



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.11789 of 2019

and

Crl.M.P. (MD) Nos.7416 & 7417 of 2014

1. Ramachandran

2. N.Radha

3. O.T.John

4. E.Mohan,

5. Jebaraj

..Petitioners/Accused No.1 to 5

Vs.

1.The Deputy Superintendent Of Police,
Railway Track Police Sub Division,
Madurai.

... Respondent/ Complainant

2. Sadhasivam

..2nd Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to Call for records pertaining to the Spl.S.C. No.10 of 2019 on the file of the District and Sessions Court / Special Court PC Act and SC/ST Act Cases, Sivagangai.

For Petitioners : Mr.A.R.C.Sundaresan, Senior Counsel
for Mr.D.Rameshkumar

For Respondent : Mr.K.Suyambulinga Bharathi, G.A. For R1

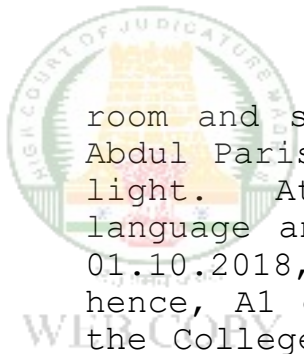
Mr.S.Vanchinathan for R2

O R D E R

This petition is filed to quash the criminal proceedings in Spl.S.C. No.10 of 2019 on the file of the District and Sessions Court / Special Court PC Act and SC/ST Act Cases, Sivagangai.

2.The case of the prosecution is that on 29.09.2018 at about 7.30 p.m, the deceased Ramesh and his room mate Jeyaprakash went to room No.104, which is the room of one Harikrishanan and entered the

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room and started to smoke cigarette. At that time, one Mohammed Abdul Paris suddenly entered into the said room and switched on the light. At that time, the deceased Ramesh abused him in filthy language and thereafter, the said Abdul Rahman left the room. On 01.10.2018, the said dispute was came to the knowledge of A1 and hence, A1 directed the said Mohammed Abdul Paris not to enter into the College hostel. Further on 03.10.2018 at about 01.00 O' clock A1 questioned the deceased Ramesh and Jeyaprakash in the hostel mess about their habit of cigarette smoking and at that time both of them admitted their guilt and hence, both were instructed to come to the room of A1 and where they were insisted to give an apology letter countersigned by the Head of the Department (HOD) and A1 brought the same to the knowledge of the Principal and formed an enquiry committee. Accordingly, A1 to A5 were formed as the committee and they insulted the deceased Ramesh about his habit of cigarette smoking and abetted him to commit suicide. Due to the said act, the deceased Ramesh felt ashamed and hence, he committed suicide by jumping infront of an unknown train. Hence the Crime has been filed for the offences under Section 174 Crl.P.C and Section 306 I.P.C and Section 3(1)(j) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, in Crime No.15 of 2018 and the first respondent conducted enquiry and filed the charge sheet and the same has taken cognizance in Spl.S.C. No.10 of 2019 on the file of the District and Sessions Court / Special Court PC Act and SC/ST Act Cases, Sivagangai as against the petitioners herein.

3.The learned counsel appearing for the petitioner would submit that the first petitioner is working as Assistant Professor and hostel warden, the second petitioner is working as Head of the Department (Civil), the third petitioner is working as Chairman Discipline and Welfare Committee, the fourth petitioner is working as Head of Department (Mechanical Department) and the fifth petitioner is working as Head of the Department in (EEE) in Mount Zion Engineering College, Lena Vilakku, Pudukkottai District. He would further submit that the petitioners did not instigate the deceased to commit suicide and there is no material as against the petitioners with regard to the offence stated in the final report.

4.He would further submit that even as per the case of the prosecution, there are absolutely no averments as against the petitioners to sustain charge under Section 306 I.P.C. There is no abetment for the commission of crime by the petitioners herein. Even as per the case of the prosecution, the petitioners directed the deceased not to smoke cigarette. The said words are just of *bonafide* expectation and professional concern of Lecturers, who had acted in good faith in making the student realise. Further, he would contend that the said words or advise are normally used by all the Lecturers while mentioning their students for the academic interest of the students. Therefore, the charge under Section 306 of I.P.C. is not at all attracted as against the petitioners and he

<https://hcservices.courtsofmadras.gov.in/hcservices/> serving the entire proceedings.



5.The learned Government Advocate (criminal side) would submit that the petitioners are arrayed as A1 to A5 and because of their abetment, the deceased aged 18 years committed suicide and there is no other reason except the words uttered by the petitioners for the deceased to commit suicide and there are clinching evidence to rope the accused into the crime.

6.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

7.Admittedly the deceased Ramesh was in the habit of cigarette smoking and hence, he was instructed to come to the room of A1 and was insisted to give an apology letter counter signed by of the Head of the Department (HOD) and A1 brought the same to the knowledge of the principal and formed an enquiry committee. Accordingly, A1 to A5 advised the deceased Ramesh about his habit of cigarette smoking and thereafter, the deceased Ramesh himself committed suicide by jump in front of an unknown train.

8.In respect of the offence under Section 306 of I.P.C. is concerned, the question is whether the act of the petitioners herein would attract the ingredients of the offence. For clarify, the Section 306 of I.P.C. is extracted herein:

"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."

9.It is seen from the records that the deceased is aged about 18 years at the time of occurrence. There should be direct act of instigation by the accused. Further, the accused should have intentionally aided the deceased to commit suicide. In the case on hand, as per the available evidence, there is nothing to show that there was any intentional act on the part of the petitioners which led the deceased to commit suicide. The words used by the petitioners were that "don't smoke cigarette in the hostel room". These words are normally used by all the Lecturers/ teachers and it cannot be said to be an act of instigation or abetment for any person to commit suicide.

10.The learned counsel appearing for the petitioner relied upon the unreported judgment passed in **Crl.O.P. (MD) No.19293 of 2014 dated 28.09.2018 – P.Rajamohan Vs. State represented by the Inspector of Police**, wherein, this Court has held as follows:

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9.It is seen from the records that the deceased is aged about 15 years at the time of occurrence. Therefore instead of charge under Section 306 of I.P.C., charge under Section 305 of I.P.C. only would attract as against the petitioner. Section 305 of I.P.C. is extracted herein:

"305. Abetment of suicide of child or insane person —If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine."

10.From the above definition, there should be direct act of instigation by the accused. Further, the accused should have intentionally aided the deceased to commit suicide. In the case on hand, as per the available evidence, there is nothing to show that there was any intentional act by the petitioner for the deceased to commit or intentionally aided or there was no illegal omission on the part of the petitioner for the deceased to commit suicide. The words used by the petitioner were that without maths book he do not attend the class and stay away from the class room. Further, he has stated that he should meet the Headmaster along with his parents for not bringing the maths book. These words are normally used by all the teachers and it do not instigate or abet any person to commit suicide.

11.The learned counsel appearing for the petitioner relied upon the unreported judgment passed in **Crl.O.P. (MD) No.24858 of 2006 dated 28.07.2009 - N.Anjali Devi and V. Veeran Vs. The Superintendent of Police and Inspector of Police**, wherein, this Court has 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.

18. In a very recent decision rendered in the case of Sonti Ramakrishna Vs. Sonti Shanthi Shree and another [2009-1-SCC-554], the Honourable Supreme Court has held that though normally threshold interference should not be made under Section 482 Code of Criminal Procedure, quashing of the complaint on facts was just and necessary. It has also held that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation."

11.By applying the above said well settled principles guided by the Hon'ble Supreme Court of India, in a catena of decisions cited supra to the present case, on looking into the words uttered by the petitioners cannot be said to be instigation. In the said circumstances, certainly it cannot be said that the petitioners had in any way instigated the deceased to commit suicide or was responsible for the commission of suicide by the deceased Ramesh.

12.Taking into consideration of the totality of the materials on record and facts and circumstances of the case, this Court is of the view that the petitioners cannot be held responsible for the commission of suicide committed by the deceased Ramesh as there was no instigation or abetment on the part of the petitioners in the commission of suicide by the deceased Ramesh.



13. In view of the above, this criminal original petition is allowed and Spl.S.C. No.10 of 2019 on the file of the District and Sessions Court / Special Court PC Act and SC/ST Act Cases, Sivagangai, is quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The District and Sessions Court /
Special Court PC Act and SC/ST Act Cases,
Sivagangai.
2. The Deputy Superintendent Of Police,
Railway Track Police Sub Division,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.D.RAMESH KUMAR, Advocate Sr. No. 92519

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17.10.2019

NS (CO)

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