

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.23516 of 2015
and Crl.MP.No.1 of 2015

Mala@Manimala

... Petitioner

Vs.

1. State rep by

The Inspector of Police,
E2, Royapettah Police Station,
Chennai-14.

2.R.Anandaraj

S/o.N.Ramakrishnaraj, No.18,
Thomaiyappar St,
Royapettah, Chennai 14.

(impleaded as per order in Crl.MP.1278 of 2021 dated 10.02.2021.)

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to SC.No.224 of 2015, on the file of the VI Additional City Civil Court, Chennai and quash the same.

For Petitioner : Mr.C.Turibius Beski

For Respondent : Mr.T.Shanmugarajeswaran
GA(Crl.side) for R1.

R2 - No appearance.

O R D E R

This petition has been filed to call for the records pertaining to SC.No.224 of 2015, on the file of the VI Additional City Civil Court, Chennai and to quash the same.

2. The petitioner is A1 facing trial in SC.No.224 of 2015 for the offence under Section 306 IPC.

3. The case of the prosecution is that the deceased Sivanesan is the cousin of the defacto complainant. A1/petitioner is a married woman and she has got two children

and she used to visit Muneeswaran Temple near the house of Sivanesan frequently. During such time, the deceased Sivanesan had friendship with A1 and over the days it developed into illicit intimacy. While so, A2/Sarathkumar and his mother Amutha, Amutha's friend LW5, Mala, Muneeswaran Temple Poojari - LW4 and Transgender Shanthini become friends and due to the friendship they often visited the temple. That being so, one month prior to the occurrence A1 severed the friendship with the deceased Sivanesan and developed close friendship with A2/Sarathkumar, due to which, the deceased was depressed. On 04.05.2014, the deceased Sivanesan, A1, A2, LW5 and Amutha gone to conduct special pooja at Muneeswaran Temple and there A1 had been close to A2/Sarathkumar leaving deceased Sivanesan. When the deceased Sivanesan started to question the petitioner/A1 she had stated that he is no more needed and she is going to live with A2 and had told him that he may go with any body or he may go and die, due to which the deceased Sivanesan got depressed and on 05.04.2014 at 2.00am he committed suicide by consuming poison. Initially, the case was registered under Section 174 Cr.PC thereafter, investigation has been completed and final report was filed against the petitioner/A1 and A2 for the offences under Section 306 IPC and charge sheet was fled before the XVIII Metropolitan Magistrate, Saidapet, Chennai and the case was taken up in PRC.No.68 of 2015 and committed to the Court of Sessions and made over to the VI Additional City Civil Court, Chennai and taken up in SC.No.224 of 2015. In the final report, the prosecution had cited 12 witnesses out of which LW1 to LW12 are the witnesses who have spoken about the relationship between the deceased and the petitioner/A1 and the subsequent relationship between the petitioner/A1 & A2 and they have also spoken about the deceased being rejected by A1 and that they have also spoken about the deceased informing them that A1 had developed friendship with A2 and when the deceased questioned her, she had told him she doesn't want him and that he may go with some body or he may die.

4. LW4 and LW5 had spoken about the incident happened on the early hours on 05.04.2014 and that hearing the conversation of some persons in the house of the deceased, LW1 to LW4 having brought the deceased from his portion in the house and having taken him to Royapettah hospital and spoken about the knowing about the death of the victim/deceased.

5. LW6 and LW7 stood as witnesses for the preparation of rough sketch and observation mahazar at the house of the deceased.

6. LW8 is the Head Constable who had taken the body for postmortem.

7. LW9 is the Doctor who had admitted the victim and declared him brought dead.

8. LW10 is the Doctor who conducted the post-mortem.

9. The learned counsel for the petitioner would submit that admittedly, the petitioner is a married women having two children, the case of the prosecution is that the deceased is stated to have developed illegal intimacy with the petitioner and later having found that the petitioner had developed friendship with A2, the victim had questioned her and when she had asked him to sever the relationship with her, he had out of frustration committed suicide on the next day. Even taking into consideration, the entire evidences on record there is no material to suggest that either the petitioner or A2 abetted the suicide of the petitioner. In order to make out charges for the offences under Section 306, the petitioner should have done any act as defined under Section 107 IPC. In this case, none of the witnesses have spoken as if the petitioner instigated the victim to commit suicide and that she had intentionally abetted suicide by any act or illegal omission.

10. He would further submit that as stated above the petitioner is a married woman having two children and it was the victim who had interfered in her life and troubled her. Assuming for a movement without admitting the allegation that the petitioner had asked the deceased to leave her and to go and live with some body or die, it was stated to have been spoken in a spur of the moment and there is no material to show that the petitioner had mens rea or wilful intention to see to that the victim commits suicide. Further, the alleged incident is stated to have happened on 04.05.2014 during evening hours, whereas the victim is stated to have consumed poison on the next day i.e on 05.05.2014 at 2.00am (early hours) in his house when he was alone. The petitioner has not even remotely contacted the victim. Further, the statement of LW4 and LW5 are hearsay in nature. Even as per their statement, the victim deceased was found to be in a depressed mood, when they had enquired him. He would further submit that the entire materials do not make out a case against the petitioner for having abetted the suicide of the victim/deceased and the entire proceedings is nothing but an abuse of process of law.

