

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 27.02.2020**
Pronounced on : 08.06.2020

+ **CRL.REV.P. 328/2015 & CRL.M.A. 8124/2015 (for stay)**

REENA Petitioner

Through: **Mr. Ramesh Gupta, Sr. Advocate**
with Mr. Ajay P. Tushir and Mr.
Shailendra Singh, Advocates.

versus

STATE OF NCT OF DELHI Respondents

Through: **Mr. Amit Ahlawat, APP for the State**
with SI Thakur Singh PS Prasad
Nagar.
Mr. Rajiv Ranjan, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. The present Revision Petition U/s 397/401 read with Section 482 Cr.P.C. has been filed by the petitioner against the impugned order on charge dated 23.03.2015 passed by Ld. ASJ, Delhi, thereby framing charges against the petitioner under Section 306 IPC in criminal case titled as “State Vs. Reena”, FIR No. 185/2010 registered at P.S. Prasad Nagar.

2. In brief the facts of the case are that the marriage between deceased Rahul Kumar Prasad and petitioner/accused Reena Prasad was solemnized

on 17.04.2009 and thereafter they started residing together at Delhi. After sometime matrimonial disputes arose between them and the petitioner left the company of deceased on 28.06.2010 and went to live with her parents at Sikkim. It is alleged that alongwith her she took gold jewellery worth Rs. 15 Lakh and a cash of Rs. 3 Lakh which belonged to deceased Rahul Kumar Prasad. In regard to this, it is alleged that deceased Rahul Kumar Prasad had filed a complaint with the police on 29.06.2010. Deceased Rahul Kumar Prasad also filed two cases including a petition U/s 9 of the H.M.A. for Restitution of Conjugal Right. Despite that petitioner Reena refused to join the company of Rahul Kumar Prasad and also refused to return the jewellery and cash and it is alleged that because of this the deceased was suffering from depression and mental stress. It is alleged that deceased was regularly and continuously receiving telephonic threats to his life from the petitioner. Thereafter on 27.09.2010, deceased Rahul Kumar Prasad committed suicide by hanging himself. Deceased Rahul Kumar Prasad left a suicide note holding the petitioner and his family members responsible for his death.

3. Since the police refused to lodge the complaint, Pankaj Prasad, brother of the deceased filed a complaint U/s 200 Cr.P.C read with Section 156 (3) Cr.P.C. for the directions to lodge FIR against the accused persons. Pursuant to the application filed by complainant Pankaj Prasad, Ld. MM directed lodging of FIR against the petitioner and her relatives. However, for want of specific allegations against the relatives of the petitioner, they

were kept in column No. 12 and charge sheet was filed against the petitioner only U/s 306 IPC.

4. I have heard Mr. Ramesh Gupta, Ld. Sr. Counsel for the petitioner, Mr. Amit Ahlawat, APP for the State and Mr. Rajiv Ranjan, Advocate, counsel for respondent No. 2 and perused the records of this case.

5. It is submitted by the Ld. Sr. Counsel for the petitioner that there is no direct and proximate link between the cruelties allegedly inflicted by the petitioner upon the deceased which resulted in his committing suicide. He further urged that the petitioner left the company of the deceased on 28.06.2010 and started living at her parent's house at Sikkim i.e. she was not with the deceased 3 months prior to his committing the suicide. He further urged that since there was a matrimonial discord between the petitioner and the deceased so he has made false allegations regarding the petitioner taking away the gold jewellery and cash. He further urged that gold jewellery was her istridhan and allegations regarding taking cash are false and no threats were ever extended by the petitioner, and all the allegations are vague and false.

6. The Ld. Sr. Counsel for the petitioner further submitted that the impugned order of framing charge dated 23.03.2015 has been passed in a mechanical manner without application of mind and in ignorance of law on the subject. He further urged that the petitioner was exonerated by the family members of the deceased including the complainant from any role in suicide and statements to that effect were recorded by the IO, therefore, no FIR was registered. He further urged that the charges must not be framed

automatically and the court should not act as a mouthpiece of the prosecution. He further urged that atleast at the time of framing the charges, the Court is required to evaluate the material and documents on record with a view to find out if facts emerging therefrom and taken at their face value discloses existence of all the ingredients constituting the offence. He further urged that the Court has undoubted power to sift and weigh the evidence for finding out whether or not a prima facie case is made out against the accused. He further urged that for the invocation of Section 306 IPC, ingredients of Section 107 of the Indian Penal Code have to be satisfied and it has to be established that there was instigation, provocation, incitement, or encouragement from the side of the petitioner to the deceased who committed the act of such a desperate nature. It is further urged that the deceased was of hypersensitive nature, who failed to cope up with the hardships of life. He further submitted that the Ld. ASJ has failed to appreciate that the suicide note shows that the deceased was in helpless condition due to the people who owe money from the deceased.

