

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 338 of 2020

Rajendra Kumar @ Guddu Thakur, S/o. Ram Prasad Thakur, aged about 39 years, R/o. Shivnandanpur, Vishrampur, Police Station Vishrampur, District Surajpur, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through : The Station House Officer, Police Station Jainagar, District Surajpur, Chhattisgarh.

-----Respondent

For Applicant : Mr. Goutam Khetrapal, Advocate with
Mr. Jitendra Shrivastava, Advocate

For Respondent/State : Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/01/2021

1. This criminal revision has been brought being aggrieved by the order of framing charge dated 05.02.2020, in S.T. No. 11 of 2020, by the learned 1st Additional Sessions, Surajpur, District – Surajpur 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 and perverse. According to whole material present in the charge-sheet filed against the petitioner, there is not a single evidence present according to which, it can be assumed that this applicant has acted in any manner, which could be regarded as abetment defined under Section 107 of I.P.C. Therefore, the applicant deserves to be discharged. Hence, it is prayed that the revision petition be allowed and the applicant

be discharged.

3. Reliance has been placed on the judgment of Supreme Court in ***State of W.B. Vs. Orilal Jaiswal***, reported in **(1994) 1 SCC 73**, in ***Swamy Prahaladdas Vs. State of M.P.***, reported in **(1995) Supp. 3 SCC 438**, in ***Mahendra Singh Vs. State of M.P.***, reported in **(1995) Supp. 3 SCC 731**, in ***Ramesh Kumar Vs. State of C.G.***, reported in **(2001) 9 SCC 618**, in ***Sanju @ Sanjay Singh Vs. State of M.P.***, reported in **(2002) 5 SCC 371**, in ***Randhir Singh Vs. State of Punjab***, reported in **(2004) 13 SCC 129**, in ***Amalendu Pal Vs. State of W.B.***, reported in **(2010) 1 SCC 407**, in ***Madan Mohan Singh Vs. State of Gujrat & another***, reported in **(2010) 8 SCC 628**, in ***M. Mohan Vs. State*** reported in **(2011) 3 SCC 626**, in ***K.R.J. Sarma Vs. R.V. Surya Rao***, reported in **(2013) 4 SCC 118**, in ***Mangat Ram Vs. State of Haryana***, reported in **2014 (12) SCC 595**, in ***Ghusabhai Raisangbhai Chorasiya Vs. State of Gujrat***, reported in **(2015) 11 SCC 753**, in ***Gurucharan Vs. State of Punjab***, reported in **(2017) 1 SCC 433**, in ***Wasim Vs. State***, reported in **(2019) 7 SCC 435**, judgment passed by this Court in ***Cr.R. No.1062 of 2019*** in ***Sunita Bhardwaj Vs. State of C.G. dated 04.10.2019***, and in ***Cr.R. No.3155/2019*** in ***Rajesh Vs. State of M.P. dated 09.07.2019.***
4. State counsel opposes the petition and the submission made in this respect. It is submitted that according to the material present in the charge-sheet, it is very much clear that the applicant is the

person, who has been held responsible for the death of the deceased. The name of the applicant is found mentioned in the suicide note of the deceased and also in the statements of the witnesses. Therefore, at this stage, it can be said that the applicant has acted in such manner, which can be regarded as abetment to the deceased for commission of suicide. Hence, the revision petition be dismissed.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. The deceased Mukhdev Singh had made purchase of a motor cycle from showroom of this applicant on loan. As stated by the witnesses, the deceased had given some signed cheques and his Bank pass book to this applicant on the basis of which, this applicant had made excess withdrawal, because of which, the deceased got frustrated and then he consumed poisonous substance to commit suicide, as a result of which, he expired.
7. Deceased had left suicide note, which is as under :-

“मैं अपने इच्छा से उपर जा रहा हूँ राजेन्द्र ठाकुर मेरे परिवार को तबाह कर दिया है। T.V.S. शोरूम विश्रामपुर मैं अपने परिवार को कभी सुख नहीं दे सका, मुझे क्षमा करें।”

सही /—
एम.डी. सिंह
वीरपुर

8. On plain reading of this suicide note, it may be gathered that the deceased had alleged against this applicant that because of him,

his family has been destroyed. There is other evidence regarding excessive withdrawal made from the account of the deceased on the basis of cheque given by the deceased himself. Even if it is assumed that this applicant, has made that withdrawals, which may be a cause of grievance to the deceased, this can not be said to be an act of abetment as defined under Section 107 of I.P.C.

9. Kalawati Singh, the wife of the deceased has stated in her statement under Section 161 of Cr.P.C. that the deceased consumed poisonous substance and told the witness that he is drowned in debt. The applicant has retained his passbook and is not returning the same and also demanding money from him, because of which, he is feeling very much troubled. Ajay Kishore Singh, son of the deceased stated that the applicant had purchased a motor cycle on loan, because of which, the applicant had taken deposit of passbook and cheque book of the deceased and on that basis, he used to draw amount from the bank account of the deceased himself. Same is the statement of the other son of the deceased. The other witnesses examined have also made similar statements that the applicant had taken deposit of passbook and cheque from the deceased.
10. On examining the suicide note and the statements of the witnesses, it would be seen that the act of the applicant had caused inconvenience to the deceased and his family. Whether the act of the applicant was justified or not, more detailed

explanation are needed but there is no investigation made in that respect by the police for which the accounts of the applicant and the loan account of the deceased should have to be seized to make out whether the act of the applicant by retaining the passbook of the deceased and making use of signed cheque given by him amounts to commission of any offence or not.

11. The only allegation at present it appears against this applicant is this that the deceased and his family had grievance against this applicant and same was the reason that the deceased committed suicide by consuming poisonous substance, which is reflected from his suicide note also.
12. The Supreme Court had in case of ***Ramesh Kumar (supra)*** has held in paragraph -20, which is as under :-

“20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

13. In case of **Sanju & Sanjay Singh (supra)**, it was held by the Supreme Court that the words uttered in a quarrel or on the spur of moment, such as “to go and die” can not be taken to be uttered with mens rea. It is in a fit of anger or emotion that can not be regarded as abetment.
14. Similarly in case of **Randhir Singh (supra)**, in **Amalendu Pal (supra)**, in **Madan Mohan Singh (supra)**, in **M. Mohan (supra)**, in **K.R.J. Sarma (supra)** and other case law cited by the applicant side, the principle laid down is very clear that the act of abetment has to be clear in accordance with the definition under Section 107 of the Indian Penal Code.
15. Section 107 of I.P.C. is as follows :-

“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

Explanation 1.—A person who, by wilful misrepresentation, or by wilful 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. On perusal of the whole evidence present in the charge-sheet, it is found that there is no evidence regarding any instigation made by the applicant. Secondly, there is no evidence regarding any conspiracy for the purpose of abetting the deceased to commit suicide and also there is no evidence regarding any intentional aid given to the deceased for commission of suicide. Therefore, the act of suicide of the deceased in this case can not be said to be a result of any abetment given by this applicant.
17. In a result, the revision petition is allowed. The charge framed against the applicant under Section 306 of the Indian Penal Code vide impugned order dated 05.02.2020, in S.T. No. 11 of 2020, by the learned 1st Additional Sessions Judge, Surajpur, District – Surajpur (C.G.) is set-aside and the applicant is discharged.

Sd/-
(Rajendra Chandra Singh Samant)
Judge