

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.111 of 2018

Order Reserved on : 12.12.2018

Order Passed on : 5.3.2019

Kewal Krishnakant Vishwakarma, S/o Manbharan Prasad Vishwakarma, aged about 34 years, R/o Village Kutaha, P.S. Jaitwara, District Satna, Madhya Pradesh, At present r/o Durg Kodal, P.S. Durg Kondal, District Kanker, Chhattisgarh posted as an Assistant Veterinary Surgeon

---- Applicant

versus

State of Chhattisgarh through Station House Officer Arjuni, District Dhamtari, Chhattisgarh

--- Respondent

For Applicant	:	Shri B.P. Singh, Advocate
For State/Respondent	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 23.12.2017 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No.45 of 2017, whereby a charge under Section 306 of the Indian Penal Code has been framed against the Applicant.
2. Facts of the case, in brief, are that the Applicant is a veterinary doctor. Before 2 years of the incident he visited the house of Kusumlata (the deceased) at Village Kohka Koliyari to see her for marriage purpose and after inquiry he chose her to marry her. Thereafter, he had been visiting her house and talking with her and her family members on mobile phone. He had also taken to his father and grand father to show her. After few days, he had also taken his sisters to show her. Thereafter, he had been telling that he will marry her only. When marriage of Mansingh, brother of

deceased Kusumlata was fixed, at that time, parents of Kusumlata asked the Applicant to ask his parents for fixation of his marriage with Kusumlata so that they could arrange marriage ceremony of their son Mansingh and daughter Kusumlata together. Thereafter, for about 15 days, the Applicant did not give any reply nor did he take any family member to the house of Kusumlata. On 1.4.2017, i.e., the date of incident at about 10 a.m., Kusumlata talked to the Applicant on phone and while talking to him she suddenly started weeping. On being asked, she told her parents that the Applicant telling her that she belongs to a poor family and he is a doctor he will not marry her. Thereafter, on the same day, at about 1:30 p.m, Kusumlata consumed poisonous substance in her room and committed suicide. Morgue was lodged by her brother Mansingh. Post mortem examination was conducted on her dead body. Statements of witnesses were recorded during morgue inquiry and on the basis of the said statements offence has been registered. Statements of witnesses were also recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet has been filed against the Applicant under Section 306 of the Indian Penal Code. Vide the impugned order dated 23.12.2017, the Additional Sessions Judge framed a charge under Section 306 of the Indian Penal Code against the Applicant. Hence, this revision.

3. Learned Counsel appearing for the Applicant submitted that from perusal of the entire charge-sheet it is clear that none of the witnesses has stated against the Applicant that he abetted the deceased for commission of suicide. There is also no allegation of cruelty or harassment by the Applicant to the deceased. There is

nothing to show in the entire charge-sheet that the Applicant played any active role direct or indirect to facilitate commission of suicide. There is no proximity and nexus between the conduct and behaviour of the Applicant with that of the suicide committed by the deceased. He further submitted that even if the evidence on record is taken as it is, the only thing that is established is that initially the Applicant had agreed to marry the deceased, but later on, he refused to marry her. Only on the basis of this, *prima facie*, offence under Section 306 of the Indian Penal Code is not made out against the Applicant.

4. On the other hand, Learned Counsel appearing for the State submitted that there is sufficient material available on record for presuming that the Applicant has committed the offence and as such there is no illegality in the order impugned framing charge against the Applicant warranting interference by this Court.
5. I have heard Learned Counsel appearing for the parties and perused the record carefully.
6. The question in the present case is whether on considering the entire available material to be correct a *prima facie* case for alleged commission of offence under Section 306 of the Indian Penal Code is made out against the Applicant or not?
7. At this juncture, it is appropriate to look into the provisions of Sections 306 and 107 of the Indian Penal Code, which run thus:

“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.

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.

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.”

8. Section 109 of the Indian Penal Code provides for punishment for abetment, which runs as follows:

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

9. As per the definition given in Section 107 of the Indian Penal Code, an abetment is constituted by any one of the following three ingredients:

- “(i) instigating a person for doing of a thing, or
- (ii) engaging in a conspiracy for the doing of that thing, or
- (iii) intentionally aiding the doing of that thing.”

