

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5886 of 2017
and Crl.MP.Nos. 4411, 4412 & 14526 of 2017

1. Karthikeyan
 2. Kosalram Pandiyan
 3. Nanthamathi @ Nanthadevi
 4. Mathiyazhagan
- ... Petitioners

Vs.

1. The State by
The Inspector of Police,
K3, Aminjikarai Police Station,
Chennai.
 2. Sudha
- ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in S.C.No.313 of 2016 from the file of learned IV Additional Sessions Judge, Chennai and quash the same.

For Petitioner : Mr. Ananthanarayanan
Senior Counsel
For S.M.Nandhie Devhan

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Mr.G.Prabakaran

O R D E R

This petition has been filed to quash proceedings in S.C.No.313 of 2016 on the file of the learned IV Additional Session Judge, Chennai, thereby taken cognizance for the offence under Section 306 of IPC, as against the petitioners.

2. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 to A4 in S.C.No.313 of 2016 on the file learned IV Additional Session Judge, Chennai, having been taken cognizance for the

offence under Section 306 of IPC. He further submitted that the first petitioner, second petitioner are brothers and third petitioner is the sister of the deceased and the fourth petitioner is the husband of the third petitioner herein. The deceased is one of the brother of the petitioners 1 to 3 herein. The petitioners and the deceased were running a brick-klyn chamber under the name and style of T.K.R.Brick. There was a business dispute between them and due to which their family stopped the business and the first petitioner alone started on his own business.

2.1. He also submitted that the mother of the deceased and the petitioners 1-3, settled the property in favour of the deceased and subsequently it was cancelled and executed settlement in favour of the second petitioner. In this regard, there was a dispute between the deceased and the petitioners and on the date of occurrence, there was a quarrel between them. In the said quarrel, the deceased was denied his share and he was threatened by the petitioners that not to enter into the property and if he entered into the property he will be murdered and buried in the said property. Further they scolded him by saying "To go and die and if he died they will live peacefully". Thereafter, the wife of the deceased pacified him and offered breakfast but he refused. Thereafter, the wife of the deceased left him and went out to temple. At that juncture, the deceased committed suicide by hanging himself. Hence the complaint.

2.2. He further submitted that in view of the above background, there is absolutely no instigation either directly or indirectly made by the petitioners to commit suicide. Further more, the third and fourth petitioners are not living anywhere near the second respondent and the deceased and they were living in Thirumullaivoyal for the past twenty years since from their marriage. He further submitted that no independent witnesses have been whispered about the instigation by the petitioners, which corroborated with the evidence of the second respondent herein. Except the statement of the second respondent, no other evidences to charge the petitioners for the offences under Section 306 of IPC and also he relied upon the following judgements :-

- i) 2015 (2) LW (Cri) 123 - P.Karuppan Vs. The State
- ii) 2017 (2) LW (Cri) 132 - Jayanthi and ors Vs. IOP
- iii) 2015 (2) LW (Cri) 357 - Saroja and ors Vs. The State.
- iv) 2017 (2) LW (Cri) 661 - Murugesan Vs State
- v) 2010 (1) MLJ (Cri) 34 - N.Anjali Devi and anr Vs. State by S.P.Villuppuram and anr

2.3. He further submitted that the second respondent inherited about 12 acres of agricultural land including brick-

klyn chamber and additional 2 grounds 1872 Sq.ft. vacant cite and a sum of Rs. 10 lakhs have been paid to her by an order dated 30.11.2017, of an Arbitrator towards the civil suit filed by the second respondent herein in O.P.No.747 of 2017. Therefore, entire dispute is civil in nature and it is an arm-twisting method to settle claims and property, the prosecution has been initiated as against the petitioners. It is nothing but clear abuse of process of Court and prayed to quash the same.

