

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.17993 of 2015
and CrI.M.P.No.1 of 2015

1.Munusamy
2.P.Parthiban

.... Petitioners/Accused 1 & 2

Vs.

1.State Rep by
Inspector of Police,
Law and Order,
T14, Mangadu Police Station,
Chennai - 600 122.
Crime No.623 of 2011
2.M.Venkatesan

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the Criminal Case in SC No.92 of 2015 on the file of the District Court - II, Kancheepuram and Quash the same by allowing this Criminal Original Petition.

For Petitioners: Mr.D.Vijayababu

For RR1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For RR2 : No Appearance

ORDER

This petition has been filed to call for the records relating to the Criminal Case in SC No.92 of 2015 on the file of the District Court - II, Kancheepuram and Quash the same by allowing this Criminal Original Petition.

2. Mr.D.Vijaya Babu, the learned counsel for the petitioners would submit on 05.09.2011 the second respondent son, deceased Prakash called A1 through phone and asked to arrange job, for

which he was replied that there is no job then. At night on that day, the deceased asked mobile phone from A2 for hearing songs as such A2 gave mobile phone and thereafter the deceased also returned the same on the same day. Thereafter, A2 plugged the mobile phone for charging and went to sleep, but the next day he found the mobile phone was missing, then he and A1 asked the deceased, who in turn did not respond. Based on the complaint, the Police enquired into the matter, thereby the deceased Prakash admitted the guilt. Thereafter when A1 and A2 came back to workplace, they asked the deceased about the mobile phone, for which the deceased informed that he was innocent. Then, A1 informed the deceased to go to his native place. At that time, the deceased Prakash informed about the incident to his aunty, Powna, who scolded him. After that A1 left from the work site. Subsequently, the deceased Prakash and other co workers A2 - Parthiban, Chandrasekar, Sathish, Venkatesh all had dinner and went to sleep. One the next day on 07.09.2011 at around 6.45 a.m. some neighbours notice the deceased committed suicide by hanging himself. The petitioners have been roped into this crime stating that they harassed and instigated the deceased to commit suicide. He further submits that the investigation officer has not examined witnesses LW-2, LW-3 and A2 and made his own statements for the purpose of achieving miscarriage of justice. The postmortem certificate reveals that there is no external or internal or bone injuries on the body of the deceased. He further submits to convict a person under Section 306 I.P.C. there has to be clear Mens rea to commit the offence and also requires an active act or direct while led the deceased Prakash to commit suicide. But the petitioners have not instigated the deceased to commit suicide.

3. Per contra, Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent police would submit that the petitioners are arrayed as first and second accused. The second respondent son, deceased Prakash called A1 through phone and asked to arrange job, for which he was replied that there is no job then. At night on that day, the deceased asked mobile phone from A2 for hearing songs as such A2 gave mobile phone and thereafter the deceased also returned the same on the same day. Thereafter, A2 plugged the mobile phone for charging and went to sleep, but the next day he found the mobile phone was missing, then he and A1 asked the deceased, who in turn did not respond. In this regard, the petitioner tortured the deceased asking mobile phone as such the next day he committed suicided by hanging himself. The petitioners only instigated and abetted the deceased to commit suicide. Further he would submit that there are incriminating evidence and materials against the petitioners to prove the charge under Section 306 I.P.C. Therefore, he vehemently opposed this petition.

4. Heard, Mr.D.Vijaya Babu, the learned counsel for the petitioners and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent police.

5. There are totally two accused in which the petitioners arrayed as first and second accused. The petitioners were charged for the offences under Section 306 I.P.C on the ground they tortured the deceased asking the mobile phone and thereby instigated or abetted the deceased to commit suicide. Hence, the charge.

6. A catena of decisions of the Hon'ble Supreme Court of India and this Court have consistently held that the word uttered in a fit and anger or emotion without intending the consequences to actually follow cannot be said to be an instigation. In fact myself and Hon'ble Mr.Justice S.Nagamuthu, then he was Judge of this Court argued in a similarly placed matter arising out of charge under Section 306 I.P.C. wherein this Court held in CrI.O.P.No.22507 of 2006 dated 16.05.2007 in the case of K.Ravikumar Vs.State House Officer, Grand Bazaar Police Station, Pondicherry & another as follows:

"10. The perusal of the records discloses that this case was registered on the basis of the complaint given by the mother of the victim on 11.07.2003 under Section 174 Cr.P.C. In the complaint, there is no mention about the alleged suicide notes left by the victim in this case. It is seen that only subsequently the suicide notes were seized from the cot of the victim. The victim is said to have written one suicide note to his mother in Tamil and other suicide note in English to his friends. The perusal of the suicide notes discloses that there is absolutely no specific allegation levelled against the petitioner herein and there is only a general remarks against the University Correction System. It is mentioned in the suicide notes that the victim expected 100 out of 100 or 90 out of 100 in Mathematics, but he was given only 42 marks and as such, he was depressed. It is also mentioned in the suicide note addressed to his mother that there should be an end to the teachers, who are correcting the answer papers carelessly. The perusal of the suicide note further shows that there should be change in the University Correction System. The victim is also said to have requested his mother to hand over yet another letter written to his friends.

11. In the two other letters addressed to one of his friends and other friends, the victim expressed his regrets for having teased his girl friend and requested her to pardon him. The third suicide note addressed to his friends reveals that he was happy in the college along

with his friends.

12. This Court is constrained to state that the above said suicide notes came into the picture only subsequently and not at the time of giving the complaint. Assuming that the said suicide notes are genuine, this Court is of the considered view that the said suicide notes only reflect the feelings of the victim about the improper correction system of answer papers by the University. From the reading of the suicide notes, it is not possible to conclude that the victim was personally known to the petitioner and the petitioner was having any grudge against the victim to award less marks. Therefore, this Court has no hesitation to hold that there is absolutely no material available on record to establish that the petitioner had any motive or intention to instigate the victim to commit suicide by awarding less marks.

13. Section 107 I.P.C. reads here under:

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 the 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.

14. Section 306 I.P.C. reads thus:

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.

15. A reading of the above said two sections makes it crystal clear that the ingredients contemplated under the above said sections are not made out by the materials available on record in this case.

16. The Hon'ble Supreme Court has held in the case of Randhir Singh v. State of Punjab (2005 Supreme Court Cases (Cri) 56) as follows:-

" Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that

mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 I.P.C."

17. Therefore, as per the decision of the Hon'ble Apex Court as stated above, there should be an active role played by the accused, which can be described as instigating or aiding to commit the suicide. In the instant case, there is absolutely no material available on record to show that the petitioner played active role, which can be described as instigating or aiding the victim to commit the suicide. Even the only piece of material available on record viz. the suicide notes do not disclose the above said ingredients constituting the offence under Section 306 I.P.C.

18. In yet another decision, the Hon'ble Supreme Court in the case of Netai Dutta v. State of West Bengal (AIR 2005 SUPREME COURT 1775) has held as follows:-

" No averment in alleged suicide note that accused had caused any harm to deceased or was in any way responsible for delay in paying salary to him no reference of any act or incidence in alleged suicide note whereby accused has committed any wilful act or omission or intentionally aided or instigated deceased in committing act of suicide it cannot be said that accused had in any way instigated deceased to commit suicide."

19. The above said principle laid down by the Hon'ble Supreme Court is squarely applicable to the facts of the instant case. In this case also, a reading of the suicide note does not specifically refer about the conduct of the petitioner and does not disclose that the petitioner has committed any wilful act or omission or intentionally aided or instigated the deceased in committing the act of suicide. Assuming that the petitioner has corrected the answer papers in a negligent manner, that itself is not sufficient to mulct the petitioner for the allegation of committing any wilful act or omission or intentionally aided or instigated the victim to commit suicide.