11. In support of his contention, the learned counsel for the petitioner would rely on the following judgments of the Hon'ble Apex Court (i) Gangula Mohan Reddy v. State of Andhra Pradesh reported in (2010) 1 SCC 750 (ii) S.S.Chheena v. Vijay Kumar Mahajan and another reported in (2010) 12 SCC 190 and (iii) judgment of this Court in Karthik v. State by Inspector of

Police, Railway Protection Force, Egmore, Chennai and another reported in 2015 (3) MWN (crl.) 21.

12. Per contra, the learned Government Advocate (Crl. Side) would submit that the petitioner is a married woman having two children, the victim developed friendship with her and later it turned into illicit intimacy. Later the petitioner developed intimacy with A2 and when she started moving around with A2 closely in front of the deceased, the deceased had questioned her and she had told that she is going to live with A2 and that he is no more needed and that he may go with any body or he may go and die, due to which the victim committed suicide. However, he would submit that the quarrel between the petitioner and the victim took place on 04.05.2014 in the evening hours and the victim committed suicide by consuming poison at his residence on 05.05.2014 at 2.00am during the early hours.

13. In reply, the learned counsel for the petitioner would submit that even assuming for a movement without admitting the words go and die do not amount to instigation to commit suicide and that a word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Further, the act of the accused cannot be attributed to have instigated the victim to commit suicide. He would further submit that the deceased had harassed the petitioner who is a married women and the words uttered were during a quarrel and there is no evidence that the words were uttered with motive or intention. Further, abetment requires an active or direct act which leads the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position to commit suicide. In this case there is absolutely no material.

14. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) appearing for R1. Notice was ordered to the second respondent/defacto complainant, private notice was taken and proof affidavit was filed, intimation was also given by the first respondent, there is no representation for the second respondent.

15. Originally, the case was registered under Section 174 Cr.PC, the respondent examined seven independent witnesses and five official witnesses. LW1 to LW5 are the witnesses who had spoken about the relationship between the petitioner and the deceased and subsequent events. As per the witnesses LW1, the petitioner is a married women having two children and she was moving closely with the deceased and thereafter she had developed friendship with the second accused/Sarathkumar. Thereafter, they moved around closely which was questioned by the deceased. The petitioner is stated to have told the victim

that she is going to live with A2 and that he is no more needed and that he may go with any body or else he may go and commit suicide. The statement of LW4 and LW5 is that the deceased had informed them that when he had questioned the petitioner, she had told him to marry someone or he may go and die. Pursuant to which the deceased consumed poison on 05.04.2015 at early hours.

16. Now what is to be seen is that whether the materials available is the charge sheet make out a case against the petitioner for the offence under Section 306 IPC.

17. In the case of Gangula Mohan Reddy v. State of Andhra Pradesh reported in (2010) 1 SCC 750 it is held as follows :-

"10. "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which 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 2 which has been inserted along with Section 107 reads as under:

"Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

11. The learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh v. State of M.P. [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157] In Mahendra Singh [1995 Supp (3) SCC 731 : 1995 SCC (Cri) 1157], the allegations levelled were as under: (SCC p.731, para 1)

"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."

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the

deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

12. The learned counsel also placed reliance on another judgment of this Court in *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088]. A three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"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 *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that the court 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 appears 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.

14. The Court in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema may necessarily be drawn.

15. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

16. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2009) 11 Scale 24] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. 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 and the ratio of the cases decided by this Court is 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 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."

18. The above decision was followed by the Hon'ble Apex Court in S.S.Cheena v. Vijay Kumar Mahajan and another reported in (2010) 12 SCC 190 and it is relevant to refer paragraph 26 read of the above judgement :-

"26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-

day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation."

19. In *Karthik v. State by Inspector of Police, RPF, Egmore, Chennai* reported in 2015 (3) MWN (Cr.) 21 in paragraphs 7 and 8 it is held as follows :-

"7. In *Swamy Prahaladdas vs. State of M.P.* and another [1995 Supp (3) SCC 438], the Supreme Court has observed that the words "go and die" do not amount to instigation to commit suicide. The relevant observation is as under :-

"At the time of framing of charge, the trial court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Session was in error in summoning the appellant to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is apparent requiring rectification. The appeal is accordingly allowed. The orders of the High Court and that of the Court of Session are thus upset. The appellant need not face the charge."

20. Further in *Gurcharan Singh v. State of Punjab* reported in (2020) 10 SCC 200 in paragraphs 15, 16, 17 and 18 it is observed as follows :-

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a

guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether the appellant had the mens rea for the crime he is held to have committed. The conviction of the appellant by the trial court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

16. The necessary ingredients for the offence under Section 306 IPC were considered in S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] where explaining the concept of abetment, Dalveer Bhandari, J. wrote as under :

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. 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 and the ratio of the cases decided by this Court is 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 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."

