is filed to quash the P.R.C.No.47 of 2014 on the file of the learned Judicial Magistrate, Orathanad and have taken cognizance for the offence under Section 306 IPC as against the petitioner and four others.

2.The case of the prosecution is that the deceased was running a juice shop. He fell in love with one Janani, daughter of the petitioner herein. When it came to the knowledge of the petitioner and others, they threatened the deceased. Therefore, the deceased committed suicide.

3.The learned counsel for the petitioner would submit that the offence under Section 306 IPC is not at all attract as against the petitioner and there is no piece of evidence to connect the petitioner for the charges. Even according to the case of the prosecution on 06.12.2010, the deceased came to Thirunalloor and on 07.12.2010, the defacto complainant went to the Thirunalloor and they quarrelled each other. Immediately, thereafter, the deceased committed suicide. There is no evidence to connect the petitioner that only because of the instigation or abetment by the petitioner, the deceased committed suicide. It is completely vague and bald allegations and based on that the charge sheet was filed for the offence under Section 306 IPC. Further, he would contend that the petitioner is being the father of the girl and he has been falsely roped in the present complaint. Therefore, he sought for quashing the criminal proceedings.

4.Per contra, the learned Government Advocate (Crl.side)



for the first respondent would submit that the deceased committed suicide on 07.12.2010 only because of the threat given by the petitioner and his relatives. There are specific allegations and averments as against the petitioner and others and the points raised by the petitioner has to be decided during the trial. Further, he would submit that on 06.12.2010, the five accused called the deceased and assured that he will finish all the issues in the panchayat. He has also informed to his brother/defacto complainant that the accused persons threatened him and immediately, he consumed poison and committed suicide. As the ingredients of the offence under Section 306 IPC is clearly made out as against the petitioner and others, this petition is liable to be dismissed.

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the first respondent.

6. The petitioner arrayed as the first accused. There are five accused persons. The petitioner is the father of the victim girl who fell in love with the deceased. When it came to the knowledge of the petitioner herein, the accused persons conducted panchayat to solve the issues. Therefore, the fifth accused called the deceased through phone on 06.12.2010 to go for panchayat at Thirunalloor on 07.12.2010. Accordingly, on 07.12.2010, the deceased reached Thirunalloor and met the defacto complaint who is none other than the brother of the deceased. He has scolded the deceased what for panchayat and other things. Thereafter, the deceased consumed poison and died. According to the case of the prosecution, the petitioner and others threatened the deceased stating that if he is in contact with the daughter of the petitioner, he will be killed.

7. It is seen from the statements of the witnesses, no one whispered about the threat made by the petitioner and other accused persons. Further, no date and time mentioned about the threat given by the petitioner and others on the deceased. Further, on 06.12.2010, the fifth accused called him for panchayat to resolve the issue. Thereafter, on 07.12.2010, the deceased reached Thirunalloor, where the defacto complainant scolded him. Thereafter, at about 2.30 p.m., he consumed poison on 07.12.2010 and he died. There must be instigation and abetment from the accused to attract the offence under Section 306 IPC.

8. In this regard, it is relevant to refer the judgment in (2002) 5 Supreme Court Cases 371 - Sanju Vs. State of M.P., wherein the Hon'ble Supreme Court 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 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."

9. In the above decision, the order of 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 is concerned, cannot be sustained.

10. Further, it is also relevant to refer the judgment of the Hon'ble Supreme Court reported in AIR 2010 Supreme Court 317 - Gangula Mohan Reddy Vs. 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."

11. In the above case, the abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aided the deceased in committing suicide, the charge cannot be sustained.

12. It is also relevant to refer the order passed in CrI.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:-

"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,



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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.

14. In the case of Sanju aliss Sanjay Singh Sengar Vs. State of MP {AIR-2002-SC-1998}, it is 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.

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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 would stand 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."



13.By applying the above said well settled principles guided by the Hon'ble Supreme Court in a catena of decisions cited supra to the present case, the charges as against the petitioner cannot be sustained. In these circumstances, there is no need for the petitioner to go for ordeal trial and the entire proceedings is clear abuse of process of law.

14.In view of the above, this criminal original petition is allowed and P.R.C.No.47 of 2014 is hereby quashed as against the petitioner. Consequently, connected M.P.(MD)No.1 of 2015 is closed.

Sd/
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate, Orathanad.

2.The Chief Judicial Magistrate, Thanjavur @ Kumbakonam
(For Information)

3.The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.

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

Cr1.OP[MD]No.5069 of 2015
and
M.P. (MD)No.1 of 2015

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