

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 468 of 2019**Order Reserved on : 28.08.2019Order Delivered on : 24.10.2019

- Parmeshwar Kumar Yadav, aged about 28 years, S/o Mr. Jaduram Yadav, resident of Manikpur, P.S. Lalpur, District Mungeli C.G.

----Applicant**Versus**

- State of C.G. through the District Magistrate, Mungeli (C.G.)

---- Respondent

For Applicant	:	Mr. Raza Ali, Adv.
For Respondent/State	:	Mr. Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****24/10/2019**

01. Heard on admission.
02. With the consent of the parties, the matter is heard finally.
03. This revision has been filed by the applicant against the order dated 08.03.2019 passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989 Act), Mungeli, in Special Case No. 01/2019, whereby the learned Special Judge framed charges against the applicant under Sections

354, 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989) Act.

04. Brief facts of the case are that, complainant has made complaint on 20.10.2018 against the applicant alleging therein that, the complainant used to get the training in the tailoring shop of the applicant, where the applicant, on the pretext of marriage, outraged her modesty. For which the FIR has been registered against the applicant for the offence punishable under Section 354 of IPC bearing crime No. 147/2018. After two weeks of the registration of the FIR, the complainant herself consumed the poison and died, for which, the merg-intimation was registered on 02.11.2018, but in spite of registering the separate FIR, the police has merged this merg intimation with the earlier registered FIR bearing No. 147/2018. After completion of investigation, charge-sheet has been filed against the applicant under Sections 354, 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989) Act. Learned trial Court on 08.03.2019 framed charges against the applicant as described above. Hence, this revision.

05. The learned counsel for the applicant submits that the complaint made against the applicant has not been registered. The prosecution has merged the two

different incidents and, without registering FIR of the second incident, the charge-sheet has been filed whereas, without registering the FIR, no charge can be framed. He further submits that the applicant cannot be compelled to face rigmarole of a criminal trial in absence of any credible material against him. It also amounts to abuse of process of law.

06. On the other hand, learned counsel appearing for the State supported the impugned order.

07. Heard learned counsel appearing for the parties and perused the material available with due care.

08. It is clear from the charge-sheet that deceased, Anita Benarjee, filed a written complaint against the applicant on the ground that, the applicant used to touch and please her saying 'I love you' and also promised her to marry. But on 19.10.2018, when deceased asked for marriage, applicant denied to marry her. On her written complaint, Crime No. 147/2018 under Section 354 of IPC was registered against the applicant on 20.10.2018. Complainant Anita Benarjee died on 02.11.2018 due to consumption of poison. This matter was investigated by the police and on same Crime No. (147/2018), final report has been filed against the applicant under Sections 354, 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989) Act.

09. At this juncture, it is appropriate to look into the provisions of Sections 306 and 107 of the Indian Penal Code, which reads 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 mission 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."

10. Section 109 of the IPC provides for punishment for abetment, which reads 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 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."

11. In ***Vishesh Kumar Bhawte & Another v. State of Chhattisgarh*** (Criminal Revision No. 98/2010 judgment dated 17.05.2019), this Court held that refusal from marriage does not amount to abetment of committing suicide.

12. In this case, deceased herself filed a written complaint against the applicant and her statement under Section 161 was also recorded during the investigation. She stated in her statement that applicant used to catch hold of her hand and try to kiss her and, on 27.09.2018, (in report 19.10.2018), it is alleged that applicant refused to marry her. After some days, she committed suicide. Since, the deceased

belonged to Scheduled Tribes community, learned trial Court framed charges against applicant under Prevention of Atrocities Act.

13. In ***State of Haryana v. Bhajan Lal (supra)***

Hon'ble Supreme Court held as under:-

“ In the exercise of the extra-ordinary power under article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- ĩ7 myriad kinds of cases wherein such power should be exer- cised:

(a) 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 ac- cused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) where the uncontroverted 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;

(d) 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;

(e) 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;

(f) where there is an express legal bar engrafted in any of the provision 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;

(g) 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. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence just- ĩ7 on and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself.”

14. In the light of this Court's previous order, the ingredients of abetment are totally absent in the instant case for an offence punishable under Section 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989)

Act. Thus, in the opinion of this Court, considering and accepting the entire material available on record as absolutely correct and true on their face value, no prima facie case for framing charges for the offence punishable under Section 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989) Act is made out against the present applicant as there is no nexus and proximity with the conduct and behaviour of the accused person with that of the suicide committed by the deceased Anita Benarjee. There is absolutely no evidence on record, that the applicant did such heinous activities with the deceased because of her belonging to Scheduled Tribes community. Therefore, charge only under Section 354 of IPC can be framed against the applicant.

15. Consequently, the revision filed by the applicant is allowed. It is held that there is no material for framing charges against the present applicant under Section 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989) Act. So, the applicant is discharged from the offence punishable under Section 306 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities 1989) Act.

16. Learned trial Court is directed to proceed against the accused/applicant under Section 354 of IPC, in accordance with law.

**Sd/-
(Rajani Dubey)
JUDGE**

vijay Sahu