

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.9683 of 2018****ORDER:**

This Criminal Petition, under Section 482 Cr.P.C. is filed to quash the proceedings in S.C.No.212 of 2017 on the file of VI Additional Sessions Judge at Mahabubabad, Warangal District, registered for the offence punishable under Section 306 r/w 34 IPC.

Syed Sarwar/Respondent No.2 herein lodged a Telugu written report on 19.06.2016 with Maripedda Banglaw Police and on the strength of the report, the Maripedda Banglaw Police registered the same as a case in Cr.No.140 of 2016 438 Cr.P.C., for the offence punishable under Section 306 r/w 34 IPC and issued FIR.

The allegations made by him against the accused in brief are that in the month of April, 2013, he performed the marriage of his elder son namely Syed Feroz with Mohd. Haseena, D/o Massom Ali, and after the marriage, they both lead happy marital life for a period of nine months and blessed with one daughter who is named as Syed Faiza and thereafter his daughter-in-law started quarrelling with his son. About six months back, his daughter-in-law picked up quarrel with his son and other family members and later left for her parents house without informing them and lodged a complaint against them at Thirumalagiri Police Station and thereafter they obtained bail and released from the judicial custody. After registering the case, father-in-law, mother-in-law, brother-in-law and co-brother of his son made phone calls to his son and used to harass him stating that he is unfit to look after his wife and asked to die and the same was informed by his son to him and other family members. Day before the incident i.e., 8.00 am, his daughter-in-law called his son and informed that she is going to marry Mandala Amarender, S/o late Dharmaraju, who belongs to Mala community, R/o

Maripeda Bangl, to lead happy marital life and abused his son asking to die and the same was also informed to him, thus she subjected his son to cruelty.

While so, due to the harassment in the hands of his wife and her family members, he wrote a suicide note on 19.06.2016 at about 04.30 am and committed suicide by hanging to ceiling fan in the bed room. On the basis of such complaint, the Police registered the said crime and took up investigation and filed charge sheet before the Court having concluded that there is *prima facie* material to proceed against the petitioner/Accused No.6 and other accused for the offence under Section 306 r/w 34 IPC.

The present Petition is filed under Section 482 Cr.P.C. to quash the proceedings on the sole ground that the allegations made in the complaint even if accepted as true do not constitute any offence much less the offence punishable under Section 306 r/w 34 IPC. The allegations made in the suicide note if accepted as true on its face value do not constitute the offence punishable under Section 306 r/w 34 IPC and requested to quash the proceedings by exercising power under Section 482 Cr.P.C.

During hearing, learned counsel for the petitioner reiterated the said contention while drawing the attention of this Court to the contents of the Report and Suicide Note to substantiate his contention that none of the allegations do not constitute any offence punishable under Section 306 r/w 34 IPC and requested to quash the proceedings.

Learned Public Prosecutor for the State of Telangana opposed the petition on the ground that the statement of the witnesses recorded by the police under Section 161 (3) Cr.P.C. during investigation discloses

prima material to proceed against the accused and requested to dismiss the petition.

A bare look at the allegations made in the Complaint dt. 19.06.2016, in-laws, and other relatives of the deceased in a fit of anger asked the deceased to die when he failed to look after his wife and similarly, the wife of the deceased informed that she is going to marry one Mandala Amarender, S/o late Dharamaraju and stay at Maripeda Banglaw to lead happy marital life with him and asked him to die while abusing. At best, the allegations made in the complaint and the FIR would show that the deceased was asked to die as he is unfit to maintain his wife. But, as seen from the contents of the suicide note, which is referred in the complaint, he was unable to bear the harassment of police to roam around the police station, he committed suicide and the suicide note runs as follows:

“ Dt. 19.06.2016.

To
Maripeda Bangla SI
And
Tirumalagiri SI,

I, sd. Feroz Ali, S/o Sarwar. On 25.04.2013 got married with Hasina, R/o Tirumalagiri. Immediately after marriage of three months started going to Police Station every time (cash on every month) has become duty. For me and my family has no patience and cash. Please close down Feroz, Hasina's marriage dispute. My daughter (Faza) my father in law Md. Mawan Ali last Sunday morning went to Hyderabad and informed that he has taken her. Whatever may be I was happy that my daughter came. In the meanwhile again phone call came from Tirumalagiri Police Station. I have not brought my daughter. Due to me my family members are getting troubles. I am facing hell. Hasena, I pray you that I will not come in your way and leave me. You want my "death". Please take care of daughter. She is a child. So do not know. Please stop here. (friends knowing everything from two years, I could not do anything and suffering physically).

Mother, father, Appu, Afeez, Afrid, Chacha, dada pardon me. I am doing wrong Fiza Beta and pardon me.

Friends & Relatives all of you thanks for ur loving me. I miss you sorry.

Note: After marriage, we should keep our friends away and should not allow to home. My situation should not come to any enemy. Thank you so much. A. Amar, Good bye.

Ur line is clear, ur waiting for this day. ”

Even if the allegations in the suicide note including the statement of witnesses recorded by the police under Section 161 (3) Cr.P.C., discloses that the cause for commission of suicide was only the information given by his wife about her proposed marriage with Mandala Amarender while asking him to die and his family members on the earlier occasions.

To attract the offence punishable under Section 306 of IPC, there must be abetment. The word abetment is defined under Section 107 of IPC. Abetment of a thing means a person abets the doing of a thing, who instigates any person to do that thing; or 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 intentionally aids, by any act or illegal omission, the doing of that thing. Offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has been abetted. Abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 of IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation as held by the Apex Court in *Parveen Pradhan Vs. State of Uttaranchal*¹.

In *M. Mohan v. State represented by Deputy Superintendent of Police*², 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

¹ 2012 (9) SCALE 745

² AIR 2011 SC 1238

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/accused must be of such nature which led the deceased to commit suicide, having no other option except to commit suicide.

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 Palaias

Jhantu v. State of West Bengal³ and Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh⁴).

In Gangula Mohan Reddy v. State of A.P⁵, 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.

In Shri Ram vs. The State of U.P⁶ 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 IPC.

In Jamuna Singh v. State of Bihar⁷, 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

³ AIR 2010 SUPREME COURT 512

⁴ AIR 2002 SUPREME COURT 1998

⁵ AIR 2010 SUPREME COURT 327

⁶ AIR 1975 SUPREME COURT 175

⁷ AIR 1967 SUPREME COURT 553

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 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.*⁸, 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)

⁸ 2007 (1) ALD (CrI.) 83 (AP)

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 view of the law declared by the Apex Court, the act of the accused i.e., asking him to die when he is unfit to maintain his wife, would not fall within 3 Clauses of 107 IPC. Therefore, the material collected during investigation including the suicide note, do not constitute any offence much less the offence punishable under Section 306 r/w 34 IPC.

In *State of Haryana v. Bhajan Lal*⁹, the Apex Court laid 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 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

⁹ 1992 Supp. (1) SCC 335

motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

According to Guideline No.3, when 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, this Court can exercise such inherent jurisdiction to quash the proceedings against the accused.

In view of the law declared by the Apex Court, the act done by the accused do not constitute any offence punishable under Section 306 r/w 34 IPC. Therefore, I find no material to proceed against the petitioner for any offence much less the offence punishable under Section 306 r/w 34 IPC. Consequently, the proceedings against the petitioner/Accused No.6 are liable to be quashed.

Accordingly, this Criminal Petition is allowed and the proceedings in S.C.No.212 of 2017 on the file of VI Additional Sessions Judge at Mahabubabad, Warangal District, are quashed against the petitioner/Accused No.6.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 03-10-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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