

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.48500 of 2018 (O&M)
Date of decision:03.10.2019

Neha Khurana

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aman Pal, Advocate for the petitioner.
Mr. Bhupinder Beniwal, AAG, Punjab.
Mr. Rahul Rampal, Advocate for respondent No.2.

ANIL KSHETARPAL J. (Oral)

By this petition, petitioner Neha Khurana, widow of Late Shri Nitin Kaushal, prays for quashing of FIR No.31 dated 10.02.2007 registered under Section 306 IPC at Police Station Sadar Ludhiana, District Ludhiana, final report and order framing charge dated 14.09.2018 followed by the charge sheet of the same date.

Some facts are required to be noticed. The criminal prosecution was set in motion on the application of Chander Shekhar, father of Late Shri Nitin Kaushal, (who allegedly committed suicide on 09.02.2017). First marriage of Nitin Kaushal was solemnized with Meenakshi in the year 2011. However, they could not pull on together, hence got divorced in the year 2014. In that year itself, Late Shri Nitin Kaushal performed love marriage with Neha (petitioner). Since, it was a love marriage, first informant was not in talking terms with Neha and her parents and the couple started residing in a rented accommodation. Late Shri Nitin Kaushal told his mother that Neha is harassing him and left for her parental home without

informing him. For the last two months, Neha was living in her parents' house. Late Shri Nitin Kaushal used to request her to come back but she did not return. On 09.02.2017 at 11.30 AM, Late Shri Nitin Kaushal went in Alto Car from home and at 11.40 p.m., mother of Nitin Kaushal received a message from his son that Neha has compelled him to end his life so he is going to commit suicide. Nitin Kaushal is alleged to have finished his life by setting him self ablaze in the car.

During investigation, a supplementary statement of the first informant was recorded, in which it was stated that they had gone to take back Neha in the last week of January 2017, who after getting annoyed had gone back to her parental home. At that time, Nitin Kaushal wept but Neha flatly refused to return, by stating that since, Nitin Kaushal keeps questioning her 20-20 times on going out from the house, hence she does not wish to reside with him. She further stated that she would not spend her life according to the whims and fancies of Nitin Kaushal. Whereas Nitin repeatedly said to Neha that if she does not come back, he would finish his life but she did not bother and rather stated that if you want to die tomorrow then better die today itself. She does not have any concern with Nitin.

Investigating Agency after completing the investigation submitted a final report under Section 173 Cr. P.C. During investigation, text messages between Late Sh. Nitin Kaushal and Neha (petitioner) were also collected. The alleged suicide note was allegedly sent by a text message by late Shri Nitin Kaushal to his mother, part of the final report, is extracted as under:-

*“Thy (sic.) all forced me to die not sending neha my wife back..
as she told me she is coming but thy (sic.) send her delhi have*

left my daughter my 1st wife for her but m killing myself bcoz of them..despite of our marriage thy want her to marry someone else. have all d call details. M killing myself bcoz of all f them including neha by wife.”

On perusal of the text messages exchanged between husband and wife, it is apparent that Nitin Kaushal was repeatedly requesting Neha Khurana (petitioner herein) to come back and his complaint was that Neha Khurana in spite of promises is not coming back. On one or two occasions, he had even called upon Neha Khurana to save him. He further texted her that he is living only with a hope and trust that she would not allow him to die.

Learned Addl. Sessions Judge, Ludhiana, passed following order framing charge, operative part whereof is extracted as under:-

“3. After considering the respective contentions of the ld. counsel for the parties and going through the file carefully, this court is of the considered view that at this stage, the contentions of the ld. counsel for the accused have got no force as it is well settled law that at the stage of framing of the charge, the Court has to apply its mind to the question whether prima facie case is made out for framing charge against the accused and at this stage, the Court has also to see while considering the question of framing the charge as to whether the material, brought on record, can reasonably connect the accused with the trial. Nothing more is required to be inquired into after analyzing the terminology used in the three sections i.e. 227, 239 and 245 Cr.P.C. Therefore, it is held that despite the differences that there is no scope for doubt that at the stage at which the court is required to consider that question of framing the charge, the test of a prima facie case is to be applied. Apart from this, the authorities relied upon by the ld. counsel for the accused, are not applicable to this case as the

facts of present case are different from the facts of cited cases. From the perusal of file, it reveals that prima facie case for the offence punishable under Section 306 IPC is made out against the accused. Accordingly, accused Neha Khurana is ordered to be served with charge-sheet. Separate charge sheet served upon the accused, to which she pleaded not guilty and claimed trial. Now, the witnesses of the prosecution be summoned for 25.10.2018.”

This Court has heard learned counsel for the parties at length and with their careful assistance gone through the paper book and the judgments relied upon.

As per the scheme of Code of Criminal Procedure, 1973, in a case which is triable exclusively by the Court of Sessions, Section 226 Cr.P.C. obligates the prosecutor to open his case by describing the charge brought against the accused and informing/apprising the Court by what evidence he proposes to prove the guilt of the accused. It has been seen that importance of Section 226 Cr.P.C. has been overlooked by the Courts. Section 226 Cr.P.C. makes it mandatory for the prosecutor to describe the charge brought against the accused and state, by what evidence he proposes to prove the guilt of the accused. Section 227 Cr.P.C. deals with discharge. It lays down that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Presiding Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. Thereafter, Section 228 Cr.P.C. provides that if, after such consideration and hearing as aforesaid, the learned Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the Court may frame

charge against the accused.

On reading of these three provisions of the Code, referred to above, it is apparent that consideration of material, analysis of the contentions raised by the learned counsel for the parties and thereafter recording of reasons are mandatory. However, such consideration is to be prima facie and the Court must ask itself before passing an order framing charge that if the evidence, which the prosecutor proposes to adduce remains uncontroverted, would be sufficient to prove the guilt of the accused or not. The Court is required to evaluate material and documents on the record with a view to find out if the facts emerging therefrom, taken on their face value, disclose the existence of all ingredients constituting the offence. It has been seen more often that the orders passed by the Courts at the time of framing charge are non speaking. No doubt, the order of charge is not required to be elaborated or detailed one, however, a short order recorded by the court must reflect application of mind. On the reading of the order, it is apparent that learned Additional Sessions Judge has passed the order just describing that “what is the standard of consideration required for framing charge.” The order does not show that learned Additional Sessions Judge has even dealt with the arguments/contentions of the learned counsel for the accused, as noticed in para 1 of the impugned order. Hence, the order passed is clearly erroneous.

The purpose of making a provision for framing charge and making it obligatory for the prosecution to describe to the court and the accused, what evidence is proposed to be led by the prosecution to prove the guilt of the accused, is to enable the court to decide as to whether it is necessary to proceed to conduct the trial. If the case ends there, the court

gains lot of time and saves much human effort. Hence, when the judge is fairly certain that there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the proceedings to pronounce the result on a future date.

All these principals have been well settled by the Hon'ble Supreme Court in various judgments. Reference in this regard can be made to **Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, (1979) 4 SCC 274, State of MP Vs. SB Johari, (2000) 2 SCC 57** and **State of Maharashtra v. Priya Sharan Maharaj and Ors., (1997) 4 SCC 393.**

Now, the stage is set for evaluating as to whether the prosecution has collected enough material or the evidence which the prosecution proposes to lead the case, ending in conviction or not?

Punishment for abetment to commit suicide is provided in Section 306 of Indian Penal Code. Abetment has been defined in Section 107 of the Indian Penal Code. Sections 107 and 306 IPC are extracted as under:-

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.

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.”

On careful reading of Section 107 IPC, it is apparent that the provision has been divided into three parts. In the present case, the case can at the most fall in first part or part three. The word “instigate” has been examined in detailed by the Division Bench of this Court in the case of **Raj Kumar Vs State of Punjab, 1983 (1) CLR 660**, wherein it has been laid down as under:-

“12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in common parlance would mean to go, to urge forward or to provoke, incite or encourage to do an act.”

The Hon'ble Supreme Court has also dealt with this aspect of the matter in the case of **Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, 2002 (5) SCC 371**. Subsequently, by an elaborate judgment, the Hon'ble Supreme Court examined this issue, at the stage of framing charge in the case of **S.S. Cheena Vs. Vijay Kumar Mahajan and another, 2010(12) SCC 190** and it was held as under

“28. 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. The intention of the legislature and the ratio of the cases decided by this Court is 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 that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.”

In view of the aforesaid, it is to be examined as to whether mere refusal of petitioner Neha Khurana to come back to the matrimonial home results in instigation or not or it amounts to intentional aid for committing suicide. The answer to the aforesaid question is no.

Second part of the allegation is that Late Sh. Nitin Kaushal had threatened to commit suicide if petitioner Neha Khurana does not come back to which Neha Khurana responded that if you want to die tomorrow better die today. Even this material which the prosecution proposes to prove at the time of trial would also not fall within the four corners of instigation. As rightly noticed by the various judgments passed by the Hon'ble Supreme Court that instigation is a positive act or intentional by illegal omission on the part of the accused for commission of suicide. In absence thereof, an accused cannot be convicted under Section 306 IPC. It is also well settled that in order to convict a accused under Section 306 IPC, a clear *mens rea* to commit the offence is required to be proved. The requirement of the Indian Penal Code is that the accused must have taken active part or had done some direct positive action or intentional illegal omission which results in instigation.

Even if last part of Section 107 IPC is carefully examined, the

omission to do something has to be illegal omission and that also with the intention to aid doing of that thing. This Court also in the judgment passed on 29.04.2019 in the case of **Kuldeep Singh and another Vs State of Punjab (CRM-M-26648-2018)** has held that mere allegations of harassment, without there being any positive action/act proximate to the time of occurrence, on the part of the accused which led or compelled the person to commit suicide would not be sufficient to implicate a person under Section 306 IPC. Reference in this regard can also be made to another judgment of Hon'ble Supreme Court in the case of **Amalendu Pal Vs State of West Bengal (2010) 1 SCC 707**. In the aforesaid judgment, it was laid down that there must be evidence to the effect that the accused played an active role by an act of instigation or while doing certain act to facilitate commission of suicide. Still further, the Hon'ble Supreme Court relied upon a previous judgment passed in the case of **Randhir Singh and another Vs State of Punjab (2004) 13 SCC 129**.

Recently also, the Hon'ble Supreme Court has dealt with the ingredients of Section 306 IPC and held that unless essential ingredients of Section 306 IPC are established beyond shadow of reasonable doubt, accused cannot be convicted. Reference in this regard can be made to **M.Arjunan Vs. State represented by its Inspector General of Police, (2019) 3 SCC 315**.

From consideration of the entire material which has been placed on file, this Court is of the view that prosecution has failed to convince that even if the case set up by the prosecution is accepted at its face value, the court would be in a position to record finding of guilt against the accused.

In view of the above, the present petition is allowed. Consequently, the impugned FIR, order framing charge followed by charge sheet are quashed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

03.10.2019	(ANIL KSHETARPAL)
mks	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No