

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 190 of 2020

Aakash Bairiha, (wrongly mention as Beriya), S/o. Late Shri Raju Bairiha (wrongly mention as Beriya), aged about 18 years, Resident of Ward No. 12, Haldibadi, Aamanala, Thana Chirmiri, District- Koriya Chhattisgarh.

---- Applicant

Versus

The State of Chhattisgarh, Through : Police Station, Chirmiri, District- Koriya Chhattisgarh.

-----Respondent

For Applicant : Mr. Parag Kotecha, Advocate

For Respondent/State : Mr. Adil Minhaj, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/02/2020

1. This petition has been brought challenging the order dated 09.01.2020, passed by the learned 1st Additional Sessions Judge, Manendragarh, District – Koriya, in Sessions Case No.17/2019 by framing charge against the applicant under Section 306 of the Indian Penal Code.
2. It is submitted by the learned counsel for the applicant that the impugned order is erroneous, illegal and contrary to the settled principles of law. The allegation in the charge-sheet that the applicant and the deceased had love affair and the applicant used to force her and threaten her for coming to meet him, which has resulted in the commission of suicide by the deceased does not contain any ingredients of abetment as it is defined in Section

107 of the Indian Penal Code. Relying on the judgment of the Supreme Court in case of **State of Kerala & Ors. Vs. Unnikrishnan Nair and Ors.**, reported in **2015 AIR SCW 4814**, it is submitted that the Supreme Court has held that presence of ingredients under Section 107 of I.P.C. in the evidence is essential for framing charge under Section 306 of I.P.C. The counsel for the applicant has also placed reliance on the judgment of Madhya Pradesh High Court in case of **Mamta Rai (Smt.) Vs. State of M.P.**, reported in **I.L.R. (2015) M.P. 3072**, it is submitted that Court needs to examine whether the accused has created such circumstance that the deceased was compelled to commit suicide. In this case, the evidence is not likewise, therefore, the petitioner is entitled for discharge in this case. Hence, this petition be allowed and the applicant be discharged.

3. Counsel appearing on behalf of the State opposes the petition and submission made in this respect. It is submitted that the conduct of the applicant is very clearly reflected from the statement of the witnesses, that the applicant was continuously harassing the deceased Bharti Sahu by threatening her, blackmailing her by stating that he has in his possession some photographs, which he will upload in whatsapp, thus he will defame her. Prima-facie this evidence is sufficient to establish that the applicant was the person, who created circumstances for the deceased because of which she committed suicide. Hence, the revision petition be dismissed.

4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. The deceased was 16 years old girl engaged in studies, who committed suicide on 02.12.2018 by hanging herself. Complainant Surendra Sahu gave written complaint on 04.10.2018 stating that on enquiry from his children, he came to know that the applicant was harassing, blackmailing, threatening the deceased by saying that he has in his possession some photographs of the deceased, which he will upload in whatsapp and make it viral. The complainant had earlier come to know about the harassment given for which he had called the brother of the applicant and given some advise, because of which applicant stopped harassing the deceased for sometime, but then he continued to do similarly again. It is also alleged that soon before the deceased committed suicide, the applicant had made a whatsapp call to the deceased, therefore, the complainant has suspicion that the deceased has committed suicide because of the threatening given by the applicant.
6. In the statement recorded under Section 161 of Cr.P.C., the complainant Surendra Sahu has given similar statement. Smt. Ramayan Sahu has stated that the deceased had informed her that the applicant is expressing one sided love, asking her to come him, again and again. The deceased also told her that the applicant had some photo, which he is not showing but telling that he will make it viral. Similar is the statement of Nisha. Ku.

Prerna, who has stated that she received phone call in the mobile of her sister, in which the applicant himself spoke, that he has some photo, which he will upload in the facebook. Suman Sahu has stated that in her presence, the applicant met with the deceased and said, that she does not talk to him and come to him and then also slapped her on one occasion.

7. Apart from the statement of the witness, the investigation shows seizure of one mobile phone from the possession of the applicant, but there is no seizure of any photographs or any electronic documents, which may have shown as to what kind of photograph in the possession of the applicant. Hence, this much is the evidence of the prosecution on which basis the prosecution has been launched against the applicant and on perusal of the same it can be made out that the applicant was interested in deceased Bharti Sahu, who used to call her on mobile phone and also invite her to his place, to which the deceased never responded according to his wishes. The alleged threat that has been given by the applicant to the deceased that he has in his possession some photographs, which he will make viral by uploading in social networking website was cause of concern to the deceased, which can not be ruled out. None of the witness have said that the photographs, which the applicant claimed to be in his possession were obscene or objectionable and neither there is evidence collected in this respect in the investigation. Therefore, it may be so that the applicant was continuously

stalking the deceased on account of one sided love affair and the deceased felt harassed for the same, but this harassment of the deceased had a direct connection with her commission of suicide is again not found connected as there is no other evidence in that respect.

8. In case of abetment, to commit suicide, the ingredients as defined under Section 107 of Indian Penal Code are essential. Firstly there is no evidence of direct instigation given by the applicant to the deceased. Secondly, there is no other accused with whom he may have conspired and thirdly he never met the deceased before committing suicide and there is no evidence to show that he aided the deceased in any manner so that she would commit suicide. Therefore, the ratio that has been laid down by the Supreme Court in ***State of Kerala (supra)*** needs to be followed in this case and it can be held that there had been no prima-facie case against the applicant for framing charge under Section 306 of the Indian Penal Code. However, on the basis of the evidence i.e. present, that the applicant used to harass the deceased in various manner, therefore, it can not be said that it is a case of clean discharge for the reason that learned trial Court has framed charge only under Section 306 of the Indian Penal Code. Hence, the prosecution against the applicant is not totally concluded.
9. Resultantly, this revision petition is allowed with modification. The charge framed against the applicant under Section 306 of the

Indian Penal Code is set-aside and the learned trial Court is directed to consider on the material i.e. left in the charge-sheet filed against the applicant and pass appropriate order in this respect as to whether the applicant can be charged and prosecuted in any other offence under Indian penal Code or any other Act.

10. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram