

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6779 OF 2018

ORDER:

This criminal petition is filed to quash the proceedings against the petitioners/A-4 & A-6 in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam, registered for the offences punishable under Section 306 r/w 34 IPC.

The case of the prosecution is that the deceased Chigilipalli Ramesh is the son of the second respondent who was working as Assistant Engineer, A.P. Transco, Eluru, West Godavari District. Chigilipalli Ramesh fell in love with A-1 and both the families performed their marriage on 11.02.2016 at Sri Suryanarayana Swamy Temple, Arasavelli, as per their caste custom in the presence of elders. After the marriage, A-1 to A-7 developed an evil intention to get the deceased separated himself from the family members of the deceased. A-1 proclaimed to have loved deceased Chigilipalli Ramesh only for his earnings but not to lead conjugal life with him. A-1 used to enquire about the moments of the deceased Chigilipalli Ramesh whenever he proceeded on duty. Disturbed with these acts, the deceased Chigilipalli Ramesh got perverted and unable to bear the mental agony, the deceased Chigilipalli Ramesh committed suicide by hanging at the house of their in-laws situated at P & N Colony at Srikakulam. Immediately, the second respondent/defacto complainant and his family members arrived at Srikakulam and found the deceased lying dead on a bench in the mortuary of RIMS hospital.

The second respondent/defacto complainant lodged a complaint with the Srikakulam II Town Police Station about the occurrence of incident and on the basis of the complaint, the police registered Crime No.134 of 2017 for the offence punishable under Section 306 r/w 34 IPC and issued F.I.R.

On the basis of the F.I.R, the Investigating Agency took up investigation and examined as many as 21 witnesses and recorded their statements under Section 161(3) Cr.P.C.

On the basis of the evidence collected during investigation, filed charge-sheet before the Magistrate, having concluded that there is prima facie material to proceed against these petitioners/A-4 & A-6. The petitioners filed this petition under Section 482 Cr.P.C to quash the proceedings on the ground that the allegations made in the complaint do not constitute an offence punishable under Section 306 r/w 34 IPC, as there was no allegation that these petitioners abetted the deceased Chigilipalli Ramesh to commit suicide and that the reason for commission of suicide was due to thought of disturbance. Apart from that, the suicide note also does not disclose anything to establish *prima facie* that these petitioners have committed offence punishable under Section 306 r/w 34 IPC and in the absence of any *prima facie* material against these petitioners to proceed further for the offence punishable under Section 306 r/w 34 IPC, continuation of the proceedings against these petitioners is an abuse of process of the Court and requested to quash the proceedings against the petitioners/A-4 & A-6 in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam,

registered for the offences punishable under Section 306 r/w 34 IPC.

During hearing, learned counsel for the petitioners reiterated the contentions.

The basis for registration of a crime against the petitioners and issuance of F.I.R and conducting investigation is the report lodged by defacto complainant, which set the criminal law into motion. According to the allegations made in the complaint, even if the allegations are accepted, there is absolutely no *prima facie* material against these petitioners who are A-4 & A-6 in P.R.C.No.11 of 2018, the statements recorded under Section 161(3) Cr.P.C are also silent with regard to abetment of the deceased Chigilipalli Ramesh, who committed suicide, except an allegation that, due to ill-treatment by his wife and family members of his wife, the deceased Chigilipalli Ramesh suffered mental agony and unable to bear with such harassment, he committed suicide.

L.W.2 in her statement recorded under Section 161(3) Cr.P.C stated that the in-laws of the deceased Chigilipalli Ramesh subjected him to cruelty and unable to bear with such harassment, he committed suicide by hanging. Similarly, L.W.3 also stated to the police that there was a quarrel between the deceased Chigilipalli Ramesh and the other accused, thereby, on account of the quarrel, the deceased Chigilipalli Ramesh hanged himself to death at about 1.00 pm during night.

