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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 922 of 2019**Order Reserved on : 20.08.2019Order Delivered on : 04.10.2019

1. Praveen Kumar Lunia S/o Late Shri Tansukhdas Lunia, aged about 61 years.
2. Smt. Nirmala Lunia W/o Shri Praveen Kumar Lunia, aged about 57 years.

Both R/o S.M.I.G.- 66 Padmanabhpur, Durg, P.S.
Padmanabhpur Chowky, District & Tahsil- Durg (C.G.)

----Applicants**Versus**

1. State of C.G. through Police Station Pulgaon, District | Durg (C.G.)

---- Respondent

For Applicants	:	Shri Surendra Singh Sr. Adv, assisted by Shri Anil Singh Rajput and Rahul Tamaskar, Adv.
For Respondent/State	:	Mr. R.S. Baghel, Dy A.G.

Hon'ble Smt. Justice Rajani Dubey
C A V Order

04/10/2019

01. Heard on admission.
02. With the consent of the parties, the matter is heard finally.
03. By the instant revision, the applicants have challenged the order dated 17.07.2019 passed by learned 8th Additional Sessions Judge, Durg, in Session Trial No. 89/2019, whereby charge under Section 306 of the Indian Penal Code has been

framed against the applicant.

04. Facts of the case, in brief, are that the applicant No. 2 was the owner of land bearing Khasra No. 2/1 rakba 0.320 hectare, Khasra No. 2/14 rakba 0.024 hectare, total rakba 37410 square feet situated at Potia Kala Durg. On 24.11.2014, the petitioner No. 2 and deceased Anil Kumar Agrawal has entered into an agreement for sale of the above land. Deceased Anil Kumar Agrawal who was the purchaser of above land, made the part payment of Rs. 20,11,000/- and rest of the amount was be paid on or before 31.03.2015. After expiry of the time framed in the agreement i.e. 31.03.2015, the deceased Anil Kumar Agrawal, due to non-arrangement of balance amount, asked the applicant No. 2 to extent the time period therefore, the applicant No. 2, prepared another agreement between the parties on 24.04.2015, and per the new agreement, the applicant No. 2 gave last opportunity to pay the rest of the amount to the deceased till 31.05.2015, and in para 2 of the agreement dated 24.04.2015, it was specifically stated that no further date will be extended after 31.05.2015. Further case is that, if the deceased(purchaser) do not make registry of the said land after giving balance amount till 31.05.2015, the advance amount would not be returned and the Applicant No. 2 would be free to sell the land in question to any person. After expiry of time framed in second agreement dated 31.05.2015, the deceased Anil Kumar Agrawal failed to deposit the rest of the amount and

petitioner No. 1 sold the above land in the month of April 2016. On 08.05.2017, Anil Kumar Agrawal had made a complaint with respect to the same transaction before the Police Station, City Kotwali, Durg against the present applicant. In the year 2017 concerned Police Station after investigating the matter, proceeded Under Section 155. Thereafter, deceased had filed the complaint case against the applicants before Judicial Magistrate First Class, which was dismissed. On 03.05.2018, the deceased Anil Kumar Agrawal consumed poison and during treatment he died. Thereafter, Crime No. 371/2018 registered against the present applicants. The learned trial Court, on 17.07.2019, framed the charges against the applicants under Section 306/34 of IPC. Hence, this revision.

05. Learned counsel for the applicant submits that the charges framed by the learned trial Court for offence punishable under Section 306/34 of IPC against the present applicant is illegal, arbitrary and contrary to law, because, if the entire prosecution story is taken as it is the ingredients of Section 306 read with Section 107 of IPC are missing in this case. The applicants were ready and willing to perform their part of contract as per the terms of agreement, however, the deceased himself failed to perform his part of contract leading to forfeiture, strictly in terms of the second agreement. He further added that, as per para 2 of the agreement dated 24.04.2015, it has been specifically mentioned that the

purchaser will duly executed Registry in his favour from the date of contract till 31.05.2015. Under the mutual consent of both parties, the period of registration will not be extended under any circumstances. Turing the given period if purchaser do not execute registry then the entire amount of the earnest money will be sunk and the deal would automatically be canceled and the seller would be free to sell the said land to any other person. The deceased failed to arrange the rest of the money. Therefore, after one year, the applicants sold the above land for making payment of loan amount of Dena Bank. The applicants never instigated the deceased to commit suicide. Learned counsel further added that the dispute between the parties is purely a civil in nature and there is no allegation, whatsoever, regarding abetement of suicide against the applicants. The deceased Anil Kumar Agrawal had made a complaint with respect to same transition before the City Kotwali Durg, but no criminal case is made out against the present applicant. Next submission is that the reason behind commission of suicide by the deceased appears to be his bankruptcy which the Court below failed to see. The impugned order of framing of charges by the learned trial Court is in violation of law laid down by the Hon'ble Apex Court.

06. In support of his contention, learned counsel placed reliance in the matter of ***Sanju V. State of MP*** reported in Criminal Appeal No. 572/2002 decided on 01.05.2002 by

Supreme Court of India, ***M. Mohan v. State*** reported in **2011 (3) SCC 626**.

07. Learned counsel for the State supporting the impugned submission that on the evidence go collected by the prosecution, prima facie, a case under Section 306 of the IPC is made out against the applicants.

08. Heard learned counsel for both the parties and perused the material available on record.

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.

Exaplanation1. 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 thus:-

"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. 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."*

12. In ***M. Mohan v. State Represented by the Deputy Superintendent of Police (AIR 2011 SCC 1238)*** the Hon'ble Supreme Court by the following observation, has clearly held that in order to convict a person under Section

306 of the IPC there has to be a clear mens rea to commit the offence.

“**45.** Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

46. 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.”

13. Hon'ble Supreme Court in ***Sanju v. State of MP (Criminal Appeal No. 572 of 2002, decided on 01.05.2002)*** held in para 15 as under:-

“ **15.** A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time

indulged in drinking as revealed from the statement of the wife – Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handy work of a man with sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 of Cr. P.C. before the Investigation Officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26th July, 1998 her husband came to them in a inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of 'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C. It is in the statement of the wife that the deceased always remained in

a drunken condition. It is a common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25th July, 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.”

14. In this case, the applicants and deceased entered into an agreement for sale and purchase of the land. Deceased previously paid Rs. 20,11,000/- as advance but he could not arrange the rest of the amount, therefore, petitioners sold the land in question to another party, and after that, deceased had made all the efforts to get his refund back from the applicants. In this regard he also filed a criminal complaint against the applicants. Thereafter, he filed complaint case but he could not succeed. All these transactions are of the year 2014 and 2015. Ultimately, deceased committed suicide on 31.05.2018, after long period of agreement dated 24.11.2014 and 24.04.2015. Complaint filed against the applicants by deceased and deposition sheets are also part of the charge-sheet. In the statement made in complaint case, deceased

Anil Kumar Agrawal also stated about the agreement. Deceased stated in his statement that applicants have committed cheating just to grab his money.

15. 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 accused;

(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 investi- gation

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 justifi- 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.”

16. In this case, the uncontroverted allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any abetment by applicants. Applicants sold their land to another person and did not return the advance payment to the deceased which was purely in accordance with the terms and condition of agreement at 24.04.2015, particular para 2 of the said agreement. This only does not constitute any explanation as defined under Section 107 of the IPC. Therefore, in my considered opinion, on the basis of material available prima facie, no offence under Section 306 of the Indian Penal Code is made out against the applicant.

17. consequently, revision is allowed.

18. The impugned order dated 17.07.2019 is set-aside. The

applicants are discharged from the charges framed against them under Section 306/34 of the IPC.

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

vijay Sahu