

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.643 of 2014

Order Reserved on : 18.3.2019

Order Passed on : 17.6.2019

Tikam Chand Rathi, son of Late Amritlal Rathi, aged about 49 years, resident of Main Road, Abhanpur, Police Station Abhanpur, Raipur, Chhattisgarh, Civil and Revenue District Raipur

---- Applicant

versus

State of Chhattisgarh through the District Magistrate, Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Shri B.P. Sharma, Advocate
For State/Respondent	:	Shri D.P. Singh, Deputy Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. By the instant revision, the Applicant has challenged the order dated 25.7.2014 passed by the 7th Additional Sessions Judge, Raipur in Sessions Trial No.149 of 2014, whereby a charge under Section 306 of the Indian Penal Code has been framed against the Applicant.
2. Facts of the case, as projected, in brief, are that Netram Sinha committed suicide by consuming poison in the intervening night of 19.2.2014 and 20.2.2014. His elder brother Krishna Prasad Sinha lodged a complaint to the effect that on account of alleged commission of pressurising to the deceased by the Applicant to sell his land ad-measuring about 2.5 acres and thereafter keeping the amount of sale-consideration by the Applicant with him made the deceased to commit suicide. On the basis of the complaint, an offence punishable under Section 306 of the Indian Penal Code

has been registered against the Applicant. During investigation of the offence, it was found that the deceased was owner of certain piece of land situated at Village Torla Nawapara, Raipur and the land was sold to one Agardas. Before the said sale, rinpustika of the land was given to the Applicant by the deceased and a loan of Rs.2,10,000/- was obtained by him from the Applicant. After entering into an agreement with buyer of the land Agardas, the deceased made repayment of the loan of Rs.2,10,000/- to the Applicant and demanded back his rinpustika and agreement papers etc. It is further alleged that the Applicant denied the deceased to return him the documents relating to the land and sought registration of sale-deed of the land of the deceased. Registration of sale-deed of the land in favour of buyer Agardas took place for a consideration of Rs.8,66,500/- and this amount was retained by the Applicant with him. Out of the amount of sale-consideration, the deceased also repaid the amounts of loan of Rs.1,60,000/- to Dilip Baghel, Rs.1,25,000/- to Shekhu Satnami, Rs.40,000/- to Bhagwat Nishad and Rs.12,000/- to Jageshwar, which he had borrowed from them. Thus, out of the sale-consideration, the deceased received a total sum of Rs.3,37,000/-. It is further alleged that the Applicant retained the amount of Rs.4,50,000/- with him and asked the deceased to allow him to retain the said amount with him saying that against that amount he will pay to the deceased a profit/interest of Rs.5,000/- per month and whenever the amount of Rs.4,50,000/- will be needed by the deceased, he will refund the said amount to the deceased on a notice of one month's duration. It is the allegation that this act of the Applicant caused abetment to the deceased to commit suicide. Statements of witnesses have been recorded under Section 161 of

the Code of Criminal Procedure. On completion of the investigation, a charge-sheet has been filed against the Applicant for an offence punishable under Section 306 of the Indian Penal Code. A charge under Section 306 of the Indian Penal Code has been framed against the Applicant by the 7th Additional Sessions Judge, Raipur. The Applicant filed an application under Section 227 of the Code of Criminal Procedure for his discharge from the said charge. The said application has been rejected by the Additional Sessions Judge vide order dated 25.7.2014. Hence, the instant revision.

3. Learned Counsel appearing for the Applicant submitted that from the evidence collected by the prosecution, *prima facie*, no offence under Section 306 of the Indian Penal Code is made out against the Applicant. Even if the entire prosecution case is treated to be true then also the same would not amount to abetment to the deceased for commission of suicide. He further submitted that none of the ingredients required for instigation for commission of suicide is present in the instant case.
4. On the other hand, Learned Counsel appearing for the State supported the impugned order and submitted that on the evidence collected by the prosecution, *prima facie*, a case under Section 306 of the Indian Penal Code is made out against the Applicant and, therefore, the Trial Court has rightly framed the charge under Section 306 of the Indian Penal Code against the Applicant.
5. I have heard Learned Counsel appearing for the parties and perused the entire material available with due care.

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 by consuming poisonous substance. It is stated that the Applicant was a broker and was also engaged in the business of money lending. The deceased had received about 3.75 acres of land in a family partition. He was in need of a sum of Rs.3,25,000/- and, therefore, he approached the Applicant for the said amount and thereafter he obtained a sum of Rs.3,25,000/- from the Applicant and also entered into an agreement with the Applicant. At that time, the deceased left some papers relating to his land with the Applicant. Thereafter, the deceased entered into an agreement with Agardas for sale of a piece of his land measuring area 2.05 acres and obtained an advance of Rs.50,000/- from Agardas. Thereafter, the deceased approached the Applicant and asked him to return the papers of his land. On this, the Applicant asked the deceased to refund his money. It is the further case of the prosecution that on 2.2.2014, the deceased took a sum of

Rs.2,10,000/- from Agardas and handed over the said amount to the Applicant. At that time, the deceased again asked the Applicant to return the papers of his land, but the Applicant told him that he will return the papers at the time of registration of sale-deed of the land. Thereafter, on 4.2.2014, at the time of registration of sale-deed of the land in the registry office, remaining amount of sale-consideration of the land, i.e., Rs.8,66,500/- was taken by the Applicant in his possession. It is alleged that 2-3 days thereafter, the deceased took a sum of Rs.3,50,000/- from the Applicant and out of this money he repaid the loans which he had taken from some persons. Allegedly, the Applicant did not refund the remaining amount of sale-consideration to the deceased even after being demanded by him nor did he return him the papers relating to the land. On this issue, on 19.2.2014, a quarrel took place between the deceased and the Applicant. Thereafter, in the intervening night of 19.2.2014 and 20.2.2014, the deceased committed suicide. The written complaint was submitted by Krishna Prasad Sinha, elder brother of the deceased on 12.5.2014. During the course of investigation, statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. In their statements, the witnesses have stated in the above-stated manner. Even if the entire prosecution evidence is taken as it is, there is nothing available to show that the Applicant instigated the deceased as defined under Section 107 of the Indian Penal Code. From the entire prosecution story and the evidence collected by the prosecution, it only appears that the deceased had taken some money from the Applicant as loan and against that loan he had deposited some papers with the Applicant as security. After repayment of the loan amount by the deceased to the Applicant if

the Applicant did not give the remaining amount of sale-consideration and the papers relating to the land to the deceased, this only does not constitute any instigation as defined under Section 107 of the Indian Penal Code. Therefore, in my considered opinion, on the basis of the material available, *prima facie*, no offence under Section 306 of the Indian Penal Code is made out against the Applicant.

- 17.** Consequently, the revision is allowed. The impugned order dated 25.7.2014 is set aside. The Applicant is discharged from the charge framed against him under Section 306 of the Indian Penal Code.

Sd/-

(Arvind Singh Chandel)
Judge