

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CRM-M-8661-2016 (O&M)
Date of Decision: 22.7.2019**

Mukesh Kher

.....PETITIONER(s).

VERSUS

State of Haryana and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Mukesh Kher, Advocate,
in person with
Mr. Jatinderpal Singh, Amicus Curiae

Mr. Vikas Chopra, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

This is a petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No.15 dated 17.1.2016 registered at Police Station DLF Phase-I, Gurgaon, Haryana and all the consequent/subsequent proceedings qua the petitioner.

The petitioner is a senior citizen and is a lawyer by profession having more than 44 years standing at the bar.

Deceased-Keshav was working as a domestic servant with Shri Deepak Malhotra. He found that said deceased Keshav was cleaning the car of its owner at about 1:00 p.m. on the ill-fated day. After cleaning the car, he put it in reverse gear and after taking turn, the car hit the flower pots, which were kept in front of the house of the petitioner and

those were broken.

It is further alleged that thereafter, the owner of the house known as Kher came out of the house and took out Keshav deceased from the car and threaten him and gave him him blows and used abusive language against him. The petitioner also demanded price of the broken flower pots. It is further alleged that the petitioner caught hold of the deceased from his hair who fell on the ground and all this was witnessed by the above said Deepak Malhotra. He tried to pacify the petitioner but the petitioner also used bad words qua him and also threatened Deepak Malhotra .

Thereafter, Keshav deceased went to his room and at about 3:00 p.m. it was found that he was hanging and committed suicide. On his statement, FIR was registered.

After completion of investigation, the challan was submitted before the Area Magistrate .

I have heard learned counsel for the parties and gone through the record.

Learned counsel for the petitioner has submitted that the petitioner and the deceased were known to each other; as per allegations in the FIR, the deceased hit the car in the house of the petitioner, due to which, it caused damage to the flower pots and the petitioner demanded price of the broken flower pots. It was tortuous act of the deceased and due to this reason, there was an altercation between the petitioner and the informant. There is no proximate nexus between the act of the deceased and commission of suicide and the petitioner has been falsely implicated

on behalf of his neighbour Deepak Malhotra.

It has been further argued that in fact the deceased committed suicide due to the conduct of his owner Shri Deepak Malhotra but in order to save his skin, the informant has projected a false story and got lodged the FIR against the petitioner from one Mr. Bishan Kumar who is the relative of the deceased.

It has been further argued that in fact on 17.1.2016, i.e., the ill-fated day, the petitioner had gone to Gurudwara Bangla Sahib Ji, New Delhi and distributed *langer* to the first batch and he saw one Nepali domestic help in front of his house in his car, who was in the process of driving back the car in front portion of the house of the petitioner, as a result of which, four flower pots placed outside the house were totally smudged and the petitioner reprimanded him and went inside his house. Even the petitioner was not known about the incident.

It has been further argued that there was absolutely neither any intention nor *mens rea* with regard to reprimanding the deceased and from a bare perusal of the material available on the record, no offence is made out with regard to abetment to suicide and there is absolutely no nexus between the acts of the petitioner and the suicide by the deceased. According to him, *prima facie*, no case is made out against the petitioner to face trial for offence under Section 306 of Indian Penal Code. In support of his contentions, he placed reliance on the judgments of the Hon'ble Supreme Court in **Madan Mohan Singh v. State of Gujarat & anr;** 2010 (8) SCC 628, **M. Mohan v. State Tr. Dy. Supdt. Of Police;** 2011 (3) SCC 626, **Ramesh Kumar v. State of Chhattisgarh;** 2001 (4)

RCR (Criminal) 537, **Rajesh v. State of Haryana**; 2019 (1) RCR (Criminal) 847 and of this Court in **CRM-M-2068 of 2012** ; A.R. Madhav Rao and others v. State of Haryana and another decided on 22.5.2018.

On the other hand, learned State counsel has vehemently contended that the petitioner not only reprimanded the deceased but also abused him, given blows and demanded the price of dismantled flower pots and the acts, omission and commission of the petitioner amounts to instigation.

This Court has given its thoughtful consideration to the rival contentions.

The suicide is as old as civilization itself. It is self murder or self destruction or self killing and it is done in many ways in which life itself can be destroyed. The reasons for the same are also numberless. Now-a-days, most of unfortunate deaths of persons occur due to the trivial matters, such as road-rage incidents, undue anguish and even street quarrels.

Section 306 of the Indian penal code penalises abetment of suicide. Section 306 prescribes punishment for “abetment of suicide” while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the preview of section 306 and it is punishable only under 309 read with section 107 of IPC. Thus even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. Section 306 of the Indian Penal Code penalises abetment of suicide.

Section 306 reads as : 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 not exceeding ten years, and shall also be liable to fine.*”

For conviction under this section, the prosecution has to prove that :

1. The deceased committed suicide,
2. The accused instigated or abetted for committing suicide,
- and
3. Mens-Rea of the accused.

ABETMENT is an offence as defined under section 107 of Indian Penal Code, 1860. Abetment in its literal sense means, the **instigation** of a person to do (or not to do) an act in a certain way, or aid given by some person to another either of his own accord or under the provisions governing joint and constructive liability. Abetment involves a mental process of **instigating** a person or intentionally aiding a person in doing of a thing.

Abetment of suicide involves a mental process of instigating a person or intentionally aiding a person in committing suicide. 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 is very much 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 a 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. No straight jacket formula can be laid down to find out as to whether in a particular case there has been **instigation**, which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to **instigation**, which may have direct relationship between section 306 and Section 107. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such, which in fact had created the situation that person committed suicide. 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 committed suicide.