3. Per contra, the learned counsel appearing for the second respondent submitted that T.K.R.Brick industries was run by the elder brother of the deceased along with his brothers. It was a family business and with malafied intention to deprive the deceased from the business, the first petitioner started abusing, harassing, humiliation and continues and repeated irritation in all manners. He also criticized that the deceased had only two daughters and they have not been considered for share as per customs right in their community. He further submitted that even in the earlier occasion, the deceased attempted to commit suicide on 28.08.2014 and he was fortunately saved by proper treatment in the private hospital. The attempt of suicide only due to harassmt of the first and second petitioners herein.

3.1. He further submitted that the entire trouble originated from 30.01.2013, when the deceased met with a road accident and thereafter he returned home after very long treatment. Utilizing the absence of the deceased in the brick business, the first petitioner rounded of the entire transactions were hidden and accounts are not maintained properly. Therefore, the deceased lodged complaint on 02.12.2014 before the Commissioner of Police alleging the harassmt and humiliation caused by the first petitioner. Only because of the harassmt and humiliation continuous and repeated irritation in all manners and criticized the deceased inabilities taken to most serious and dangerous act of attempting to commit suicide by the deceased for the first time on 28.08.2014. There was suicide note by the deceased, in his hand written revealed that the petitioners along with other persons are responsible for his committing suicide. In fact once against he was writing suicide note on 30.11.2014 stating that the deceased and his wife were brutally attacked by the petitioners and later they were admitted in the hospital for treatment. Therefore, the second respondent filed a writ petition before this Court in W.P.No.24234 of 2015 for her safety to reside in her husband share property house. Therefore, the deceased seriously depressed due to the betrayal of own brothers' harassmt and accusation.

3.2. He further submitted that unfortunately on the fateful day, on 02.07.2015, the deceased had gone to the house of the

petitioners herein and demanded the profits in the brick-kyln business. But the petitioners threatened him that if he entered into the property, they will murder him and burry him there itself. Hence the deceased was mentally worried and refused to have breakfast offered by the second respondent. Thereafter, the second respondent went to nearby temple and when she returned back to home, she found that the deceased was found hanging. The deceased was deprived income from the month of January, 2013 for the reason that without allocating any share of income by the petitioners. The petitioners committed offence under Section 306 of IPC with sole intention to swindle the assets of the deceased. In this regard, the learned counsel appearing for the second respondent relied upon the following judgments reported in

- i) 1989 AIR (SC) 1661 - Brij Lal Vs. PremChand
 - ii) 2008 AIR (SC) 527 - Didigam Bikshapathi & anr Vs. State of AP.
 - iii) (2009) 16 SCC 605 - Chiresh Kumar Chopra Vs. State
 - iv) 2009 Cri LJ 3728 - Dammu Sreenu Vs. State of A.P.
- and prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor submitted that the petitioners are arraigned as A1 to A4 and they have been charged for the offences under Section 306 of IPC. There are specific avernments as against the petitioners to connect the petitioners with the charge. Further there is a direct evidence to prove the case as against the petitioners. Therefore, he prayed for dismissal of the quash petition.

5. Heard Mr. Ananthanarayanan, learned Senior Counsel appearing for the petitioners and Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr. G. Prabakaran, learned counsel appearing for the second respondent.

6. The petitioners are arraigned as A1 to A4, in which the first and second petitioners are brothers and the third petitioner is the sister of the deceased. The fourth petitioner is the husband of the third petitioner i.e., brother-in-law of the deceased. Admittedly, there was a family business in the name and style of T.K.R. Brick Industries running by the first and second petitioners along with the deceased. While being so, there was a dispute among them, as such the deceased attempted to commit suicide even as early as on 28.08.2014 itself. Thereafter he was saved by treatment. In fact there was a suicide note and it reveals that "என் முடிவக்கு காரணமானவர்கள் கார்த்திகேயன், அண்ணா லதா, அபிசேக், சாய்ராம், சுப்பிரமணி, கிளஸ்டன், முனுசாமி, இளங்கோ. FIR போட்டு ஜாமின் வரக் கூடாது. Sd/- (R. Krishnakumar) 30.11.2014 எனக்கு நன்மை செய்தவர்கள், சுதா என் இரண்டு மகள்களும் எனக்கு காரணம் இல்லை Sd/- (R. Krishnakumar) 30/11/2014". It shows that the deceased was abused, harassed and humiliated with repeated irritation by the first and second petitioners herein.

7. It is also seen that the deceased and the second respondent are husband and wife and they gave birth to two female children as such the first and second petitioners try to loot out the entire property belonging to the deceased brother. It is also evident that the settlement deed executed in favour of the deceased by their mother subsequently cancelled without his knowledge and the very same property was settled in favour of the second petitioner herein. After the death of her husband, the second respondent herein filed a writ petition in W.P.No.23234 of 2015, challenging the cancellation of settlement deed, in which this Court granted interim injunction thereby restraining the petitioners from interfering with the second respondent's peaceful possession and enjoyment of the property. In fact, before that the second respondent and her daughters were attacked by the petitioners in which, she lodged a complaint and the same was registered in Crime No.855 of 2015 on the file of the Inspector of Police, T5 Thiruverkadu Police Station, Ambattur. It shows the continues harassment, abuse and humiliation by the petitioners towards the deceased and his family members. Therefore, the deceased mentally depressed and he already attempted to commit suicide and fortunately he was saved.

8. It is further seen that on the date of occurrence, i.e., 02.07.2015, there was a quarrel between the petitioners and the deceased and it is evident from the statement of the witnesses. In this regard the learned counsel appearing for the second respondent relied upon the judgement of the Hon'ble Supreme Court of India reported in 1989 AIR (SC) 1661 in the case of Brij Lal Vs. PremChand., as follows :-

"24. As to what would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation. Such being the case, the instigative effect of the words used by the accused must be judged on the basis of the distraught condition to which the accused had driven Veena Rani. Full well knowing her helpless state and frustration, if the accused had told her that he set greater store on the sum of Rs. 1,000 required by him than her life

and that she can die the very same day and afford him early relief, it is not surprising that Veena Rani committed suicide a little later on account of the accused's instigation."

The Hon'ble Supreme Court of India held that the abetment by instigating the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation.

9. In the case on hand, on the date of occurrence i.e., on 02.07.2015, there was a quarrel between the brothers and immediately, the deceased committed suicide. But it is seen that all along from the year 2013, there was a continues humiliation and harassment over the deceased by the petitioners 1 and 2. Therefore, it cannot be said that mere quarrel between the persons would not mean that they instigated to commit suicide. It is relevant to rely the judgment reported in 2008 AIR (SC) 527 in the case of Didigam Bikshapathi & anr Vs. State of AP., which held as follows :-

"10. As noted above, the powers possessed by the High Court under Section 482 of the Code. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540 and Minu Kumari v. State of Bihar AIR 2006 SC 1937)

11. The suicide note clearly refers to the background in which the victim took the extreme step of taking away his own life by committing suicide. It is not a case where there is no reference to any act by the accused. In Netai Dutta's case (supra) para 6 it was observed as follows:

"6. In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag."

12. In the instant case the suicide note clearly refers to the acts of the accused-appellant and the roles played by them. Therefore, the High Court rightly rejected the prayer of exercise of power under Section 482 of the Code. We make it clear that any observation made by the High Court and by us while dismissing of the present appeal shall be construed to be determinative factor in the trial."

10. In the another judgment reported in (2009) 16 SCC 605 in the case of Chirish Kumar Chopra Vs. State, the Hon'ble Supreme Court of India held as under :-

"15. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered by this Court in Ramesh Kumar Vs. State of Chhattisgarh⁴.

16. Speaking for the three-Judge Bench, 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 (2001) 9 SCC 618 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 doing of an act by the other by "goading" 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 - 7th Edition). 18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused

kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

11. In the present case, apart from the earlier suicide note as extracted above, the statement recorded under Section 161 of Cr.P.C. revealed that on account of sharing of the family property, the deceased was put under the tremendous pressure to do something which he was perhaps not willing to do. Prima facie it appears that the conduct of the petitioners 1 and 2 was such that the deceased was left with no other option except to end his life and therefore, there are materials and evidences to attract the offence under Section 306 of IPC as against the petitioners 1 and 2.

12. The learned counsel appearing for the petitioners relied upon the judgment of this High Court reported in 2017(2) LW CrL. 661 in the case of Murugesan Vs State., as follows :-

"11. Furthermore, in the judgment of the Apex Court reported in 2011 (3) SCC 626 (M.Mohan Vs. State), with regard to bringing an accused under the purview of the offence under Section 306 IPC, the Apex Court held as follows:

"41. This Court in SCC para 20 of Ramesh Kumar (Ramesh Kumar Vs. State of Chhattisgarh (2001 (9) SCC 618 = 2002 SCC (Cri) 1088) has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC.p.629):

"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."

... ..

44. 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.

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."

12. From the dictum laid down by the Apex Court in the above decisions, it is clear that before holding an accused guilty of the offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it, in order to find out as to whether the cruelty/harassment meted out to the deceased/victim had left her with no other alternative except to commit suicide. Merely because there is continuous harassment, without there being any positive act on the part of the accused which led or compelled the person to commit suicide, the conviction under Section 306 IPC is not sustainable."

13. He also relied upon the another judgement of this Court reported in 2017 (2) LW (Crl) 132 in the case of Jayanthi and ors Vs. Inspector of Police, reads as follows :-

"19. In a case reported in 2002(5) SCC 371 (Sanju vs.Stateof M.P.) the Hon'ble Supreme Court has held as follows:"Even if we accept the prosecution story thatthe appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in aquarrel or on the spur of the moment cannot betaken to be uttered with mens rea. It is in a fit of anger and emotion."

In the above judgments, this Court held that mere continuous harassment without there being any positive act, the offence under Section 306 of IPC would not attract. Further held that even the words uttered "to go and die" that would not constitute the offence under Section 306 of IPC ingredients. The word instigate denotes incitement or urging to do some drastic or inadvisable action or to stimulates or incite. In the case on hand, there was a continuous harassment by the petitioners 1 and 2 and it is also evident that the deceased already attempted to commit suicide with suicide note. The said suicide note reveal that humiliation, harassment made by the petitioners 1 and 2 towards the deceased. Therefore the above judgements are not helpful to the case of the petitioners insofar as the petitioners 1 and 2.

14. Insofar as the third and fourth petitioners are concerned even according to the second respondent, except their mere presence on the date of occurrence, there is no other continues harassment or abuse made by them on the deceased. Except bald and vague allegations, there is no specific allegations as against them to attract the offence under Section 306 of IPC. Further no one has whispered about their specific instigation or abatement on the deceased to commit suicide. More over, they are residing in the different place and no other materials to attract the charge as against the petitioners 3 and 4. Therefore the criminal proceedings cannot be sustained as against the petitioners 3 and 4 herein, and to meet the ends of justice, this Court is inclined to quash the proceedings as against the petitioners 3 and 4 herein.

15. In view of the above discussions, this Criminal Original petition stands allowed and the proceedings in S.C.No.313 of 2016 from the file of learned IV Additional Sessions Judge, Chennai is hereby quashed as against the petitioners 3 and 4 alone. Insofar as the petitioners 1 and 2 are concerned, this Criminal Original Petition stands dismissed. Considering the fact that the case is of the year 2016, the trial Court viz., the learned V Additional Sessions Judge, Chennai, is directed to complete the trial in S.C.No.313 of 2016 as against the petitioners 1 & 2, within a period of three months from the date of receipt of copy of this Order.

16. Accordingly, this Criminal Original Petition stands partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rts

To

1. The IV Additional Sessions Court,
Chennai,
2. The Inspector of Police,
K3, Aminjikarai Police Station, Chennai.
3. The Public Prosecutor,
High Court of Madras, Chennai.

+1 cc to Mr.G.Prabakaran, Advocate, S.R.No.41880

+1 cc to Mr.M.Nandhie Devhan, Advocate, S.R.No.41851

CRL.O.P.No.5886 of 2017
and CrI.MP.Nos. 4411, 4412
& 14526 of 2017

AD(CO)
SSM(24/06/2019)

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