10. A person is said to “instigate” another to an act, when he actively suggests or stimulates him to the act by any means of language direct or indirect whether it takes the form of express solicitation or of hints, insinuation or encouragement. The word “instigate” means to goad, urge forward, provoke, incite or encourage to do an act.

11. As Section 306 of the Indian Penal Code makes abetment of commission of suicide punishable, therefore, for making liable for an offence punishable under Section 306 of the Indian Penal Code, it is the duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of the accused, it is necessary to see that his act must fall in any of the three ingredients as enumerated under Section 107 of the Indian Penal Code and, therefore, it is necessary to prove that the said accused has instigated the person to commit suicide or must have engaged with one or more persons in any conspiracy for seeking that the deceased commits suicide or he must intentionally aid by any act or illegal commission of the suicide by the deceased.

12. In **(2001) 9 SCC 618 (Ramesh Kumar v. State of Chhattisgarh)**,

it has been observed by the Supreme Court as under:

“20. Instigation is 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. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. 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 of abetting the offence of suicide should be found guilty.”

- 13.** In (2011) 3 SCC 626 (**M. Mohan v. State Represented By The Deputy Superintendent of Police**), the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 of the Indian Penal Code there has to be a clear *mens rea* to commit the offence:

“45. The intention of the legislature and the ratio of the cases decided by this Court are 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/she committed suicide.”

14. In **2015 AIR SCW 4814 (State of Kerala v. S. Unnikrishnan Nair)**, the Supreme Court has observed as under:

“**13.** As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it hereinbefore. On a plain reading of the same, it is difficult to hold that there has been any abetment by the respondents. The note, except saying that the respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reason, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate.

18. Coming to the case at hand, as we have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, we are disposed to think that the High Court is justified in quashing the proceeding, for it is an accepted position in law that where no prima facie case is made out against the accused, then the High Court is obliged in law to exercise the jurisdiction under Section 482 of the Code and quash the proceedings. [See V.P. Shrivastava v. Indian Explosives Limited and others, (2010) 10 SCC 361]”

- 15.** In the light of aforesaid enunciation of law, the facts of the present case are to be examined.
- 16.** It is the case of the prosecution that the deceased committed suicide at her house by consuming poisonous substance. It is the further case of the prosecution that both the Applicant and the deceased were unmarried and prior to the incident, for the last two years, the Applicant had been visiting the house of the deceased and he had also made a promise to the deceased and her family members that he will marry her. But, later on, on the date of incident, he telephonically refused to marry her by saying that she belongs to a poor family and he is a doctor. Apart from this, there is nothing available against the Applicant. There is nothing available to establish that the Applicant had been continuously torturing or harassing the deceased physically or mentally and he refused to marry the deceased on a telephonic call itself. Making refusal by the Applicant to the deceased cannot be said to be an instigation on the part of the Applicant. It is a normal practice of the society that before finalisation of a marriage, parties visit many families and even after taking talks for a long period, refusal of marriage takes place and in this circumstance, if, on refusal of marriage, any girl or boy commits suicide, it will generate huge number of litigations of offence punishable under Section 306 of the Indian Penal Code. Therefore, only on refusal of marriage, if a girl or boy commits suicide, that cannot be held to be a case of offence punishable under Section 306 of the Indian Penal Code. In my considered opinion, in the instant case, any of the ingredients of Section 107 of the Indian Penal Code, as mentioned above, does not constitute the offence alleged against the Applicant.

17. In the opinion of this Court, on considering the entire material, no *prima facie* case for framing of a charge under Section 306 of the Indian Penal Code is made out against the Applicant as there is no proximity or nexus between the conduct and behaviour of the Applicant with that of the suicide committed by the deceased.
18. Consequently, the revision is allowed. The impugned order dated 23.12.2017 framing charge against the Applicant under Section 306 of the Indian Penal Code is set aside and the Applicant is accordingly discharged.
19. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge