

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.17012 of 2019
and
Crl.MP.Nos.8555 & 8556 of 2019

L.Rajkumar
S/o.Latchumanan ... Petitioner

Vs.

1. The State rep by
The Inspector of Police,
Alandurai Police Station,
Coimbatore - 641 007.
(Crime No.35/2014)

2. C.Muruganantham ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in connection with P.R.C.No.32 of 2019 on the file of the Judicial Magistrate Court No.5, Coimbatore and quash the same.

For Petitioner : Mr.Krishnasamy Chinnasamy

For Respondents

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

ORDER

This petition has been filed challenging the proceedings in P.R.C.No.32 of 2019 on the file of the Judicial Magistrate Court No.5, Coimbatore, thereby taken cognizance for the offences under Sections 306 of IPC, as against the petitioner.

2. On the complaint lodged by the second respondent, a case has been registered in Crime No.35 of 2014 for the offence under Section 174 of Cr.P.C., thereafter it has been altered into Section 306 of IPC. The petitioner is the sole accused in Crime No.35 of 2014. The allegations is that the second respondent sister's son-in-law one Anandan, who is the deceased in the case had committed suicide. He received the above information from his worker one Subramani, who has seen the occurrence that the deceased jumped into well and committed suicide. The said Anandan jumped into well for the

reason that the petitioner/accused had illegal relationship and with the said Anandan wife. Both of them went to Pollachi and attempted to commit suicide by consuming poison, in which the said Anandan wife died. The said news has been published in daily news paper and after seeing the news paper, the said Anandan committed suicide by jumping into well.

3. After investigation, the prosecution altered the offence under Section 306 of IPC. Even according to the case of the prosecution, the deceased jumped into well and committed suicide. His wife and the petitioner/accused eloped to Pollachi and stayed in hotel. They had decided to commit suicide and consumed poison. The deceased wife died and the petitioner/accused survived. The said news has been published in tamil daily as such, the deceased committed suicide by jumping into well. In fact the deceased wife already eloped with the petitioner herein and the deceased did not take any action as against the petitioner herein.

4. Now the only point for consideration is that whether the offence under Section 306 of IPC would attract as against the petitioner or not?

5. It is relevant to extract the provisions under Section 306 of IPC as follows :-

"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."

Accordingly the abetment involves mental process of instigating a person or aiding that person in doing a 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 the crime.

6. In the case on hand, the petitioner and the deceased wife went to Pollachi and stayed in hotel and they also attempted suicide by consuming poison, in which the deceased wife alone died. It was published in the news papers. Therefore, there is absolutely no instigation or abetment by the petitioner herein to committee suicide by the deceased. Further in order to bring a case within the purview of Section 306 of 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.

In the case on hand, the deceased committed suicide after seeing the news paper that his wife eloped with the petitioner. If at all any instigating to the deceased to commit suicide only by his wife. Therefore, there is absolutely no iota of evidence to attract the offence under

Section 306 of IPC as against the petitioner herein.

7. It is relevant to rely the judgment dated 28.07.2009 passed in Crl.O.P.(MD) No.24858 of 2006 in the case of N.Anjali Devi and V. Veeran Vs. The Superintendent of Police and Inspector of Police, in which, this Court has held as follows:

"9. In the case of Swamy Prahaladdas Vs. State of MP and another [1995-Supp-3-SCC-438], the accused was charged for an offence under Section 306 of IPC on the ground that the accused during the quarrel is said to have remarked to the deceased to go and die and the Honourable Supreme Court, was of the view that mere words uttered by the accused to the deceased to go and die were not even prima facie enough to instigate the deceased to commit suicide.

10. In the case of Mahendra Singh Vs. State of MP [1995-Supp-3-SCC-731], the accused was charged for an offence under Section 306 of IPC based upon the dying declaration of the deceased, which reads as under:-

"My mother in law and husband and sister in law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister in law. Because of those reasons and being harassed I want to die by burning."

The Honourable Supreme Court, considering the definition of abetment under Section 107 of IPC, found that the charge and conviction of the accused in the above said case for the offence under Section 306 of IPC is not sustainable merely on the allegation of harassment to the deceased. The Apex Court further held that none of the ingredients of abetment were attracted on the statement of the deceased.

11. In yet another case of Ramesh Kumar Vs. State of Chhattisgarh [2001-9-SCC-618], the Honourable Supreme Court, while considering the charge framed and conviction for the offence under Section 306 of IPC on the basis of the dying declaration recorded by the Executive Magistrate, in which she had stated that

previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband, who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire, acquitting the accused, the said:-

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference 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 for abetting the offence of suicide should be found guilty."

12. Reverting to the facts of the case, the statement of the witnesses made under Section 161 Code of Criminal Procedure would reveal that the stolen money had been recovered from the deceased girl and she was reprimanded by the Teachers more particularly by the Petitioners herein for stealing the money. In the dying declaration, the deceased girl had stated that the 2nd Petitioner remarked her to go and die and the 1st Petitioner slapped on her cheek and scolded her in harsh words. Even assuming that the Petitioners have acted in the above said manner and uttered the above words as projected by the Prosecution, it is to be seen as to whether the said utterance would by itself constitute the ingredients of 'instigation'.

13. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. The presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or

in a spur of the moment cannot be taken to be uttered with mens rea. Secondly, the said abusive words is said to have been uttered to the deceased by the Petitioners, when they had come to know that the deceased had stolen the money from the bag of the Anganvadi Teacher and money was also recovered from her. Thirdly, the deceased had her lunch in the School and attended the post lunch session classes and left the School only after it was over and she had committed suicide only after reaching the home. All these factors would clearly point out that it could not be a direct result of the utterances made by the Petitioners.

14. In the case of Sanju aliss Sanjay Singh Sengar Vs. State of MP [AIR-2002-SC-1998], it is held that the accused telling the deceased to go and die would by itself not constitute the ingredients of instigation and presence of mens rea is necessary concomitant of instigation. Holding so, the Honourable Supreme Court quashed the charge sheet framed under Section 306 of IPC on the ground that the ingredients of abetment is totally absent.

15. One important thing to be noted in this case is that the Petitioners being the Teachers of the Government School in the interest of the Institution correct any mistake done by the student in order to cultivate good habits and get rid of bad habits, such as stealing money. In fact, the father of the deceased girl had been summoned and it is stated that he gave a letter of apology for the conduct of his daughter and also undertook that the same would not recur again. In such view of the matter, the act of the petitioners cannot be said that it would amount to abetment of suicide.

16. In the case of Sashi Prabha Devi Vs. State of Assam [2006-Cri.LJ-1762], the allegation is that the accused, a Head Mistress of a School wrongly struck off the name of the

deceased from the Register of the Students in Class X, which induced the deceased to commit suicide and the High Court of Gujarat has held that there was no evidence showing that the accused had acted at any point of time, suggested or hinted for commission of suicide and when the accused was entitled to correct any wrong order, as in fact deceased had not passed her class IX examination, no case of instigation or abetment of suicide was made out against the accused.

17. In the case of Nettai Dutta Vs. State of will be [2005-2-SCC-659], the Honourable Supreme Court upholding the order of the High Court, quashed the charge sheet filed under Section 306 of IPC on the ground that the offence under Section would stand only if there is an abetment for the commission of crime.

18. In a very recent decision rendered in the case of Sonti Ramakrishna Vs. Sonti Shanthi Shree and another [2009-1-SCC-554], the Honourable Supreme Court has held that though normally threshold interference should not be made under Section 482 Code of Criminal Procedure, quashing of the complaint on facts was just and necessary. It has also held that words uttered in a fit of anger or emotion without any intention cannot be termed as instigation."

8. By applying the above said well settled principles guided by the Hon'ble Supreme Court of India, in a catena of decisions cited supra to the present case, the petitioner cannot be said to be instigated the deceased. In the said circumstances, certainly it cannot be said that the petitioner had in any way instigated the deceased to commit suicide or was responsible for the commission of suicide by the deceased.

9. Taking into consideration of the totality of the materials on record and facts and circumstances of the case, this Court is of the view that the petitioner cannot be held responsible for the commission of suicide committed by the deceased as there was no instigation or abetment on the part of the petitioner in the commission of suicide by the deceased.

10. In view of the above, this criminal original petition is allowed and P.R.C.No.32 of 2019 on the file of the learned Judicial Magistrate No.5, Coimbatore, is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Judicial Magistrate No.5,
Coimbatore.

2. The Inspector of Police,
Alandurai Police Station,
Coimbatore - 641 007.

3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Krishnasamy Chinnasamy, Advocate, S.R.No. 19879

CRL.O.P.No.17012 of 2019 and
Crl.MP.Nos.8555 & 8556 of 2019

BP (CO)
GN(26/06/2020)

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