7. On the other hand, it is urged by the Ld. APP for the state, assisted by the Ld. counsel for the respondent No. 2 (complainant) that the marriage between the petitioner and the deceased took place on 17.04.2009 and after the marriage matrimonial disputes arose between them. It is also submitted that the petitioner left the matrimonial home on 28.06.2010 to live at her parental home and alongwith her she took away jewellery worth Rs. 15 Lakh and cash of Rs. 3 Lakh belonging to the deceased which was a cause of concern to him. The deceased had also filed a petition U/s 9 of the H.M.A

against the petitioner but she neither joined the company of the deceased nor she returned the jewellery and cash and the deceased used to regularly get life threats from the petitioner. It is further submitted that the charge was framed on 23.03.2015, and the trial is at its advance stage. It is further submitted that the scope of interference U/s 397 Cr.P.C is very limited and the Court has to only form a prima facie view at the stage of framing of the charge and if strong suspicion arises the court can frame the charge, therefore, the present petition is not maintainable.

8. In response to the contention of the Ld. APP for the State, assisted by the Ld. counsel for the respondent No. 2 that the trial is at its advance stage, it is submitted by the Ld. Sr. Counsel for the petitioner that even if the trial is at the advance stage that cannot take away the legal remedy available to the petitioner. He further argued that the impugned order was passed on 23.03.2015 which was immediately challenged before the Hon'ble High Court and it came up for hearing for the first time on 27.05.2015 and since then it could not be decided so, there is no fault of the petitioner in this regard and she should not be made to face trial as she otherwise has a good case for discharge.

9. First of all, it is to be considered, as to what is the scope of this Court in revisional jurisdiction with regard to framing of the charge. In the case of ***Union of India v. Prafulla Kumar Samal*** MANU/SC/0414/1978 : (1979) 3 SCC 4, the Apex Court laid broad contours on the point of framing of charge:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

10. Similar opinion was expressed in the case of *State of Orissa v. Debendra Nath Padhi* MANU/SC/1010/2004 : (2005) 1 SCC 568, wherein the Apex Court held:

6. At the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. These two sections read as under:

Section 227 CrPC

227. Discharge.--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 Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 228 CrPC

228 . Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate to consider the police report and the documents sent with it under Section 173. And, if necessary, examine the accused and after giving the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

8. What is the meaning of the expression the record of the case, as used in Section 227 of the Code. Though the word case is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the case to the Court of Session and send to that court the record of the case and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

9. Further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In

the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207-A. Under Section 207-A in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under Sub-section (1), to take evidence as provided in Sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in Sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in Sub-section (6) and to commit the accused for trial after framing of charge as provided in Sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in Sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in Sub-section (14). The aforesaid Sections 207 and 207-A have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the Code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge.

10. Now, let us examine the decisions which have a bearing on the point in issue.

11. In *State of Bihar v. Ramesh Singh* MANU/SC/0139/1977 : (1977) 4 SCC 39 : 1977 SCC (Cri) 533 considering the scope of Sections 227 and 228 of the Code, it was held that at the stage of framing of charge it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

12. In *Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* MANU/SC/0266/1979 : (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : (1980) 1 SCR 323 a three-Judge Bench held that the Magistrate at the stage of framing charges had to see whether the facts alleged and sought to be proved by the prosecution prima facie disclose the commission of offence on general consideration of the materials placed before him by the investigating police officer. (emphasis supplied) Though in this case the specific question whether an accused at the stage of framing of charge has a right to produce any material was not considered as such, but that seems implicit when it was held that the Magistrate had to consider material placed before it by the investigating police officer.

13. In *State of Delhi v. Gyan Devi* MANU/SC/0649/2000 : (2000) 8 SCC 239 : 2000 SCC (Cri) 1486 this Court reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons.

14. In *State of M.P. v. S.B. Johari* MANU/SC/0025/2000 : (2000) 2 SCC 57 : 2000 SCC (Cri) 311 it was held that the charge can be

quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial.

15. In *State of Maharashtra v. Priya Sharan Maharaj* MANU/SC/1146/1997 : (1997) 4 SCC 393 : 1997 SCC (Cri) 584 it was held that at Sections 227 and 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect, however, has been adverted to in *State Anti-Corruption Bureau v. P. Suryaprakasam* 1999 SCC (Cri) 373 where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that.

(emphasis supplied)

11. Thus it is settled position of law that at the time of framing of charge, the Court is not supposed to look into the evidence of the case in detail and is only to consider whether there is a strong suspicion against the accused on the basis of the material that comes before it. The court has the power to sift the evidence for the limited purpose of finding out, whether or not a prima facie case is made out against the accused. However, the Court is not supposed to delve deeply into the merits of the matter and start a roving expedition into the evidence that is brought forth it, as if conducting a trial. Further there is no one fixed definition that may be ascribed to the term 'prima facie' nor can the term strong suspicion have a singular meaning. While coming to the conclusion of a strong prima facie case or strong suspicion, the Court shall have to decide each case on the basis of its own independent facts and circumstances.

12. A Court exercising revisional jurisdiction cannot go into intricate details as regards the merits of a matter and may interfere only when there is any illegality or material irregularity or impropriety in the order passed by the lower court and further, a revisional court cannot sit as a court of appeal and reappraise the merits of the case. Thus, this Court is empowered to examine, whether the trial Court carefully applied the law with regard to framing of charge to the facts of this case and if there is any infirmity in the impugned order or not.

13. The petitioner in the instant case has been charged by the Ld. trial Court for the offence U/s 306 IPC vide impugned order dated 23.03.2015 for abetting the murder of her husband. Section 306 IPC reads 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.

14. The foremost essential of Section 306 IPC is abetment. The abetment is defined in Section 107 of the IPC.

15. **Section 107 IPC reads 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.

Explanation 1.- A person who, by willful misrepresentation, or by willful 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.

16. In *Sanju v. State of M.P.* MANU/SC/0392/2002 : (2002) 5 SCC 371, the Apex Court while elaborating upon Section 306, IPC, held as under:

9. In *Mahendra Singh v. State of M.P.* MANU/SC/1987/1995 : 1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157 the appellant was charged for an offence under Section 306 IPC basically based upon the dying declaration of the deceased, which reads as under: (SCC p. 731, para 1)

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 these reasons and being harassed I want to die by burning.

10. This Court, considering the definition of abetment under Section 107 IPC, found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment of the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

11. In *Ramesh Kumar v. State of Chhattisgarh* MANU/SC/0654/2001 : (2001) 9 SCC 618 this Court was considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an 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 herself on fire. Acquitting the accused this Court said: (SCC p. 620)

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 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 for abetting the offence of suicide should be found guilty.

12. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25-7-1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased to go and die.. For this, courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 CrPC when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 CrPC is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him to go and die.. Even if we accept the prosecution story that the appellant did tell the deceased to go and die., that itself does not constitute the ingredient of instigation. The word instigate denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25-7-1998 ensued by a quarrel. The deceased was found hanging on 27-7-1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25-7-1998 drove the deceased to commit suicide. Suicide by the deceased on 27-7-1998 is not proximate to the abusive language uttered by the appellant on 25-7-1998. The fact that the deceased committed suicide on 27-7-1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25-7-1998 when it is alleged that the

appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

14. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of abetment. are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7- 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.

17. Now coming to the relevant facts of the case in hand, the deceased left behind a suicide note which reads as follows :

“I Rahul Gupta S/o Ram Sharan Prasad resident of 11649/1, Sat Nagar, II Floor permanent resident of C/o Bengal Traders, Sigtam Bazar, East Sikkim. I am unable to face the present circumstances for which my wife Reena Prasad is responsible. Due to her false allegations against me, I am committing suicide. I wish that after my death, my dead body be handed over to my in laws. I love my wife very much but she loves money. I also want to keep her happy but she can not live happily because she loves money not me. She left home on 28th June and ever since then I have become lonely. I reported in the police station and also filed a case U/s 9 of the Hindu Marriage Act for restitution of conjugal rights but she did not return I made lot of efforts for her to stay with me. There is some one with her who is instigating her. Whatever is my condition today is because of my wife. You all please excuse me. My house hold goods be sent to my native place. I have no will to live. After my death, my wife and her mother be punished appropriately.

Signed in English

Rahul Gupta

18. The suicide not further reads as :

I do not have enough means to fight court cases against Reena. Whatever cases she has filed against me are all false. My friend Kailash Aggarwal has helped me immensely. Even Sita Ram Ji has helped me a lot and tried to save my relationship but mother and brother of Reena destroyed my relationship. Reena has taken away gold and cash worth Rs. 20 lacs from my house and now she does not want to return back. She has tried to frame me but I am innocent. I asked for help

from so many people but none helped me and I became very upset. I can not think clearly ever since my wife has left me. It is my desire that after my death, the money which has been taken away by my wife be utilized to pay my debts. God should not give a wife like Reena to even my enemy. My brother in law and brother had gone to call Reena but Reena, her parents and brother threatened to kill me. Ever since then, I am under fear that they might get me murdered. Reena and her family members be punished severely.

Signed in English
Rahul Gupta

19. One cannot lose sight of the fact that in the present case, the reading of the suicide note does not remotely suggest that the petitioner has incited deceased to commit suicide. There is no material on record to show that the ingredients of the offence of abetment had been satisfied.

20. I am clearly of the view that the ingredients of abetment are totally absent in the instant case for an offence U/s 306 IPC. Taking the totality of material on record, tone and tenor of the suicide note and facts and circumstances of this case into consideration, it leads to the irresistible conclusion that it is the deceased and he alone and none else is responsible for his death.

21. A plain reading of the suicide note would clearly show that the deceased was in great stress due to his matrimonial discord with the petitioner and was depressed. Petitioner left the company of the deceased on 28.06.2010, much prior to his committing the suicide. It seems his efforts to bring her back failed which led to frustration. It also appears that the

deceased owed money to certain people. Reading of the suicide note suggests that such a note is not the handiwork of a man with a sound mind and sense. He appears to be 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. The instigation is to goad, urge forward, provoke, incite or encourage to do “an act”.

22. The present case is not the one where the petitioner had by her acts or omissions or by a continuous course of conduct created such circumstances that the deceased was left with no option except to commit suicide in which case an instigation may have been inferred.

23. It is very pertinent to mention here that the petitioner had left the company of the deceased on 28.06.2010 and he committed suicide on 27.09.2010 i.e. after three months of the separation between them, so one more aspect of the case is that there was no live and proximate link between the acts complained of and the suicide.

24. In my considered view, the Ld. Trial Court had failed to apply the law properly to the facts of this case and committed an error in reading the suicide note which is shorn of ingredients of section 306 IPC. The contents of the alleged suicide note written by the deceased does not show any kind of abetment from the side of the petitioner, who was living separately from

him at a far off place for the last 3 months from the date of the suicide. Also there are no specific allegations against the petitioner that may suggest instigation at her hands. Though, suicide note talks of some threats etc. but those are totally vague and as far as the mentioning of the cash and jewellery are concerned, the same is also vague with no specific details.

25. The reading of the suicide note clearly shows that the petitioner at no point of time instigated, goaded, incited and encouraged the deceased with such an intention that he should commit suicide. The deceased appears to be a weak character who was not in a position to face the ups and downs of life and he adopted the short cut method in order to bring an end to his agony and worldly affairs.

26. It is trite law that at the stage of framing of charge, the Court is not to delve deeply with the evidence brought forth, but the same does not mean that the Court should ignore gaping holes apparent on the face of the record, in the case of the prosecution, and the court cannot act as a mouthpiece of the prosecution.

27. In these facts and circumstances, I find that the trial court did not appreciate the facts of the case in the right perspective and came to an adverse finding that a prima facie case and a strong suspicion is made out against the petitioner. Impugned order dated 23.03.2015 shows complete non application of the law in the right perspective and the reasoning given by the Ld. A.S.J. at the time of framing of the charge does not stand the scrutiny of this Court. Accordingly, the present revision petition is allowed. The order on framing of charge dated 23.03.2015 passed by the Ld. CRL.REV.P. 328/2015

ASJ/05/C/Delhi in criminal case titled as State Vs. Reena, FIR No. 185/2010 registered U/s 306 of the IPC, Police Station Prasad Nagar, Delhi is set aside.

28. Petition and Crl. M.A. 8124/2015 stands disposed of.

RAJNISH BHATNAGAR, J

JUNE 8, 2020

Sumant