The present criminal petition is filed on the ground that, none of the allegations made in the complaint do not constitute an offence, muchless an offence punishable under Section 306 r/w 34 IPC. It is contended that, picking up quarrel by the petitioners with Chigilipalli Ramesh and harassing and abetting him, do not constitute an offence punishable under Section 306 r/w 34 IPC. Further, it was mentioned that the persons responsible for the death of Chigilipalli Ramesh were the petitioners herein, who picked up quarrel on account of harassment and thereby, Chigilipalli Ramesh committed suicide. Even if this fact is accepted on its face value, the petitioners cannot be made responsible for commission of suicide by Chigilipalli Ramesh on account of alleged abetment, as none of the allegations mentioned would attract definition of the offence of abetment of a thing, as defined under Section 107 IPC. Therefore, initiation of criminal proceedings against these petitioners and commencement of investigation by the Investigating Agency without any positive evidence or act attributed to these petitioners, would amount to abuse of process of the Court and placed reliance on the judgment of this Court in **V. Shankaraiah v. State of A.P**¹, wherein, this Court held that, committing of suicide on account of the feeling of humiliation does not attract offence punishable under Section 107 IPC i.e. abetment.

It is also contended that, the police will not get jurisdiction, unless there is direct attribution to these petitioners and that the incidents attributing abetment of suicide is too remote cause and

¹ 2002 (1) ALD Cri 812

placed reliance on the judgment of the Supreme Court in **State of West Bengal and others v. Swapan Kumar Guha**² and on the strength of the principles laid down in the above judgment, the petitioners requested to quash the proceedings in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam.

During hearing, Sri Raja Reddy Koneti, learned counsel for the petitioners contended that the alleged harassment or picking up quarrel with the deceased do not constitute the offence of abetment as defined under Section 107 IPC and in the absence of any specific attribution against these petitioners, which lead to commission of suicide by Chigilipalli Ramesh, the petitioners cannot be roped into the offence. Further, it is also contended that the police are incompetent to investigate into the offence, in the absence of any specific allegations, the Investigating Agency will not get jurisdiction to investigate into the offence.

Learned counsel for the petitioners placed reliance on the judgments of Supreme Court in **M. Mohan v. State represented by Deputy Superintendent of Police**³, **State of West Bengal and others v. Swapan Kumar Guha**⁴ and judgment of this Court in **V. Shankaraiah v. State of A.P** (referred supra) and on the strength of the principles laid down in the above judgments, learned counsel for the petitioners requested this Court to quash the proceedings in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam.

² AIR 1982 SUPREME COURT 949

³ AIR 2011 SUPREME COURT 1238

⁴ AIR 1982 SUPREME COURT 949

Whereas, learned Public Prosecutor for the State of Andhra Pradesh contended that the material collected during investigation including his statements recorded under Section 161(3) Cr.P.C and also collected post-mortem report is suffice to establish *prima facie* case against the petitioners. It is further contended that the statements recorded by the police during investigation and the other material collected during investigation directly pointing out the complicity of these petitioners for the offence punishable under Section 306 r/w 34 IPC.

According to the allegations made in the charge sheet, on account of unbearable harassment of these petitioners, more particularly, the incident which took place on the date of death of Chigilipalli Ramesh is the main reason for committing suicide, as Chigilipalli Ramesh suffered mental disturbance on account of such incident. Learned counsel for the petitioners contended that, in the absence of any material before the Court, that the death was due to alleged harassment which lead to abetment would not constitute an offence punishable under Section 306 r/w 34 IPC.

Learned counsel for the petitioners placed reliance on the judgment of this Court in **V. Shankaraiah v. State of A.P** (referred supra), where, the learned single Judge of this Court held that, when there is no evidence that the accused aided or induced the deceased to commit suicide, the charge against the accused is liable to be quashed. Similarly, in **M. Mohan v. State represented by Deputy Superintendent of Police** (referred supra), the Apex Court held that while interpreting Section 306 I.P.C. held that abetment involves a mental process of instigating a

person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature is clear that in order to convict a person under Section 306 I.P.C. there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which lead 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/she committed suicide.

From the principle laid down by the Supreme Court in the above judgment, it is clear that the act done by the petitioners/A-4 & A-6 must be of such nature which led the deceased to commit suicide, having no other option except to commit suicide. In the First Information Report, no such allegation is made that Chigilipalli Ramesh committed suicide having no other alternative, expect to commit suicide. However, the allegations made in the charge sheet would show that, on account of unbearable harassment by the petitioners, Chigilipalli Ramesh committed suicide, suffering mentally.

Section 107 of The Indian Penal Code defined Abetment of a thing and it is as follows:

107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — 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.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

In view of the language in Section 107 IPC, there must be an instigation by any person or engagement by several persons in any conspiracy for the doing illegal act or intentionally aids, by any act or illegal omission, the doing of that thing, constitutes abetment.

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in I.P.C. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2)

engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These ingredients are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. (vide **Amalendu Palalias Jhantu v. State of West Bengal**⁵ and **Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh**⁶).

In **Gangula Mohan Reddy v. State of A.P**⁷, the word Instigation is defined as to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

⁵ AIR 2010 SUPREME COURT 512

⁶ AIR 2002 SUPREME COURT 1998

⁷ AIR 2010 SUPREME COURT 327

In **Shri Ram vs. The State of U.P**⁸ the Supreme Court had an occasion to interpret the word 'intentional aiding'. In order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107.

If, this principle is applied to the present facts of the case, the second respondent herein/defacto complainant made only a bare allegation that, on the date of death of Chigilipalli Ramesh, the petitioners picked up a quarrel with Chigilipalli Ramesh, harassed him indiscriminately. Thereafter, Chigilipalli Ramesh hanged at his in-laws house and died. The cause shown by the second respondent for the death of Chigilipalli Ramesh is the earlier two incidents. But, there was nothing to suggest that they picked up quarrel and they abetted Chigilipalli Ramesh, son of the second respondent with an intention to drive him to commit suicide. In the absence of any such allegation made in the complaint, as well as in the statements recorded by the police

⁸ AIR 1975 SUPREME COURT 175

under Section 161(3) Cr.P.C, mere abusing or picking up quarrel is not sufficient *prima facie* to proceed against these petitioners for the offences punishable under Section 306 r/w 34 IPC. Therefore, the act or omission or instigation attributed to the petitioners would not fall within the definition of abetment under Section 107 IPC, since, the alleged two incidents in the complaint are not aimed to commit any offence or drove Chigilipalli Ramesh to commit suicide. Consequently, I find no *prima facie* material to proceed against these petitioners to proceed further, for the offences punishable under Section 306 r/w 34 IPC.

In **Jamuna Singh v. State of Bihar**⁹, the Supreme Court held that, in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under Section 107 I.P.C. a person abets the doing of an act in either of three ways which can be : instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under Section 115 I.P.C., even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to

⁹ AIR 1967 SUPREME COURT 553

commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed.

Similar question came up before this Court in **Sri Yeneti Apparao v. State of A.P**¹⁰, wherein, this Court had an occasion to decide the aspect of what would amount to abetment. This Court after adverting to the definition of ‘abetment’, under Section 107 I.P.C, and explanations annexed thereto, held as follows:

“From this it is clear that act, which merely amounts to aiding the commission of an offence, cannot be said to be an abetment as defined under the provisions of law. When looked in that perspective it is clear in the instant case, that A2, who was a Village Administrative Officer and was subordinate to A1 was simply obliging him and no doubt the said obliging would be aiding, but cannot be said to be intentional aiding as it is not the case of the prosecution and that the prosecution has not attributed any malice to A2 and it has come forward with the theory that he was demanding the money on behalf A1. Hence this Court is of the view that A2 is entitled to benefit of doubt.”

