



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P.(MD)No.19479 of 2015 and

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

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C.Subbaiah

... Petitioner/
Accused No.1

Vs.

The State rep. by,

1. The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.
(Crime No.202 of 2013)

... 1st Respondent/
Complainant

2. Booma Devi

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the charge sheet in P.R.C.No.64 of 2015 on the file of the learned Judicial Magistrate, Manamadurai and quash the same in so far as the petitioner is concerned.

For Petitioner

: Mr.Veera Kathiravan,
Senior Counsel,
for Mr.C.Jeganathan.

For R-1

: Mr.A.Robinson,
Government Advocate(Crl.Side)

For R-2

: Mr.Arul
for M/s.A.R.Kannappan

ORDER

The second respondent herein Booma Devi is the defacto complainant in this case. Her husband Pandi consumed poison on 08.04.2013 and subsequently died. In this regard, the second respondent lodged information before Manamadurai police station leading to registration of Crime No.202 of 2013 for the offence under Section 306 of I.P.C. against the petitioner herein and five others. A suicide note was found on the person of Pandi. It was a handwritten suicide note and on forensic analysis, it was established that the suicide note was written by none other than the deceased Pandi himself. Investigation was taken up and final report was filed before the Judicial Magistrate, Manamadurai, against the



petitioner and five others for the offence under Section 306 of I.P.C.

2. Cognizance of the offence was taken and since the case is triable only by the Sessions Court, committal proceedings are pending before the Judicial Magistrate, Manamadurai, in P.R.C.No.64 of 2015. To quash the impugned prosecution, this Criminal Original petition has been filed by the first accused.

3. Heard the learned Senior counsel appearing for the petitioners/accused No.1 and the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the defacto complainant.

4. The learned counsel appearing for the defacto complainant would submit that when the genuineness of the suicide note has been established, this Court will not be justified in entertaining the quash petition. He would call upon this Court to dismiss the Criminal Original petition by leaving the petitioner to work out his defence in a regular trial.

5. He also pointed out that the deceased had specifically named the petitioner herein, namely, Subburaj. He took me through the contents of the final report and also the statements of the witnesses recorded under Section 161 of Cr.P.C. In the final report, it has been mentioned that the fourth accused Velmurugan had sold the property measuring 2.75 Acres in Survey No.15/1 in their village in favour of one Kayambu. In the said sale deed, Pandi and L.W.8 Appasamy had signed as attesting witnesses.

6. The case of the prosecution is that Pandi came to know that Velmurugan did not own the property. When accused No.4 Velmurugan came to know that Pandi was trying to alert the true owner, Velmurugan and his partners, namely accused Nos.1,3,5 and 6 began to criminally intimidate Pandi. Unable to bear the pressure exerted by the accused, Pandi took the extreme step of consuming poison and committed suicide. The learned counsel appearing for the defacto complainant would therefore submit that this is not a case in which the inherent powers of this Court are to be exercised.

7. I am unable to agree with the aforesaid submissions of the learned counsel appearing for the defacto complainant.

8. As rightly pointed out by the learned senior counsel appearing for the petitioner, what has to be seen is whether the elementary ingredients of Section 306 of I.P.C. are present in this case. Merely because the deceased had left a hand written suicide note blaming the petitioner and others, that would not be conclusive of the issue. What has to be seen is whether the petitioner by his act had the *mens rea* and induced the deceased Pandi to commit suicide. In this case, all that the prosecution has brought out is



that the accused criminally intimidated the deceased Pandi.

9. If the accused had been indulged in acts of criminal intimidation, Pandi definitely had the option of lodging a criminal case before Manamadurai police station for the offence under Section 506(ii) of I.P.C. But in this case, admittedly there is no such complaint. If Pandi was weak minded and decided to commit suicide, the accused cannot be fastened with penal liability on that score.

10. The learned Senior counsel drew my attention to a recent decision of the Hon'ble Supreme Court reported in (2019) 3 SCC 315 (M.Arjunan V. State). The Hon'ble Supreme Court held as follows:-

"6. As pointed out by the High Court, of course PW1 to PW5 have spoken about the borrowing of money by the deceased and also the execution of the promissory note. The sheet anchor of the prosecution's case to prove the guilt of the accused is the suicide note(MO1) written by the deceased. On perusal of suicide note(MO1), it is seen that in MO1 the deceased has written about the financial difficulties faced by him and his inability to meet the financial crunch and also his inability to repay the same. The tenor of MO1 only shows that the deceased was subjected to pressure for payment and was facing the financial difficulty. In MO1(letter) there is nothing to indicate that there was instigation by the appellant-accused which had driven the deceased to take the extreme step of committing suicide.

7. The essential ingredients of the offence under Section 306 IPC are: (I) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.

8. In our considered view, in the case at hand, MO1 letter and the oral evidence of PW1 and PW5, would not be sufficient to establish that the suicide by the deceased was directly linked to the instigation or abetment by the appellant-deceased. Having advanced the money to the deceased, the appellant-accused might have uttered some abusive words; but that by itself is not sufficient to

<https://hcservices.ecourts.gov.in/hcservices> create the offence under Section 306 IPC. From



the evidence brought on record and in the facts and circumstances of the case, in our view the ingredients of Section 306 IPC are not established and the conviction of the appellant-accused under Section 306 IPC cannot be sustained."

Applying the aforesaid ratio laid down by the Hon'ble Supreme Court to the case on hand, one can visualize that the transaction in question had run into some difficulties. Pandi was a land broker. In this background, it is quite possible that the accused might have uttered certain offending words. But it is not sufficient to prove the offence under Section 306 of I.P.C.

11. The other decision on which the learned senior counsel placed reliance is the one reported in (2011) 3 SCC 626 (M.Mohan V. State). The Hon'ble Supreme Court in the said decision held as follows:-

"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. Yet another decision of the Hon'ble Supreme Court relied on by the learned senior counsel reported in AIR (2019) SC 478 (Rajesh V. State of Haryana) is as follows:-

"7. It is necessary to refer to Section 306 I.P.C. and Section 107 I.P.C. 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 the doing of that thing; or

Thirdly - Intentionally aids, by any act or 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."

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8. Conviction under Section 306 of I.P.C. 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 I.P.C, 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 I.P.C. (See Amalendu Pal alias Jhantu V. State of West Bengal((2010) 1 SCC 707)).

9. The term instigation under Section 107 I.P.C has been explained in Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi((2009) 16 SCC 605) as follows:

'16. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618: 2002 SCC(Cri) 1088] : (AIR 2001 SC 3387), 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 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 "investigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning

<https://hcservices.ecourts.gov.in/hcservices/> 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 Edn.).'

10. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (See Praveen Pradhan V. State of Uttaranchal(2012) 9 SCC 734)."

13. In the case on hand, there is nothing on record to indicate that the accused wanted Pandi to commit suicide. Even assuming that they had criminally intimidated Pandi, that would not by itself constitute an abetment of the suicide committed by Pandi. The elementary ingredients of Section 306 of I.P.C. are wholly absent in this case.

14. In this view of the matter, the impugned prosecution stands quashed. The Criminal Original petition has been filed by the first accused. Since I have come to the conclusion that the ingredients of Section 306 of I.P.C. are absent, the benefit of the order now passed will enure to the non-petitioning accused also. This Criminal Original petition stands allowed, accordingly. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

pmu

To

1. The Judicial Magistrate,
Manamadurai.

2.The Chief Judicial Magistrate, Sivagangai

3. The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.R.KANNAPPAN, Advocate (SR-91814[F] dated 15/10/2019)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-92031[F] dated 15/10/2019)

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