



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P.(MD)Nos.7214 of 2016 & 2734 of 2017 and
CRL M.P.(MD)Nos.3642 of 2016 & 2092 & 2093 of 2017

CRL.O.P.(MD)No.7214 of 2016

Krishnasamy

... Petitioner/Accused No.6

Vs.

1. The State rep. by,
The Inspector of Police,
Koppampaatti Police Station,
Thoothukudi District.
(Crime No.124 of 2013)

... Respondent/Complainant

2. Muthukumar

... Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records in connection with the impugned charge sheet in S.C.No.83 of 2015 on the file of the learned Mahalir Neethi Mandram, Fast Track Mahila Court, Thoothukudi, in so far as the petitioner is concerned and quash the same.

For Petitioners : Mr.G.Thalaimutharasu

For R-1 : Mr.A.Robinson,
Government Advocate(Crl. Side).

For R-2 : No appearance.

CRL.O.P.(MD)No.2734 of 2017

Neela Jeyalakshmi

... Petitioner/Accused No.7

Vs.



1. The State rep. by,
The Inspector of Police,
Koppampaatti Police Station,
Thoothukudi District.
(Crime No.124 of 2013)

... Respondent/Complainant

2. Muthukumar

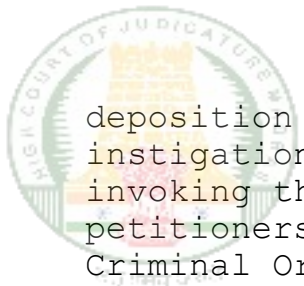
... Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet in S.C.No.83 on the file of the Fast Track Mahila Court, Thoothukudi and quash the same as illegal in so far as the petitioner is concerned.

For Petitioner	: Mr.R.Krishnan
For R-1	: Mr.A.Robinson, Government Advocate(Crl. Side).
For R-2	: No appearance.

COMMON ORDER

The family of the defacto complainant had their house right behind the Panchayat Union in North Semaputhur Village. Fund was sanctioned for construction of compound wall. It was noticed that unless they were vacated, it would not be possible to construct the compound wall. The family of the defacto complainant refused to vacate the same. In this regard, a dispute arose with accused Nos.1 to 5 who are the local villagers and who were interested in the construction of the compound wall. The victim who is the mother of the defacto complainant is said to have threatened them that if they insisted that they should vacate, she will go to the extent of committing suicide. Ignoring the threat held out by the deceased, accused Nos.1 to 5 are said to have dug the pits on 23.10.2013. The victim Tamilselvi once again raised her objection. Thereupon, accused Nos.1 to 5 had uttered certain offending words against Tamilselvi. Unable to bear the same, Tamilselvi is said to have consumed Pesticide and died. In this regard, the second respondent herein lodged an information with Koppampatti police station leading to registration of Crime No.124 of 2013. The case was initially registered under Section 174 of Cr.P.C., and later it was altered to one under Section 306 of I.P.C. After examining the various witnesses, final report was filed against accused Nos.1 to 5. Cognizance of the offence was taken and the case was committed to the Sessions Court and made over to the Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi, for trial in S.C.No.83 of 2015. After the trial commenced, P.W.1 was examined. P.W.1 in her



deposition stated that accused Nos.1 to 5 committed the act at the instigation of these petitioners. Therefore, the Court below invoking the provision under Section 319 of Cr.P.C, implicated these petitioners as accused Nos.6 and 7. To quash the same, these Criminal Original petitions have been filed.

WEB COPY

2. Accused No.6 was the jurisdictional Sub Inspector of Police during the relevant time and accused No.7 was the Headmistress of the Panchayat Union Middle school.

3. Heard the learned counsel appearing for the accused and the learned Government Advocate(Criminal Side) appearing for the respondent.

4. The Hon'ble Supreme Court in the recent decision reported in AIR (2019) SC 478(Rajesh V. State of Haryana) has held 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 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 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



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) .

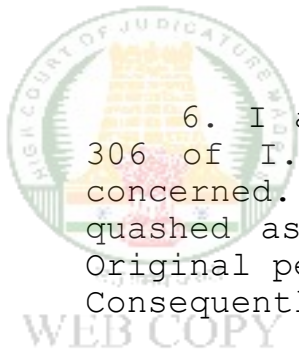
9. The term instigation under Section 107 I.P.C has been explained in Chitresh Kumar Chopra V. State (Govt. of NCT of Delhi) (2009) 16 SCC 605) as follows:

'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 "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 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)."

5. Applying the ratio laid down in the aforesaid decision, by no stretch of imagination the petitioners can be said to have intended that Tamilselvi should die. Accused No.6 was only a jurisdictional Sub Inspector of Police. Accused No.7 was the Headmistress. Tamilselvi fell into depression following the quarrel



6. I am of the view that the essential ingredients of Section 306 of I.P.C. are not attracted as far as the petitioners are concerned. In this view of the matter, the impugned proceedings are quashed as far as the petitioners are concerned. These Criminal Original petitions stand allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

pmu

To

1. The Judge,
Mahalir Neethi Mandram,
Fast Track Mahila Court,
Thoothukudi.
2. The Inspector of Police,
Koppampaatti Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.G.Thalaimutharasu, Advocate, SR.No.86612.

CRL.O.P. (MD)Nos.7214 of 2016 & 2734 of 2017 and
CRL M.P. (MD)Nos.3642 of 2016 & 2092 & 2093 of 2017
12.09.2019

CS (14.10.2019) 5P 5C