

Sr. No.112

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR--669-2018(O&M)
Date of decision:06.09.2018**

Om Parkash

.....Petitioner

versus

State of Haryana and another

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Birender Singh Rana, Sr. Advocate with
Mr. Parveen Kaushik, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Rajbir Sehrawat, J(Oral)

Present petition has been filed challenging the charge framing Order and the charge framed under Section 306 of Indian Penal Code against the petitioner vide; Order dated 13.12.2017.

The brief facts of this case are that FIR No.315 dated 25.06.2017; under Sections 306,34 IPC; was registered at Police Station Shivaji Colony, Rohtak; at the instance of complainant-Rajesh. In this FIR four persons were named. The petitioner is one of them. The allegations as contained in the FIR are that the complainant is having a small company dealing in Nuts-bolt. His younger brother worked in a private company. His father Vijender retired from Nav Bharat company, Rohtak and used to stay at home. He was 62 years old. Further allegation of the complainant is that his brother Manoj was married to Sneha daughter of Om Parkash, the present petitioner, resident of Kakrola, Najafgarh, New Delhi,(on

30.06.2006). It was further alleged that on asking of the present petitioner, the father of the complainant had lent Rs.30 lakhs to the petitioner. The petitioner had assured the father of the complainant that either he will get a small factory established for the brother of the complainant or he will ensure the employment for the brother of the complainant. The father of the complainant had borrowed Rs.20 lakh from one Ashwani Kumar. Remaining money was arranged from his own resources. After some time, the above said Ashwani Kumar and his sons started demanding their money back. However, his father was not able to return the money. Therefore, the father of the petitioner used to remain dejected. Since the petitioner neither established any factory nor got any employment for the brother of the complainant, therefore, the father of the complainant demanded the money back from the present petitioner. However, despite repeated demands by the father of the complainant, the petitioner was not returning the money. Feeling harassed by this situation, the father of the complainant, committed suicide on 24.06.2017. On account of these facts, the FIR was got lodged by the complainant.

However, later on complainant himself gave affidavits in favour of the other accused; saying that they were not responsible for the suicide committed by the father of the complainant. Resultantly, all the other accused were let off by the police. The challan was filed only against the present petitioner. Subsequently, the Trial Court framed the charge against the petitioner. It is against those proceedings that the present petition has been filed.

Another aspect which is relevant for the purpose of the present case is that an alleged suicide note was also found by the police during the

course of the investigation. Although in this suicide note the name of the petitioner has also come in an indirect reference, as the daughter of the petitioner having filed the matrimonial dispute against the family of the deceased. However, the allegation of the harassment, as mentioned in the suicide note, is only against the above said Ashwani Kumar, who had already expired on 21.06.2017.

While arguing the case, learned counsel for the petitioner has submitted that even if the entire case of the prosecution is accepted, no offence under Section 306 IPC is made out. At the best, this is a case where some money is taken by the petitioner and that money is not returned to the deceased. Mere non-return of the money by the petitioner can not be taken as an instigation by the petitioner to the deceased, to commit suicide. Since the petitioner is not even alleged to have done any overt or positive act towards the inducing of or the process of commission of suicide by the deceased, therefore, the petitioner can not be punished under Section 306 IPC.

Learned counsel for the petitioner has relied upon the judgment of this Court rendered in **2009(2)R.C.R.(Criminal)229; Amarjit Singh and others vs. State of Punjab**, and the judgment of the Hon'ble Supreme Court rendered in **2010(1)SCC 750; Gangula Mohan Reddy vs. State of Andhra Pradesh** to contend that merely because the deceased was hyper sensitive to the ordinary petulance, discord and differences coming across in daily life would not make the accused as liable for suicide committed by the deceased. Further, reliance of the learned counsel for the petitioner is upon the judgment of the Hon'ble Supreme Court rendered in **2007(3)R.C.R.(Criminal)87; Bhagwan Das versus Kartar Singh and others** to submit

