



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.13742 of 2015

and

M.P. (MD)No.1 of 2015

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- 1.Balamurugan
- 2.Rani
- 3.Maheswari
- 4.Devi

... Petitioners/Accused No.1 to 4

Vs

- 1.The Inspector of Police,
Manamelkudi Police Station,
Pudukkottai District.

(Crime No.167 of 2014) ... 1st Respondent/Complainant

- 2.Govindhan

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the case in S.C.No.46 of 2015, on the file of the Mahila Court, Pudukkottai and quash the same.

For Petitioners : Mr.M.Suri

For Mr.M.Suresh

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1

: No appearance for R2

O R D E R

The petitioners are facing trial in S.C.No.46 of 2015, on the file of the learned Mahila Court, Pudukkottai, for the offence under Section 306 of I.P.C.

2.The second respondent herein is the defacto complainant. Even though he has been served and his name is printed in the cause list, he has not chosen to enter appearance.

3.The case of the prosecution is that the deceased/Punitha Lakshmi was the fourth daughter of the defaco complainant. Punitha Lakshmi was given in marriage to one Ramu of Muthurajapuram some 13 years prior to the occurrence. Two children were born through the said wedlock. But the deceased/Punitha Lakshmi developed illicit intimacy with the first accused/first petitioner namely., Balamurugan. The case of the prosecution is that the deceased/Punitha Lakshmi wanted to discontinue her relationship with the first petitioner/Balamurugan and pick up relationship with another person. Therefore, on the occurrence date i.e., 12.08.2014



at about 01.30 p.m., the petitioners herein are said to have gone to the house of the deceased and abused her in filthy language. They are also said to have told the deceased that the deceased must either be with the first accused/Balamurugan or die. Few hours after the said incident, Punitha Lakshmi committed suicide by hanging herself. It is claimed by the prosecution that initially Punitha Lakshmi was rescued and that she died enroute to the hospital. The father of the deceased lodged information before Manamelkudi Police Station, leading to registration of Crime No.167 of 2014. Investigation was taken up and final report was filed against the first petitioner and the third accused, who are none other than his own sisters. Cognizance of the offences was taken and the case was committed to the Sessions Court and made over to the learned Mahila Court, Pudukkottai in S.C.No.46 of 2015. To quash the same, the criminal original petition has been filed.

4.Heard the learned counsel on either side.

5.At the very out set, the petitioner's counsel submitted that a sum of Rs.1,00,000/- each will be deposited to the credit of S.C.No.46 of 2015, on the file of the learned Mahila Court, Pudukkottai in the name of each child of the deceased. The children can withdraw the said amount after they attain majority. In the meanwhile their father can withdraw the interest once in six months. The Court below shall invest the said amount in an interest bearing account. The amount of Rs.2,00,000/- (Rs.1,00,000/- each for each of the child) will be deposited within a period of three months from the date of receipt of a copy of this order.

6.The learned counsel appearing for the petitioner submitted that the case projected by the prosecution is inherently improbable. He pointed out that the even according to the prosecution Punitha Lakshmi was a married woman having two children. The relationship which the deceased had with the first petitioner was one of illicit intimacy. If the deceased wanted to snap her relationship with Balamurugan and seek fresh relationship with some other person, certainly all the three sisters of Balamurugan would not have gone together and picked up fight with the deceased. The prosecution case is that Balamurugan accompanied by his three sisters went to the house of the deceased and shouted and abused her in filthy language. This in my view is inherently improbable.

7.More than anything else, even if in the heat of the movement, the accused had uttered certain words and the deceased commits suicide later, the accused cannot be fastened with penal liability under Section 306 of I.P.C.

8.The learned counsel appearing for the petitioners drew my attention to a recent order dated 18.10.2019 made in Crl.A.No.2181 of 2009 (State of West Bengal Vs. Indrajit Kundu and Others), where

<https://hccres.litton.org.in/crime> Supreme Court held as follows:-



"From the material placed on record, it is clear that respondents are sought to be proceeded for charge under Section 306/34 mainly relying on the suicide letters written by the deceased girl and the statements recorded during the investigation. Even according to the case of de facto complainant, respondent Nos. 2 and 3 who are parents of first respondent shouted at the deceased girl calling her a call-girl. This happened on 05.03.2004 and the deceased girl committed suicide on 06.03.2004. By considering the material placed on record, we are also of the view that the present case does not present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. In the case of Swamy Prahaladdas vs. State of M.P. and Anr. 33 1995 Supp (3) SCC 438 Crl.A.No.2181 of 2009 this Court while considering utterances like to go and die during the quarrel between husband and wife, uttered by husband held that utterances of such words are not direct cause for committing suicide. In such circumstances, in the aforesaid judgment this Court held that Sessions Judge erred in summoning the appellant to face the trial and quashed the proceedings."

9.The Honourable Supreme Court in another recent decision reported in **AIR 2019 SC 478, [Rajesh Vs. State of Haryana]** held as follows-

'7. It is necessary to refer to Section 306 IPC and Section 107 IPC which reads as under:

'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.

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



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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."

8. 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*).

9. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 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 (2010) 1 SCC 707 (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367 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



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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 goading or urging forward. The dictionary meaning of the word goad is a thing that stimulates someone into action; provoke to action or reaction to keep irritating or annoying somebody until he reacts.''

10. Applying the ratio laid down in the aforesaid decisions of the Honourable Supreme Court, I am of the view that no case under Section 306 of I.P.C., is made out against the petitioners herein. Continuance of the impugned prosecution would only amount to an abuse of legal process. Therefore, the impugned proceedings stand quashed and the criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To:

1. The Judge, Mahila Court, Pudukkottai.
2. The Inspector of Police,
Manamelkudi Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+3 CC to Mr.M.SURESH, Advocate (SR-94939[F] dated 30/10/2019)

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VB(05.03.2020) 5P 7C