(emphasis supplied)

It is clear from the law declared by the Courts in the judgments referred supra, that any act or illegal omission with an intention to commit an offence also forms part of the definition of abetment.

In the present facts of the case, there is absolutely nothing to conclude that these petitioners, soon before the death of Chigilipalli Ramesh committed any act or illegal omission with an intention to commit an offence or instigated him to commit suicide. Even if the allegations made in the charge sheet which is inclusive of statements of witnesses recorded under Section 161(3) Cr.P.C and other material collected during investigation, is accepted as it

¹⁰ 2007 (1) ALD (CrI.) 83 (AP)

is, the petitioners, picked up quarrel and due to the said quarrel Chigilipalli Ramesh committed suicide. But, whereas, Chigilipalli Ramesh was found dead after the date of alleged incident of abetting or harassing him. If really, the petitioners instigated to commit suicide by denying anything or by denying to do anything illegally, the death might have taken place immediately after the incident of abusing him. But, there is a long gap of hours between the alleged incident of abusing Chigilipalli Ramesh and committing suicide. In the absence of direct nexus between death and alleged incident of abusing Chigilipalli Ramesh, due to intervention of hours between the incident, it is difficult to conclude that these petitioners abetted Chigilipalli Ramesh to commit suicide.

Though 21 witnesses were examined by the Investigating Agency, the investigation itself is without any jurisdiction, since the allegations made in the written report are not directly pointing out the complicity of these petitioners. Moreover, the statements recorded by the police which are placed on record by the learned Public Prosecutor for the State of Andhra Pradesh does not disclose that these petitioners instigated or aided or committed any illegal act to commit suicide by Chigilipalli Ramesh, except making an allegation by the defacto complainant that the petitioners are responsible for the cause for the death of Chigilipalli Ramesh on account of incident narrated in the complaint.

In **State of West Bengal and others v. Swapan Kumar** (referred supra), the Supreme Court is of the consistent view that, a First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie

satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. An investigation can be quashed if no cognizable offence is disclosed by the F.I.R. It is surely not within the province of the police to investigate into a Report (F.I.R) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. The condition precedent to the commencement of investigation under Section 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code.

In view of the law declared by the Supreme Court in the above judgment, unless the allegations made in the F.I.R disclose

commission of a cognizable offence by the petitioners, the police will not get jurisdiction and investigate into the crime.

Applying the principle laid down in the above judgment to the present facts of the case, there is absolutely no material on record to establish *prima facie* that these petitioners by the act or illegal omission with an intent to commit an offence or instigation drove Chigilipalli Ramesh to commit suicide. The statements are also silent that these petitioners with *mens rea* picked up quarrel with Chigilipalli Ramesh which allegedly drove him to commit suicide. Therefore, in the absence of any material, this Court has no option except to quash the proceedings against the petitioners/A-4 & A-6 in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam, registered for the offences punishable under Section 306 r/w 34 IPC, by exercising power under section 482 Cr.P.C.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court cannot appreciate the evidence but evaluate the material on record, in view of the limited scope and jurisdiction of this Court under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to

any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana v. Bhajan Lal**¹¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

¹¹ 1992 Supp. (1) SCC 335

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Therefore, when the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

In ***State of Karnataka v. L. Muniswamy and Ors.***¹², the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The

¹² AIR 1977 SC 1489

compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

In view of the principles laid down in the above decisions and in view of my foregoing discussion, I find that it is a fit case to exercise inherent jurisdiction under Section 482 Cr.P.C to quash the proceedings against the petitioners/A-4 & A-6 in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam, registered for the offences punishable under Section 306 r/w 34 IPC.

In the result, the criminal petition is allowed, quashing the proceedings against the petitioners/A-4 & A-6 in P.R.C.No.11 of 2018 on the file of Additional Judicial Magistrate of First Class, Srikakulam, registered for the offences punishable under Section 306 r/w 34 IPC.

Consequently, miscellaneous petitions if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 11.10.2018

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