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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.26286 of 2016

and

Crl.M.P.Nos.13086 & 13087 of 2016

K. Mohan

... Petitioner

Vs

1. State rep. by
The Inspector of Police,
T-3, Korattur Police Station,
Chennai.

2. M. Rajesh
S/o. P. Manickasamy

... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the case in S.C.No.267 of 2016 on the file of the Fast Track Mahila Court at Thiruvallur and quash the same as illegal, incompetent and ultravires.

For petitioner ... Mr. C.S.Srinivasan,
for Mr. S.Sankar

For respondent ... Mr.C.E.Pratap,
Government Advocate (Crl. side).
for R1

R2 ... No Appearance

ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings in S.C.No.267 of 2016 on the file of the Fast Track Mahila Court, Thiruvallur.

2. Notice served on the 2nd respondent and his name is also printed in the cause list. But, none appeared for the 2nd respondent.



3. The case of the prosecution is that the 2nd respondent got married to one Shanthi in the year 2002 and they have also got two children out of the wedlock. Before marriage, the said Shanthi said to be in love with the petitioner herein, which was opposed by the Shanthi's parents. Thereafter, she was given marriage to the 2nd respondent. After marriage, the petitioner said to have harassed the said Shanthi by showing the photographs, which was taken before the marriage and also criminally intimidated her. Apprehending that the petitioner is likely to defame her, she attempted to commit suicide by consuming sleeping pills and she was admitted in the hospital and survived. Alleging that the petitioner abetted the said Shanthi to commit suicide, the 2nd respondent has lodged a complaint before the respondent police. Based on that a crime was registered for the offences under Sections 294(b), 306, 506(ii) of IPC. After investigation, final report has been filed for the offences under Sections 116 r/w. 306 of IPC. To quash the same, the present petition has been filed.

4. The learned counsel for the petitioner submitted that, the 2nd respondent's wife only attempted to commit suicide and she is surviving, and no offence for abetment has been made out under Section 116 of IPC, hence, the charge under Section 116 r/w 306 IPC has to be quashed. That apart, even from the statements available on record, it is very clear that the 2nd respondent only defamed his wife and hence she attempted to commit suicide. At any rate, the alleged act of the petitioner cannot be considered as abetment falls under Section 116 of IPC. Hence, there is no prima facie offence made out against the petitioner and hence, the same is liable to be quashed.

5. Per contra, the learned Government Advocate (Crl. side) submitted that the petitioner, who was in love with the 2nd respondent's wife, before her marriage, and started harassing her after marriage with the 2nd respondent and criminally intimidated her by showing their photographs, due to the same, she attempted to commit suicide, hence, criminal case was registered and a charge sheet has been filed under Section 116 r/w. 306 of IPC, and no case is made out to quash the same.

6. This Court considered the submissions made on either side and perused the materials available on records carefully.

7. The petitioner stood charged for the offence under Section 116 r/w. 306 IPC, for abetting the 2nd respondent's wife to commit suicide and the offence not committed consequent to



" Abetment of offence punishable with imprisonment—if offence be not committed — Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

8. Section 306 of IPC, deals to abetment for suicide, which reads as follows :

9. To bring home an offence under Section 306 IPC, a suicide should have been committed, then only the abettor of such suicide could be made liable for the offence under Section 306 IPC. In the instant case, no offence is made out against the petitioner for the offence under Section 306 IPC as there is no suicide, however, the petitioner is now charged with the aid of Section 116 IPC, on the ground that the offence was not committed consequent to the abetment. A person can abet another to commit suicide, but no one can abet to an attempt to commit suicide, there cannot be any abetment of an abetment. In such circumstances, Section 116 IPC will not come into play. This issue has been elaborately considered by the Hon'ble



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Supreme Court in 2001 (8) SCC 633 in the case of Mr. Satvir Singh and others /vs/ State of Punjab and another. In paragraph 7 and 8 of the judgment, it has been held as follows :-

" 7. At the outset, we may point out that on the aforesaid facts no offence linked with Section 306 IPC can be found against any of the appellants. The said section penalises abetment of suicide. It is worded thus:

"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."

It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.

8. Learned Sessions Judge went wrong in convicting the appellants under Section 116 linked with Section 306 IPC. The former is "abetment of offence punishable with imprisonment-if offence be not committed". But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of offence under Section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence, there cannot be an offence under Section 116 read with Section 306 IPC. Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by the Sessions Court. "



10. In the instant case, admittedly, the 2nd respondent's wife only attempted to commit suicide and survives and the petitioner alleged to have abetted the same cannot be punished for offence under Section 116 r/w. 306 IPC. Hence, the charge against the petitioner is not maintainable and the same is liable to be quashed.

11. Accordingly, this Criminal Original Petition is allowed and the case against the petitioner in S.C.No.267 of 2016 on the file of the Fast Track Mahila Court at Thiruvallur, is quashed. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mrp
To

1. The Fast Track Mahila Court,
Thiruvallur,
2. The Inspector of Police,
T-3, Korattur Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Sankar, Advocate Sr.69367

Cr1.O.P.No.26286 of 2016

nrl[col]
srg 25/02/2022