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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.6328 of 2018
and
Crl.MP.Nos.3205 & 3206 of 2018

1. Selvi Julious

2. A.J.Gunavathy

... Petitioners

Vs.

1. State rep. By
The Inspector of Police,
Thiruvalam, Police Station,
Vellore, Vellore District.
Crime No.516 of 2016

2. B.Balu

(2nd respondent is impleaded vide order dated 18.07.2018
in Crl.MP.No.9292 of 2018 in Cl.OP.No.6328 of 2018)

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in PRC.No.14 of 2017 on the file of the learned Judicial Magistrate, Katpadi and quash the final report dated 08.09.2017.

For Petitioners : Mr.Karthik, Senior Counsel
For Mr.T.S.Gopalan & Co.

For Respondents : Mr.C.E.Pratap,GA(Crl.Side)for R1
Mr.D.Rajagopal for R2

ORDER

This petition has been filed to quash the charge sheet in PRC.No.14 of 2017 on the file of the learned Judicial Magistrate, Katpadi.

2. The case of the prosecution is as follows:

The victim is a final year student of Shieffelin Institute of Health Research and Leprosy Centre, Karigiri. On 02.12.2015, A-1 at the instance of A-2 had called upon the victim and in the presence of the other students, had used unparliamentary words, castigated and abused the victim for her acts of ragging and other unnatural behaviour, which led the victim to consume acid that was kept in the restroom in the cabin of A-1. On hearing the cry of the victim and coming to know of the act of the victim, the victim was immediately rushed to the hospital and her parents were also informed.



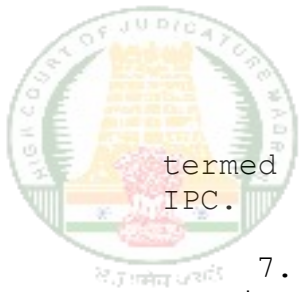
Inspite of the medical treatment given to the victim, she succumbed to her act and on the basis of the complaint given by the father of the victim, the criminal machinery was set in motion by registering a case against the petitioners in Crime No.516/2016 and after investigation, final report in PRC No.14/2017 was filed before the Judicial Magistrate, Katpadi for the offence u/s 306 IPC. Aggrieved against the same, the petitioners are before this Court with the aforesaid prayer.

3. The learned counsel for the petitioners submitted that the first petitioner is the Principal of the above said Nursing School and the second petitioner is a Leprosy cured patient and hostel warden in the same Institution. The petitioners have acted only considering the welfare of the students and it was not the intention of the accused to drive the victim to commit suicide. The ordinary chiding in a parental way was taken very seriously by the victim and being a young woman, she has taken the extreme step to consume acid. The petitioners had no intention in abetting the victim to commit suicide and also did not utter any word which spurned the victim to take extreme step.

4. The father of the victim girl was impleaded as second respondent in this case vide order dated 18.07.2018 in CrI.MP.No.9292 of 2018. The learned counsel appearing for the 2nd respondent submitted that the victim has left a written suicide note. Subsequently, she mentioned the names of the accused and the circumstances which forced her to consume the cleaning acid found in the toilet. At that time, when the victim wrote the suicide note, she was in a sound state of mind and the suicide note was written without outside coercion or intervention. The learned counsel, therefore, submitted that it is a clear case of abetment and, therefore, the relief sought for in the petition cannot be granted.

5. Heard, the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the first respondent as well as the learned counsel for the second respondent and perused the materials available on record.

6. The facts in the present case relating to A-1 calling the victim and scolding her in the presence of other students and also A-2 is not in dispute. However, it is the admitted case of the prosecution, as vouched by the petitioners that for certain unnatural acts and also for not adhering to the rules of the institute, A-1 had used harsh words on the victim. However, it is the case of the petitioners that the intimacy of the victim with one of her friends, who was in turn intimate with the other girl, was not to the liking of the victim, which resulted in certain disputes between the three persons, which came to the knowledge of the 2nd petitioner, which was in turn communicated to the first petitioner, who had called upon the victim and the other persons and had advised them in the capacity of the Principal. The said act of the Principal (A1) and Warder (A2) had been the driving force for the victim to commit suicide which is



termed to be instigation within the meaning of Section 306 IPC.

7. Could the act of A-1, being the Principal of the Institute could be termed to be instigation on the part of A-1 to make the victim commit suicide is the moot question that falls before this Court.

8. In this regard, learned counsel for the petitioners has pressed into service the decision of the Hon'ble Supreme Court reported in Sanju @ Sanjay Singh Sengar Vs. State of M.P. (2002 (5) SCC 371), wherein the Hon'ble Supreme Court has dealt on the meaning of 'instigation' as found in Section 306 IPC and it is necessary to quote the relevant portion of the order for better clarity :-

'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'.

9. The contention was also drawn to the judgment of the Hon'ble Supreme Court reported in 2011 3 SCC 626 in the case of M.Arjunan Vs. State Rep. by its Inspector of Police. The Hon'ble Supreme Court has clearly explained the terms as to what would constitute the abetment to commit suicide. The said paragraph is extracted below:

'7.The essential ingredients of the offence under Section 306 of IPC are (i) the abetment;(ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 of IPC.'

10. From the above decisions, it is clearly evident that for instigation to be considered as abetment, there should be mens rea and in the absence of any mens rea utterances of common nature against a person, leading the said person to commit the extreme act of suicide cannot be said to be



instigation attracting the penal provision of Section 306 IPC.

11. In the case on hand, A-1 and A-2 had no axe to grind against the victim, but for certain acts of the victim, which, A-1 as the Principal of the Institute had condemned the victim, though may be in the presence of other students. It is the case of the petitioners that equally the other students were also responsible for certain acts for which the said students were also reprimanded. However, the victim alone had taken the extreme step of committing suicide. A-1, being the Principal of the Institute, finding fault with the victim for certain acts committed by the victim, cannot be labelled as instigation on the part of A-1 to lead the victim to commit suicide. Further, A-2, being the warden of the Hostel had brought to the notice of A-1 the act of the victim and the other students, which is her duty as a Warden of the hostel and the said act of A-2 cannot also be labelled as instigation for the victim to commit suicide. A careful scrutiny of the acts of A-1 and A-2, the petitioners herein, with regard to their utterances to the victim, could in no way be termed to attract the ingredient of instigation or abetment falling within Section 306 IPC.

12. The decision of the Hon'ble Supreme Court in Gangula Mohan Reddy Vs. State of Andhra Pradesh (2010 (1) SCC (Cr.) 750), has also been taken in aid by the learned counsel for the petitioner to drive home the point that the hyper-sensitivity of the victim had resulted in her committing the extreme act and her hyper-sensitivity cannot be fastened against the petitioners to implicate them in the offence. For better appreciation, the relevant portion of the decision, wherein the Hon'ble Supreme Court has dealt with hyper-sensitivity on the part of the victim, is quoted hereunder for reference :-

'.....a deceased was undoubtedly hyper-sensitive to ordinary petulance, discord and differences which happen in day to day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation'.

13. In the case on hand, it is evident from the materials placed before the court that the petitioners had merely acted in their position as Principal and Warden of the Institute and had dealt with the victim and had reprimanded her for certain acts committed by her. It is the normal manner in which the Principal and Warden of an educational institution are likely to deal with their students and if the said act of the petitioners could be taken to be instigation for attracting the provisions of Section 306 IPC, then there would be no discipline inculcated amongst the future generation. Mere scolding of a student for certain acts cannot be brought within the ambit of Section 306 IPC. May be, the victim had left a suicide note, but that suicide note cannot be basis to fasten the offence of abetment on the petitioners when even according to the prosecution, the petitioners had performed



their job as Principal and Warden. The hyper-sensitive act of the victim cannot be the basis to launch prosecution against the petitioners and if such a prosecution is made to survive, then it would only lead to indiscipline amongst the future generations, which would have a detrimental effect not only on the children of future generation, but would also be detrimental to the nation as a whole. There should be evidence capable of suggesting that the accused intended by such act to instigate the victim to commit suicide, which has not been established in the present case and, therefore, in the absence of satisfying the necessary ingredients, the petitioners cannot be allowed to undergo the rigor of trial.

14. In State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police



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officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

15. In yet another case in R.P.Kapur - Vs - State of Punjab (AIR 1960 SC 866), the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no



legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

16. The postulates framed by the Hon'ble Supreme Court in Bhajan Lal's case and R.P.Kapur's case (supra) stand squarely attracted and this Court has, therefore, no hesitation to exercise its powers u/s 482 Cr.P.C. to quash the final report.

17. For the foregoing reasons, this Criminal Original Petition is allowed and the final report filed against the accused in PRC No.14 of 2017 on the file of the learned Judicial Magistrate, Katpadi is quashed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
Thiruvalam, Police Station,
Vellore, Vellore District.
- 2.The Judicial Magistrate, Katpadi.
- 3.The Public Prosecutor
High Court of Madras
Chennai - 600 104.

+1cc to M/s.T.S.Gopalan & Co., Advocate SR.No.38753

Cr1.O.P.No.6328 of 2018
and Cr1.MP.Nos.3205 & 3206 of 2018

SSV(CO)
SB(12/11/2021)