

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1090 of 2011(O&M)

Date of decision : 19.1.2018

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Sadhu Singh Karwal and others

.....Petitioners

vs.

Union Territory of Chandigarh and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Jasdev Singh, Advocate for the petitioners

Mr. Sukant Gupta, Additional PP, UT, Chandigarh

Mr. R.S. Chahal, Advocate for respondent No.2.

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H. S. Madaan, J.

This revision petition is preferred against order dated 23.4.2011 passed by the Additional Sessions Judge, Chandigarh, vide which petitioner Sadhu Singh Karwal, Rajinder Kumar Karwal and Ashwani Kumar Karwal, have been ordered to be charge sheeted for offence under Section 306 read with Section 120-B IPC.

Briefly stated, facts of the case as per prosecution story are that on 20.1.2009 on receipt of information at Police Station Sector

34, Chandigarh, from police control room, Chandigarh, that a person was lying in the park on the backside of Petrol Pump, Sector 46, Chandigarh, the Police Party from the said Police Station headed by ASI Balbir Singh, went there. However, it transpired that PCR vehicle had already taken the said unknown person to GMCH, Sector 32, Chandigarh, for treatment. However, he was declared brought dead. Subsequently, the person was identified as Ashok Kumar Karwal s/o Sadhu Singh Karwal r/o House NO. 170/1, Sector 46-A, Chandigarh, who had been working as SDE in BBMB, Industrial Area, Phase 1, Chandigarh.

Inquest proceedings under Section 174 Cr.P.C. were carried out on the dead body of Ashok Kumar Karwal and post mortem examination was also got performed thereon. The viscera of the dead body was sent to CFSL Sector 36, for examination. On 25.1.2009 a suicide note, which was in torn condition, was found from the place where deceased was found lying in the park. The suicide note was taken into police possession. The writing thereof was “IN CASE OF MY DEATH MY BROTHER RAJINDER SINGH KARWAL, SDE, 170/46A GF WILL BE HELD RESPONSIBLE SD. ASHOK KUMAR KARWAL 20.1.2009 170/1 46 A.”

Viscera report from CFL was received, which disclosed that common insecticide, volatile, metallic/inorganic and sedative poisons were detected in the said viscera. To say phosphide was detected in Exhibits 1, 2, 3 and 4. The suicide note and admitted hand writing of deceased Ashok Kumar Karwal, were sent to Government Examiner of Question Documents for examination and as per reports received

from there, those were by the one and same person. It further transpired that Ashok Kumar Karwal had been claiming house rent allowance from his Department i.e. Bhakra Beas Management Board, which during the period of 1.3.2004 to 29.2.2008 came out to Rs. 2,47,000/- on the basis of rent receipts purported to have been issued by his father Sadhu Singh Karwal, although those were not genuine documents and Ashok Kumar Karwal had forged signatures of his father thereon. Sadhu Singh Karwal made a complaint to the Chief Engineer (System Operations), BBMB, Chandigarh, regarding fraudulent withdrawal of house rent allowance and taking of undue benefit of income tax rebate by Ashok Kumar Karwal. However, during the course of enquiry, Neelam Karwal widow of Ashok Kumar Karwal stated that her father-in-law Sadhu Singh Karwal, brothers-in-law Rajinder Singh Karwal and Ashwani Karwal were harassing her husband due to dispute regarding a vacant room situated at Ist floor of their residence, as such her husband committed suicide. A written complaint was submitted by Virat Karwal son of Ashok Kumar Karwal, alleging that his father had committed suicide due to unnecessary harassment and threats from his grandfather Sadhu Singh Karwal and his uncle Rajinder Singh Karwal.

Three of them, were arrested in this case, challaned and forwarded to face trial. Challan was committed to the Court of Sessions and was assigned to Additional Sessions Judge, Chandigarh, who framed formal charge for offence under Section 306 read with Section 120-B IPC against all the three accused, vide order dated

23.4.2011.

The petitioners feeling aggrieved by the said order have approached this Court by way of filing the present revision petition.

Notice of the petition was given to the respondent- State, who has appeared through State counsel. Complainant has also appeared through counsel.

I have heard learned counsel for the parties, besides going through the record and I am of the view that in light of the material collected by the Investigating Agency during the course of investigation of the case and considering the suicide note of the deceased, which is a crucial document, only the person named therein i.e. Rajinder Singh Karwal could have been charged for offence under Section 306 IPC and not the other two accused, namely, Sadhu Singh Karwal and Ashwani Kumar Karwal. Evidence against these two is not found to be enough and sufficient so as to frame formal charge against them. Simply because of the fact that Sadhu Singh Karwal had complained to the department of the deceased, that he had been claiming house rent by submitting forged rent receipts, purported to have been issued by him, when actually it was not so, cannot certainly constitute abetment. Further more, Sadhu Singh Karwal could very well have got the room of his house vacated from his son, whose status at best seems to be that of a licensee. Further more institution of civil litigation cannot be taken to constitute abetment or instigation.

Learned counsel for the petitioners has referred to citation

Praveen Pradhan vs. State of Uttaranchal and another 2012 (4)

RCR (Criminal) 724 wherein it was observed that when 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 was abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC, however, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.

He has further referred to authority **S.S. Chheena vs. Vijay Kumar Mahajan and another (2010) 12 Supreme Court Cases 190**, by the Apex Court, wherein it was observed that in a case under Section 306 and 107 IPC relating to abetment of suicide, when appellant was not named in the FIR, order of framing a charge under Section 306 IPC on the basis of allegation of father of deceased, were not substantiated and suicide note did not even remotely connect appellant with offence of abetment and the order framing charge against the appellant was held unsustainable.

In authority **M. Mohan vs. State Represented by the Deputy Superintendent of Police, (2011) 3 Supreme Court Cases 626** by the Apex Court, it was observed that abetment involves mental process of instigating or intentionally aiding a person in doing a thing and there should be clear mens rea to commit offence under Section 306 IPC, which requires commission of direct or active act by accused, which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide.

In authority **Madan Mohan Singh vs. State of Gujarat and**

another (2010) 8 Supreme Court Cases 628, it was observed in case of abetment of suicide, intention of accused to aid or to instigate or to abet the suicide must be proved. It was further observed that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing a charge under Section 306 IPC.

Thus in view of the discussion above, the revision petition is bound to succeed with regard to Sadhu Singh Karwal and Ashwani Kumar Karwal. Accordingly the same is accepted and charge for offence under Section 306 read with Section 120-B IPC is set aside qua such petitioners.

Whereas petition qua petitioner Rajinder Kumar Karwal who is specifically named in the suicide note, left by the deceased, stands dismissed.

(H.S. Madaan)
Judge

19.1.2018

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No