20. A perusal of the original records produced by the learned Public Prosecutor, Pondicherry shows that the communication sent by the Investigating Agency to the Director of prosecution contains the following statement:-

" It is submitted that, Thiru Ravikumar (the petitioner herein), Lecturer, working in Annamalai University, Chidambaram, Tamil Nadu, awarded fail mark of 20 at the time of initial correction to the said student. It is very

negligent on the part of said Thiru Ravikumar, but he made a correction without having any intention with the student Thiru S.Irwin Pyari Abivarma. He made correction based on dummy numbers which was given by the University authorities, as per the usual customs. Hence there is no chance for intention to the said Thiru Ravikumar, Lecturer, for awarding of very lesser marks to that answer sheet of deceased Irwin Pyari Abivarma. During the time of re-valuation it was awarded by Dr.P.Vivekanandan and Thiru T.Sundararaj as 54 and 61 respectively."

21. There is absolutely no two opinion that the teaching staff should be more responsible and careful in correcting the answer papers of the students. But, at the same time, the younger generation viz., the students cannot resort to take the extreme step of putting an end to their life merely on the ground of getting lesser marks in the examination. It is always open to them to ask for re-valuation. Even in this case, after re-valuation, the victim secured more marks.

22. Therefore, for the aforesaid reasons, this Court has no hesitation to hold that allowing the proceedings to continue against the petitioner would amount to a clear case of abuse of process of Court and as such, the proceedings initiated against the petitioner in P.R.C.No.8 of 2006 pending on the file of Judicial Magistrate, Pondicherry, is liable to be quashed and accordingly, quashed and the criminal original petition is allowed."

7. In the above cited case, there was a suicide note. Beyond from the said suicide note, it does not specifically refer about the conduct of the accused and does not disclose that the petitioner has committed any wilful act or emotion or intentionally aided or instigated the deceased in any act of committing suicide. Further recorded that the teacher corrected answer sheets in a negligent manner, that itself is not sufficient to mulct the accused for the allegation to commit any wilful act or emotion or intentionally aided or instigated the victim to commit suicide. In the case on hand this kind of act of the petitioners would not utter any abetment or instigation to commit suicide. At the same time, the victim could not have resort to take extreme step of putting his life to an end.

8. In Crl.O.P.No.24858 of 2006 by an order dated 28.07.2009 in the case of N.Angali Devi and another Vs. State by the Superintendent of Police, Villupuram, this Court held as follows:

"9. In the case of Swamy Prahaladdas Vs. State of MP and another [1995-Supp-3-SCC-438], the accused was charged for an offence under Section 306 of IPC on the ground that

the accused during the quarrel is said to have remarked to the deceased to go and die and the Honourable Supreme Court, was of the view that mere words uttered by the accused to the deceased to go and die were not even prima facie enough to instigate the deceased to commit suicide.

10. In the case of Mahendra Singh Vs. State of MP [1995-Supp-3-SCC-731], the accused was charged for an offence under Section 306 of IPC based upon the dying declaration of the deceased, which reads as under:-

"My mother in law and husband and sister in law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister in law. Because of those reasons and being harassed I want to die by burning."

The Honourable Supreme Court, considering the definition of abetment under Section 107 of IPC, found that the charge and conviction of the accused in the above said case for the offence under Section 306 of IPC is not sustainable merely on the allegation of harassment to the deceased. The Apex Court further held that none of the ingredients of abetment were attracted on the statement of the deceased.

11. In yet another case of Ramesh Kumar Vs. State of Chhattisgarh [2001-9-SCC-618], the Honourable Supreme Court, while considering the charge framed and conviction for the offence under Section 306 of IPC on the basis of the dying declaration recorded by the Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband, who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire, acquitting the accused, the said:-

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference 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 for abetting the offence of suicide should be found guilty."

12. Reverting to the facts of the case, the statement of the witnesses made under Section 161 Code of Criminal Procedure would reveal that the stolen money had been recovered from the deceased girl and she was reprimanded by the Teachers more particularly by the Petitioners herein for stealing the

money. In the dying declaration, the deceased girl had stated that the 2nd Petitioner remarked her to go and die and the 1st Petitioner slapped on her cheek and scolded her in harsh words. Even assuming that the Petitioners have acted in the above said manner and uttered the above words as projected by the Prosecution, it is to be seen as to whether the said utterance would by itself constitute the ingredients of 'instigation'.

13. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. The presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. Secondly, the said abusive words is said to have been uttered to the deceased by the Petitioners, when they had come to know that the deceased had stolen the money from the bag of the Anganvadi Teacher and money was also recovered from her. Thirdly, the deceased had her lunch in the School and attended the post lunch session classes and left the School only after it was over and she had committed suicide only after reaching the home. All these factors would clearly point out that it could not be a direct result of the utterances made by the Petitioners.

14. In the case of Sanju aliss Sanjay Singh Sengar Vs. State of MP {AIR-2002-SC-1998}, it is held that the accused telling the deceased to go and die would by itself not constitute the ingredients of instigation and presence of mens rea is necessary concomitant of instigation. Holding so, the Honourable Supreme Court quashed the charge sheet framed under Section 306 of IPC on the ground that the ingredients of abetment is totally absent.

15. One important thing to be noted in this case is that the Petitioners being the Teachers of the Government School in the interest of the Institution correct any mistake done by the student in order to cultivate good habits and get rid of bad habits, such as stealing money. In fact, the father of the deceased girl had been summoned and it is stated that he gave a letter of apology for the conduct of his daughter and also undertook that the same would not recur again. In such view of the matter, the act of the petitioners cannot be said that it would amount to abetment of suicide.

16. In the case of Sashi Prabha Devi Vs. State of Assam [2006-Cri.LJ-1762], the allegation is that the accused, a Head Mistress of a School wrongly struck off the name of the deceased from the Register of the Students in Class X, which

induced the deceased to commit suicide and the High Court of Gujarat has held that there was no evidence showing that the accused had acted at any point of time, suggested or hinted for commission of suicide and when the accused was entitled to correct any wrong order, as in fact deceased had not passed her class IX examination, no case of instigation or abetment of suicide was made out against the accused.

17. In the case of *Nettai Dutta Vs. State of* will be [2005-2-SCC-659], the Honourable Supreme Court upholding the order of the High Court, quashed the charge sheet filed under Section 306 of IPC on the ground that the offence under Section would stand only if there is an abetment for the commission of crime."

9. The above case squarely applies to this case on hand that the petitioners after their mobile phone was missing, they only enquired the deceased and insisted for return of the mobile phone as such the act of the petitioners cannot be said that it would amount to abetment of suicide.

10. It is also relevant to cite the judgment reported in AIR 2010 Supreme Court 317 in the case of *Gangula Mohan Reddy Vs. State of Andhra Pradesh*, wherein it is held as follows:

"20. 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.

"21. The intention of the Legislature and the ratio of the cases decided by this Court is 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 committed suicide.

22. In the light of the provisions of law and the settled legal positions crystallised by a series of judgments of this Court, the conviction of the appellant cannot be sustained. Consequently, the appeal filed by the appellant is allowed and disposed of."

11. The Hon'ble Supreme Court of India held that the abetment involves mental process of instigation, instigating the person or intentionally aid the person on doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide charge cannot be sustained. In the

case on hand there is absolutely no material to prove the charge of abetment as against the petitioners. Further there is no clear mens rea to commit suicide. It also requires 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 committed suicide. Therefore, the entire proceedings in SC.NO.92 of 2015 against the petitioners cannot be sustained.

12. Accordingly, this Criminal Original Petition is allowed and the proceedings in S.C.No.92 of 2015 on the file of the learned District Court-II, Kancheepuram is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pds/lok

To

1. The District Court - II,
Kancheepuram
2. Inspector of Police,
Law and Order,
T14, Mangadu Police Station,
Chennai - 600 122.
3. The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.D.Vijayababu, Advocate sr.no.15708

Crl.O.P.No.17993 of 2015
and Crl.M.P.No.1 of 2015

sj(co)
nr 29/03/2019