

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2018

PRONOUNCED ON : 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.No.17701 of 2011  
and  
M.P.Nos.1 & 2 of 2011

Mookaiya ... Petitioner/Sole Accused

Vs

1.State rep. by  
The Inspector of Police,  
E-4, Abhiramapuram Police Station,  
Chennai.  
(Crime No.727 of 2010)

2.Karunanidhi ... Respondents  
[R2 impleaded vide order dated 20.11.2018  
in Crl.M.P.No.5976 of 2017]

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.591 of 2010 on the file of the learned 1<sup>st</sup> Additional Sessions Judge, Chennai and quash the same.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondents: Mr.T.Shanmuga Rajeswaran  
Government Advocate  
(Crl. Side) for R.1

Mr.M.Saravanan for R.2

ORDER

This Criminal Original Petition is filed by the petitioner to quash the proceedings pending against him in S.C.No.591 of 2010 on the file of the learned 1<sup>st</sup> Additional Sessions Judge, Chennai.

2. The case of the prosecution is that one Loganathan was involved in the purchase and sale of old papers and also chit

business. For his business purpose and also for constructing a own house, the said Loganathan borrowed some amount from the petitioner herein. As Loganathan was not regular in repaying the amount, the petitioner, on 09.06.2010, is said to have scolded him in front of his shop, that too, in front of the public and verbally abused him and further insisted upon the said Loganathan to transfer the house into his name, if he is not able to return the borrowed sum. Due to this harassment, Loganathan, with an apprehension, absconded and in this regard, a man missing case was registered in Crime No.727 of 2010, based on the complaint of the second respondent. Pending investigation, on 11.07.2010, based on the information given by the second respondent, the first respondent police found that the Loganathan committed suicide by hanging in his shop and on enquiry, the respondent police found the suicide note written by the deceased, in which, the deceased has stated about the harassments met out by him and further stated that the petitioner is responsible for his death. Thereafter, the respondent police has altered the offence to Section 306 IPC and in conclusion of the investigation, has filed the final report.

3. Learned Counsel for the petitioners would submit that 40 days prior to the date of occurrence, ie., on 09.06.2010, the petitioner is said to have demanded the deceased for repayment of loan amount. Thereafter, the deceased was found missing and after 40 days, he committed suicide. According to the learned Counsel for the petitioner, there is no abetment or intention on the part of the petitioner to drive the deceased to commit suicide. He only demanded the repayment of loan amount alone, as such, in the given circumstances, an offence under Section 306 IPC per se will not be attracted. The presence of mens rea is necessary, which is lacking in this case and therefore, he prays for allowing the present petition.

4. Per contra, the learned Government Advocate (Crl. Side) would draw the attention of this Court to the suicide note recovered from the place of occurrence. This suicide note was examined by Forensic expert / LW14, who has confirmed that the same was written by the deceased. In the said suicide note, the deceased has expressed the harassments met out by him at the hands of the petitioner, which has driven him to commit suicide. In fact, out of 18 witnesses examined by the prosecution, more than three witnesses speak about the money transaction as well as the harassment faced by the deceased. These things would strengthen the case of the prosecution, as such, this is not a fit case to quash the proceedings at the threshold and therefore, the learned Government Advocate prays for dismissal.

5. The cause of action in respect of the present case arose in the year 2010 and this petition is pending right from the

year 2011. Though the second respondent, who was impleaded on 20.11.2018, was present before this Court, he expressed his inability to present his case as well as to engage a Counsel. Therefore, this Court, vide order dated 04.12.2018, has suo motu appointed Mr.Saravanan, former Additional Public Prosecutor, to assist this Court by representing the second respondent / defacto complainant.

6. Mr.Saravanan, learned Counsel for the second respondent, took this Court through the complaint filed by the second respondent on 06.07.2010, which is a man missing complaint. In the said complaint, the second respondent has stated that on 09.06.2010 at about 08.30 pm, the deceased approached his father / second respondent and told that he borrowed loan from several places and to settle the same, requested his father for a sum of Rs.1,00,000/-. The complainant asked his son to wait for three days and therefore, his son left the place to their house. But, his son / the deceased never turned up. In this regard, though he enquired several persons, including the petitioner herein, nothing is forthcoming and thereafter, he lodged the complaint for man missing.

7. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

8. According to the prosecution, there is a money transaction between the petitioner and the deceased. As the deceased was not regular in repaying the amount, it is alleged that the petitioner herein has scolded and verbally abused the deceased on 09.06.2010, in front of his shop. It is further alleged that if the deceased is not able to settle the debt, the petitioner has asked the deceased to either transfer his house property to him or he will kill him. On the same day, the deceased had asked his father / defacto complainant for a sum of Rs.1,00,000/- to settle the loans. But then, he was found missing and in this regard, a man missing case was registered on 06.07.2010.

9. Thereafter, on 11.07.2010, the deceased was found dead in his shop, by hanging and the respondent police has recovered a suicide note from the place of occurrence. In order to establish the authenticity of the suicide note, the prosecution has obtained a report from the forensic expert and handwriting expert. The statement of the forensic expert / LW14 was also recorded by the prosecution in support of the same. In the said suicide note, the deceased has spoken about the harassments faced by him and has held the petitioner responsible for his action. Though the case was originally registered for man missing, the same was subsequently altered. Final report was also filed for the offence punishable under Section 306 IPC and

the same was committed and pending before the learned 1<sup>st</sup> Additional Sessions Judge, Chennai, in S.C.No.591 of 2010.

10. The issue to be decided in the present case is whether the allegations raised in the final report, based on the suicide note, will constitute an offence under Section 306 IPC. For better appreciation, Section 306 IPC is extracted thus:

"306 - 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."

11. As per the above, whoever abets a person to commit suicide is liable to be prosecuted. The word 'abetment' is defined under Section 107 IPC and for better understanding, the same is extracted thus:

"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."

12. Going by the documents that were put forth by the prosecution, it is seen that 40 days prior to the date of occurrence, the deceased was scolded and humiliated by the petitioner, in front of his shop and his friends. Thereafter, the deceased was found missing and on 11.07.2010, he was found dead by hanging. In the suicide note, he has narrated the harassments faced by him at the hands of the petitioner. Therefore, this Court is prima facie of the view that the deceased has faced a constant threat at the hands of the petitioner, which has led him in taking such an extreme step.

13. In similar circumstances, the Hon'ble Supreme Court, in its latest decision, in Rajesh v. State of Haryana, reported in 2019 SCC OnLine SC 44 has held as follows:

"9. Conviction under Section 306 IPC is not sustainable

on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See Amalendu Pal alias Jhantu v. State of West Bengal, reported in (2010) 1 SCC 707).

10. The term instigation under Section 107 IPC has been explained in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), reported in (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, as follows:

"16. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C.Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See Oxford Advanced Learner's Dictionary, 7<sup>th</sup> Edn.)."

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. [See Praveen Pradhan v. State of Uttaranchal, reported in (2012) 9 SCC 734]"

14. Though it is a settled law that mere uttering of words 'go and die'; 'better die today than tomorrow'; or 'whether will we allow you to live peacefully / whether would you live peacefully', in a fit of anger and emotion, itself will not constitute such abetment, in the present case on hand, the materials available on record shows that the deceased was under constant threat and humiliation, which instigated him in committing suicide. Therefore, this Court is of the view that the prosecution has established a prima facie case and it is for the petitioner to defend the same, before the trial Court, by adducing evidences during the trial.

15. In view of the foregoing discussions, this Court is not inclined to quash the proceedings in S.C.No.591 of 2010 on the file of the learned 1<sup>st</sup> Additional Sessions Judge, Chennai, at this stage. The petitioner is at liberty to raise all his grounds before the trial Court and the trial Court is directed to decide the same, on merits and in accordance with law, uninfluenced by any of the findings rendered by this Court in this petition, and conclude the trial as expeditiously as possible.

16. Considering the valuable legal service rendered by Mr.Saravanan, former Additional Public Prosecutor, by representing the second respondent / defacto complainant, this Court directs the Tamil Nadu State Legal Services Authority, to pay a sum of Rs.5,000/- (Rupees Five Thousand only), as Honorarium to Mr.Saravanan.

17. In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

gk

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The 1<sup>st</sup> Additional Sessions Judge,  
Chennai.
- 2.The Inspector of Police,  
E-4, Abhiramapuram Police Station,  
Chennai.

3.The Public Prosecutor,  
Madras High Court,  
Chennai.

Copy to:-

The Member Secretary,  
Tamil Nadu State Legal Services Authority,  
High Court,  
Madras.

+lcc to Mr.A.M.Rahamath Ali, Advocate, SR.No.22124

Crl.O.P.No.17701 of 2011  
and  
M.P.Nos.1 & 2 of 2011

Kak(06/05/2019)



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