that mere harassment by a person, without anything more being done by him, is not a ground to hold such a person liable for suicide by another person who might have felt offended by the harassment. Lastly, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in **2010(4)R.C.R.(Criminal) 66;S.S.Cheena vs. Vijay Kumar Mahajan** to contend that without a positive act on the part of the accused to instigate or aid in committing suicide, the accused can not be held liable for suicide committed by another person. Learned counsel further relies upon this judgment of the Supreme Court to contend that once the charge is not found to be maintainable; then the accused should not be made to face the trial; only for the sake of conducting the trial against him. Therefore, it is contended by counsel that the charge, as well as, all the consequent proceedings, and trial against the present petitioner, all deserve to be quashed.

On the other hand, learned counsel for the State has filed reply stating that the other persons named in the FIR have not been arrayed as an accused in the case. Out of those, named in the suicide note, Ashwani Kumar, already stood expired on 21.06.2017. Qua the other persons the complainant himself has expressed his satisfaction that these persons are not responsible for the death of the father of the complainant. Therefore, challan was filed only against the present petitioner. It is contended by the learned State counsel that since the Court has framed charge against the petitioner, therefore, now the trial can not be scuttled. The petitioner has been found involved in causing harassment to the deceased. Therefore, he has rightly been made an accused in the case. It is further contended that out of 13 witnesses; 02 have already been examined in the trial against the

petitioner. Hence it would not be appropriate to terminate the proceedings against the petitioner.

Learned counsel for the State has also relied upon the judgment of the Hon'ble Supreme Court rendered in **2012(4)R.C.R(Criminal)377; Amit Kapoor vs. Ramesh Chander and another** to contend that in Revision Petition the jurisdiction of the Revisional Court is very limited.

Before proceeding further it is appropriate to have reference to Section 306 IPC, which is as reproduced herein below:-

“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.”

A perusal of this Section shows that the person accused under the Section is punished for abetment of the act of suicide by the deceased. The abetment is defined under Section 107 of IPC. It would be beneficial to have reference to this Section as well, which is reproduced below:-

“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.”

Although Section 107 IPC deals with abetment in general,

however, read in the context of Section 306 IPC, it would mean, that a person accused under Section 306 IPC can be held liable only:-

- (a) If he instigates the deceased to commit suicide.
- (b) If he conspires with a third person/s to lead the deceased to commit suicide, and pursuant to the conspiracy some act or illegal commission takes place on his/their part.
- (c) If he intentionally aids the deceased in committing the suicide, by his act or illegal omission.

Bare reading of this section shows that it employs phrases like 'instigates', 'conspires' and 'intentionally aids'; all of which conclusively determine that there has to be a 'mens rea' on the part of the accused for making him liable for abetment of suicide by the deceased. Mere silence or inaction on the part of the accused or the accused remaining unconcerned about the problems of the deceased; is not a ground to punish the accused under Section 306 IPC; when the deceased commits suicide. There has to be a positive participation of the accused, with culpable mind, for specifically deriving the deceased to the decision of ending his life by committing suicide. This can be through positive advice or a threatful coercion, cast upon the deceased to cajole or to force him to commit suicide. The advice or coercion can be direct, as well as, through some conspiracy. Another instance where accused would be liable under Section 306 IPC is where he positively and directly participates in the process of suicide by the deceased by intentionally aiding him in committing the suicide, irrespective of the fact whether such aid is provided by him before the actual starting of the act of suicide or at the time of actual commission of suicide by the deceased. But, as observed above, in any case, there has to be an intentional

and positive or the overt act to make him liable under Section 306 IPC. The positive participation or the overt act of the accused should be intended to produce as direct consequence, the commission of suicide by the deceased. This proposition is adequately clarified by the above cited judgments of Supreme Court; relied upon by the counsel for the petitioner. Therefore, there is a clear distinction between an accused being a mere 'reason' for suicide on one hand and the accused being 'responsible' for suicide on the other hand. While being merely a 'reason' for suicide of deceased is not punishable under Section 306, being intentionally 'responsible' for suicide by the deceased, through positive participation, is very much punishable.

Having heard the learned counsel for the parties and perusing the record, this Court finds that the argument raised by learned counsel for the petitioner merits acceptance. One of the fact which has come on record is that the daughter of the petitioner was married to the son of the deceased. However, there had been a matrimonial discord between the parties. Resultantly, the daughter of the petitioner had already initiated proceedings against the family of the deceased. Daughter of the petitioner had already got lodged an FIR under Sections 498-A, 406 IPC involving her husband and her in-laws, including the deceased. This fact finds mention in the alleged suicide note also. Therefore, it is obvious that the petitioner and the deceased were not even on good talking terms at the time of alleged suicide by the deceased. Although the FIR at the instance of the daughter of the petitioner has been registered in the year 2017, however she had initiated the proceedings against the deceased and his family way back in the year 2014. Hence in the near proximity to the alleged suicide, there is even no possibility of the petitioner being on good terms with the deceased; either to

take the money from him or to have business-like relationship with the deceased. Therefore, on the face of it, it is clear that the petitioner has no reason or occasion to harass the deceased as alleged by the complainant.

Otherwise also, taking the version of the complainant or of the deceased as reflected in the suicide note to be correct, the allegation qua harassment, which was pressing upon the mind of the deceased, was only against Ashwani Kumar. It was Ashwani Kumar who was demanding his money back from the deceased. The petitioner had nothing to demand from the deceased as such. Therefore, it can not be said that it was the petitioner who was harassing. Obviously, even as per the alleged suicide note; It is only the acts of Ashwani Kumar and his sons; which were in the mind of the deceased, which could have led him to form his opinion that he should no more be living in the world. The petitioner being mentioned as merely a 'reason' for suicide by the deceased, is not sufficient to convict the petitioner under Section 306 IPC.

Learned counsel for the petitioner has rightly relied upon the judgment of this Court; as well as; the judgment of the Hon'ble Supreme Court to support his submission to contend that unless there is a positive act alleged against the petitioner, which might have contributed to the process of the commission of suicide by the deceased, the charge against the petitioner under Section 306 IPC can not be sustained. This has been so held by the Hon'ble Supreme Court in the judgment rendered in the case of *S.S.Cheena(supra)*. Still further this Court also has held in the case of *Amarjit Singh(supra)* that merely because the petitioner failed to return the borrowed money to the deceased, can not be taken to be a sufficient act of instigation to the deceased; to commit suicide. Hence the charge against the

petitioner under Section 306 IPC can not be sustained merely with the allegation that he was not returning the money borrowed by him from the deceased. And there is no more allegation against him. Learned counsel for the State has relied upon the judgment of the Hon'ble Supreme Court to contend that the powers of the Revisional Court is limited and it should not be exercised in routine manner. However, this Court does not find substance in the argument of learned counsel for the State.

Learned counsel for the petitioner has not sought to rely upon any evidentiary appreciation of any document or the evidence led before the Trial Court. The argument of learned counsel for the petitioner is that assuming the entire allegation raised against him to be correct, still the offence under Section 306 IPC is not made out against him. In this kind of situation, the power of a Revisional Court can not be read in any restrictive manner; and thereby; force an otherwise innocent person to face the trial.

Although learned counsel for the State has argued that the trial has already started and two witnesses have been examined, therefore, Trial should be continued, however, this Court finds that the Hon'ble Supreme Court in the case of *S.S.Cheema(supra)*; has also held that once the charge is not found to be made out against a person then the trial can not be permitted to be continued against him; for the sake of completion of the process of trial. It results in wastage of valuable time of the Court as well as undue harassment to the accused. Hence once the charge under Section 306 IPC is found to be not made out; then even the further proceedings and trial against the petitioner can not be permitted to be continued. It deserve to be noted here that there is no other allegation/charge against the petitioner except under Section 306 IPC.

In view of the above, the charge framed against the petitioner as well as the consequent trial against him, is hereby quashed. Petition is allowed.

6th September, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*