17. While dealing with a case of abetment of suicide in Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13)

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must

scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely 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, conviction in terms of Section 306 IPC is not sustainable.

13. 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."

18. In *Mangat Ram v. State of Haryana* [*Mangat Ram v. State of Haryana*, (2014) 12 SCC 595 : (2014) 5 SCC (Cri) 127], which again was a case of wife's unnatural death, speaking for the Division Bench, K.S.P. Radhakrishnan, J. rightly observed as under : (SCC p. 606, para 24)

"24. We find it difficult to comprehend the reasoning of the High Court [*Mangat Ram v. State of Haryana*, Criminal Appeal No. 592-SB of 1997, decided on 27-5-2008 (P&H)] that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning."

21. Looking at the material on record in this case in consonance with the judgments referred to above, the petitioner

is a married lady with two children and that there was relationship between the petitioner and the deceased and later the petitioner was stated to have developed relationship with A2 and when it had been questioned by the victim/deceased, the petitioner had stated to have told him to sever the relationship and go with some one or go and die. The said quarrel/ conversation had happened on 04.05.2014 and the victim had committed suicide on 05.05.2014 at early hours at 2.00am. The words spoken are casual in nature which are often employed in the heat of the moment between quarrelling people and nothing serious was expected to follow thereafter and it also does not reflect the requisite mens rea. Further, the deceased who had enough time to contemplate and weigh the pros and cons of the act by which he ultimately ended his life. The Act of suicide cannot be said to be the direct result of the words uttered by the petitioner. The witnesses have stated that the victim was found to be in a depressed stage and he had been sensitive and that he had committed suicide on the next day by consuming poison. In this case, there is no material to show that the petitioner had mens rea and none of the witnesses spoken that the petitioner had guilty mind and in furtherance of the state of mind abetted the suicide of the deceased. Taking into consideration the entire materials on record and carefully scrutinising and critically examine the facts no charge can be made out against the petitioner for having instigated or abetted the victim to commit suicide. No charge can be framed against the petitioner for the offence under Section 306 IPC and it would be a travesty of justice to compel the petitioner to face criminal trial without any credible material whatsoever to frame charges against the petitioner for the offence under Section 306 IPC.

22. In the result, the criminal original petition is allowed by quashing the SC.No.224 of 2015 pending on the file of the VI Additional City Civil Court, Chennai. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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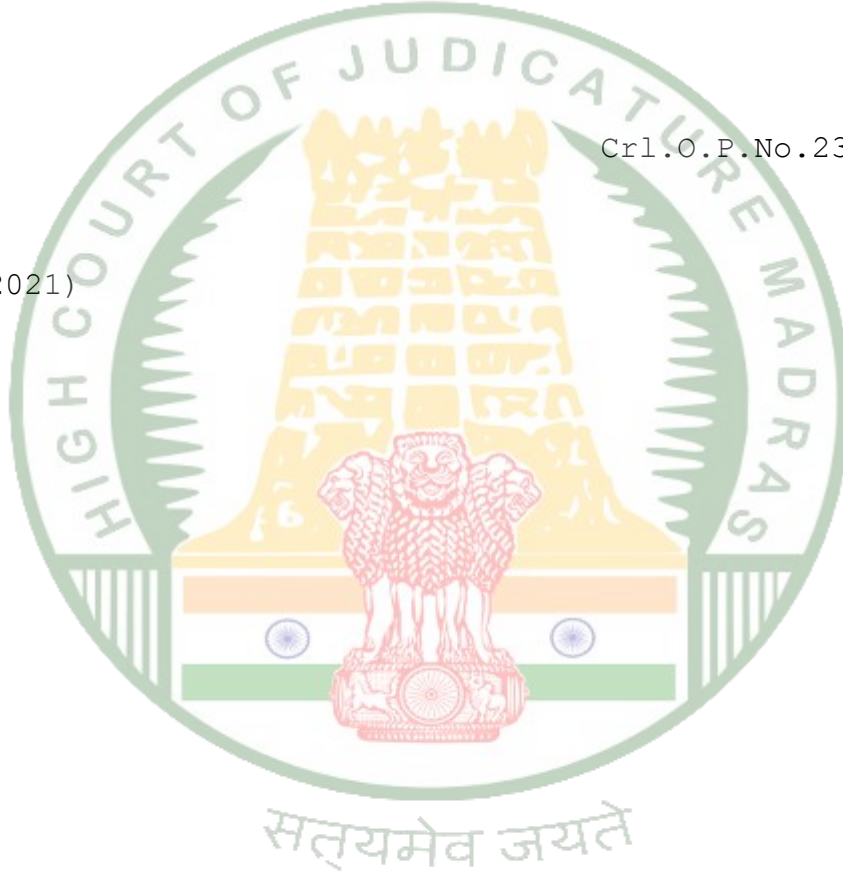
To

1. The VI Additional City Civil Court, Chennai.
2. The Inspector of Police,
E2, Royapettah Police Station,
Chennai-14.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.13300

Crl.O.P.No.23516 of 2015

PCH(CO)
KM(26/04/2021)



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