In the case in hand, it is undisputed that the petitioner had no prior enmity either with the deceased (who was a domestic help with Deepak Malhotra) or his master.

On a bare perusal of the material available on the record, it transpires that it was a street quarrel between the deceased and the petitioner, which erupted due to the tortuous act of the deceased. The deceased appeared to be a minor. Probably he was not having any driving licence and it seems that he did not know driving. He drove the car in reverse motion which hit some part of the house of the petitioner and dismantled some flower pots belonging to the petitioner.

It is alleged that the petitioner abused him, reprimanded him and demanded price of the dismantled flower pots.

If we go through the entire incident, then the main ingredient of the offence of abetment i.e. *mens rea* is missing. A person aggrieved by the tortuous act of the wrong-doer can claim and demand compensation of the wrong done to his property. If he demands so and the wrong door commits suicide, it does not amount to abetment to suicide. Similarly, use of abusive language alone without any *mens rea* does not amount to abetment to suicide.

In **P. Sreenivasulu v. State of A.P.**; 2004 Criminal Law Journal 2718, when there was a dying declaration of the deceased that the accused abused her and she committed suicide, it has been observed in para 14 as under : -

“14. I am of the considered view that abuses cannot amount to abetment, unless something more is done in pursuance of the said act of abuses. I am also of the consider view that the present case does not fall under Section [306](#), I.P.C. as there is no abetment to commit suicide. In fact no charge has been framed and the accused was not made aware of the offence for which he was tried. It is the duty of the Court to make the accused aware of the offence for which he is being tried, lest it may cause prejudice to the accused. If the Court below feels that the case had been made out under Section [306](#), I.P.C. it ought to have framed a charge under Section [306](#), I.P.C. and recorded the plea of the accused and then

proceeded with further trial, instead of giving punishment directly for the offence under Section [306](#), I.P.C. More so, during the course of 313, Cr. P. C. examination the accused was not questioned regarding the alleged offence under Section [306](#), I.P.C. which caused prejudice to the accused. In this case P.Ws. 1 to 3 state that it is a stove accident. The dying declaration recorded by the Magistrate shows that because of the abuses of the accused, she committed suicide by pouring kerosene over herself and setting fire. In fact there is no abetment to commit suicide. I am of the considered opinion that uttering of abuses will not amount to provocation to commit suicide and it does not constitute abetment. It is contended that after the police have given the requisition to record dying declaration, the case was registered. Hence, there is every possibility of anti-dating F.I.R. In my opinion, no offence is made out under Section [306](#), I.P.C. and there is no need to advert to investigation aspect, as it loses much of its importance.

The instigation is a part of abetment but instigation requires the mental element of intention as well as *mens rea*.

The term instigation under section [107](#) IPC has been explained in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi, 2009(4) R.C.R.(Criminal) 196 : (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367*** as follows:

"16. Speaking for the three-Judge Bench in *Ramesh Kumar case* [2001(4) R.C.R.(Criminal) 537 : (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 "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 "instigation", 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 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.)."

Words uttered in a fit of anger or omission without any intention cannot be termed as instigation.

In **Rajesh v. State of Haryana**; 2019 (1) RCR (Criminal)

847, it has been observed in para 8 as under : -

“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.”

In **Gurcharan Singh v. State of Punjab**; 2017 (1) RCR (Criminal) 118, Hon'ble Supreme Court has observed in para 28 to 30 as under : -

“28. The pith and purport of Section [306](#) I.P.C. has since been enunciated by this Court in ***Randhir Singh v. State of Punjab 2004(4) R.C.R.(Criminal) 740 : (2004)13 SCC 129***, and the relevant excerpts therefrom are set out hereunder.

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve

that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 I.P.C.

13. In ***State of W.B. v. Orilal Jaiswal, 1994(3) R.C.R. (Criminal) 186 : (1994) 1 SCC 73***, this Court has observed that the *courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences* 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 of abetting the offence of suicide should be found guilty."

29. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal (supra) that courts

have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in ***Amalendu Pal @ Jhantu v. State of West Bengal 2010(1) R.C.R. (Criminal) 643 : 2010(1) Recent Apex Judgments (R.A.J.) 184 : (2010) 1 SCC 707.***

30. That the intention of the legislature is that in order to convict a person under Section 306 I.P.C., there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in ***S.S. Chheena v. Vijay Kumar Mahajan 2010 (4) R.C.R.(Criminal) 66 : 2010(4) Recent Apex Judgments (R.A.J.) 629 : (2010) 12 SCC 190.***”

So far as the quashing of the FIR and consequential proceedings are concerned, the Hon'ble Supreme Court in **State of**

Haryana and others v. Ch. Bhajan Lal and Ors., 1992 AIR (SC) 604

has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a

cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Whether, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In the instant case, the element of instigation is completely missing. The petitioner had neither an enmity with the deceased nor he had any ill-will towards him. He was the lawful owner of the flower pots. He reprimanded the deceased for the loss caused by the latter's act and in case he demanded cost of the broken flower pots, it was his right and it will never be taken as an instigation to commit suicide. Similarly, if he had lost his temper on seeing damage to his property and called names to deceased, it will not amount to instigation. Thus, FIR as well as subsequent proceedings arising out of the FIR qua the petitioner are nothing but the abuse of the process of law and those are not tenable and liable to be quashed.

Consequently, by exercising the powers under Section 482 of the Code, this Court quashes FIR No.15 dated 17.1.2016 registered at Police Station DLF Phase-I, Gurgaon, Haryana and all the

consequent/subsequent proceedings qua the petitioner.

Thus, the present petition stands accepted accordingly.

July 22, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>