

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P.No.25440 of 2014
M.P.No.1 of 2014 and M.P.No.1 of 2015

1. Anthony Tilak
P. Krishna Prasath

... Petitioners

Vs.

1. The State rep by
The Inspector of Police,
Sevaipet Police Station,
Thiruvallur District.
(Crime No. 603 of 2011)

2. V.Padmanabhan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in P.R.C.No.6 of 2013 on the file of the learned Judicial Magistrate No.II, Thiruvallur and quash the same. (Prayer amended as per the order of this Court made in M.P.No.3 of 2014 in Crl.O.P.No.25440 of 2014 dated 13.04.2015)

For Petitioners: Mr.Shanmuga sundaram
Senior Counsel
For Mr.K.Azhagu Raman

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.T.Munirathna Naidu
For M/s. T.M.Naidu & Co.

W E B C O P Y
O R D E R

This petition has been filed to quash the proceedings in P.R.C.No.6 of 2013 on the file of the learned Judicial Magistrate No.II, Thiruvallur.

2. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 and A2. There are absolutely no avernments as against the petitioners to attract the offence under Section 306 of IPC. The prosecution filed charge sheet as against the petitioners that on 22.11.2011, a dead body was found in a well of a agricultural land. On the complaint of the Village Administrative Officer, initially the case was registered

under Section 174 of Cr.P.C. Thereafter altered into for the offences under Section 306 of IPC. The petitioners are the Directors of M/s. Corporate Solutions Marketing Service India Pvt. Ltd., in which the deceased was working as accountant. The petitioners forcibly obtained signature in cheque leaves and took 2½ sovereign of gold chain from the deceased for misusing of company's funds by the deceased. Therefore, the deceased feared for the complaint of misappropriation and as such the deceased committed suicide. Further submitted that there was no allegation as against the petitioners and only after thought they were implicated in the alleged offence. After the occurrence the relative of the victim created message in the victims mobile phone as if "the account of the victim was used for company's funds, a chain was collected and four cheque leaves with signature were also collected" and falsely implicated in this crime. Further submitted that even according to the prosecution, before the occurrence, there was no allegation of abetment or instigation by the petitioners to commit suicide. Therefore, the charge itself is not made out as against the petitioners.

2.1. He further submitted that there are catena of judgments have held that even though there is a word uttered by the person by saying to the victim to die, it will not amount to abetment of committing suicide. In this regard, the learned Senior Counsel relied upon the following judgments:-

1. 1995 Supp (3) SCC 438 - Swamy Prahaladdas Vs. State of M.P & another
2. 2002 (5) SCC 371 - Sanju @ Sanjay Singh Sengar Vs. State of M.P.
3. 2009 (1) SCC 554 - Sonti Rama Krishna Vs. Sonti Shanti Sree & another.
4. 2010 (1) SCC 750 - Gangula Mohan Reddy Vs. State of Andhra Pradesh.
5. 2014 (3) MLJ (Crl.) 18 - Mani Vs. State by the Inspector of Police, Chennai
6. Crl.O.P.(MD).No.19293 of 2014 dated 28.09.2018 - P.Rajamohan Vs. Inspector of Police, Gudalur South Police Station, Theni District.
7. Crl.O.P(MD).No.12462 of 2014 dated 12.10.2018 - Santhosh Vs. Inspector of Police Kovilpatty West Police Station, Tuticorin District.
8. Crl.O.P.(MD).No.5069 of 2015 dated 30.10.2018 - Loganathan Vs. Inspector of Police, Pappanadu Police Station, Thanjavur District.

Therefore, he prayed for quashing the entire proceedings.

3. Per contra, the learned Additional Public Prosecutor submitted that there are totally two accused, in which the petitioners are arraigned as A1 and A2. Initially the case has been registered under Section 174 of Cr.P.C. and thereafter altered into Section 306 of IPC and it is pending for committal in P.R.C.No. 6 of 2013 on the file of the learned Judicial Magistrate No.II, Thiruvallur. He further submitted

that there is a message sent by the victim that the reason for the death of the deceased is that "his company all funds used in his account is only for company use but they saying its misuse of funds and they threatened him and collected his chain and four cheque leaves and signature in letters". So take this as evidence for his death and action on them and get back the chain and cheque leaves to his parents." Therefore there is prima facie made out as against the petitioners to charge under Section 306 of IPC and prayed for dismissal of the quash petition.

4. The learned counsel appearing for the second respondent submitted that the deceased body was found in well on agricultural land and after information by the Village Administrative Officer, the case was registered under Section 174 of Cr.P.C. After production of evidence to attract the offence under Section 306 of IPC, the offence has been altered into Section 306 of IPC as against the petitioners. The petitioners are none other than the Directors of M/s. Corporate Solutions Marketing Service India Pvt. Ltd., in which, the deceased was working as an Accountant. They foisted false complaint as against the deceased as if he misappropriate the company's money, through his account and as such the petitioners threatened the deceased. To establish the charge of misappropriation they also obtained signature and four cheque leaves and gold chain from the deceased and also threatened him. Therefore they instigated and abetted the deceased to commit suicide and he vehemently opposed and prayed for dismissal of the quash petition.

5. Heard Mr. Shanmuga sundaram, learned Senior Counsel appearing for the petitioners, Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr. T. Munirathna Naidu, learned counsel appearing for the second respondent.

6. The petitioners are arraigned as A1 and A2. They are the Directors of M/s. Corporate Solutions Marketing Service India Private Limited, in which the deceased was working as an Accountant. While he was working as Accountant, there was a complaint against him in respect of the misappropriation of company's fund. Thereafter he committed suicide by jumped into the well. Initially the case was registered under Section 174 of Cr.P.C., subsequently alter into Section 306 of IPC. The defacto complainant produced a cell phone as evidence and it contains message as follows :-

"This is the information giving to my reason for my death is my company all funds used in my account is only for company use only but they saying its misuse of funds and they thriten me and collected my chain and four cheque leaves and signature in letters so take this as evidence for my death and take

action on them and get back the chain and cheque leaves to my parents its the duty of police."

7. It is seen from the photograph of the message produced by the second respondent that the message typed from the phone No. 9994394020. There is no evidence to show that the message has been sent from the phone which belonging to the deceased. There is no evidence to show that the message was sent by the deceased and the said message sent to whom. Further whether the said message received by any other phone for which also no evidence. It seems that simply typed the message and gave it to the first respondent to alter the offence under Section 306 of IPC.

8. Even assuming that the message was sent by the deceased before his suicide, it would not attract the offence under Section 306 of IPC. In this regard the learned Senior Counsel relied upon the judgment reported in 2010(1) SCC 750 in the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, which reads as follows :-

"16. In State of West Bengal v. Orilal Jaiswal & Another. (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 trail for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears 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 of abetting the offence of suicide should be found guilty.

17. The Court in the instant case came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema may necessarily be drawn.

18. In the instant case, the deceased was undoubtedly hyper sensitive to ordinary petulance, discord and

differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

19. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009 (11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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 crystallized 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. "

It is necessary to refer Sections 306 and also 107 of IPC, which reads as follows :-

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.

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable."

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."

9. The charge under Section 306 of IPC is not sustainable on the allegation of harassment without there being any positive act at the time of the occurrence by the accused, which lead or compelled the person to commit suicide. In order to bring the case within a purview of Section 306 of IPC, there must be a cause of suicide and in the commission of said offence, the person who is said to have been abetted the commission of suicide, must have played active role by an act or instigation or by doing certain act to facilitate the commission of suicide.

10. In the instant case, the petitioners are the Directors of M/s. Corporate Solution Marketing India Private Limited, in which the deceased was working as an Accountant. While he was working there, was a misappropriation of company's fund. There is no evidence to show that the petitioners instigated or abetted the deceased to commit suicide at any point of time. It is also seen that the occurrence took place on 21.11.2011 and on the date of complaint, the cell phone of the deceased was not produced before the first respondent. Only on 26.11.2011, the complainant produced the cell phone of the deceased before the first respondent and thereafter the offence has been altered into 306 of IPC. There is no explanation for the delay in presenting the cell phone containing the message as stated supra. Therefore, there is absolutely no evidence for instigation or abetment by the petitioners to the deceased to commit suicide. Therefore the petitioners are not responsible for the commission of suicide by the deceased. The impugned proceeding is nothing but clear abuse of process of law and it cannot be sustained against the petitioners.

11. In view of the above discussions, this Criminal Original Petition stands allowed and the proceedings in P.R.C.No.6 of 2013 on the file of the learned Judicial Magistrate No.II, Thiruvallur is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.II,
Thiruvallur.
2. The Inspector of Police,
Sevaipet Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.K.Azhagu Raman , Advocate SR.No. 24434

+1cc to M/s. T.M.Naidu & Co , Advocate SR.No. 24167

CRL.O.P.No.25440 of 2014 and

M.P.No.1 of 2014 and M.P.No.1 of 2015

A.SK(05/04/2019)

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