

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH
Crl.OP.No.6968 of 2018
and
Crl.MP.Nos.3592 and 3593 of 2018

Penkey Ganesh

...Petitioner

.Vs.

State by
Station House Officer,
Yanam Police Station,
Yanam,
Puducherry.

...Respondent

Crime No.247 of 2006

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to to call for the records on the file of the learned Judicial Magistrate, Yanam pertaining to Docket Order dated 29.11.2017 in STC No.307 of 2009 and set aside.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor
Puducherry

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below altering the charges in exercise of its jurisdiction under Section 216 of the Code of Criminal Procedure and adding an offence under Section 306 of IPC along with the existing charge under Section 309 IPC.

2.Based on the statement given by the petitioner to the respondent Police, an FIR came to be registered in Crime No.247 of 2006, for offences under Section 309 and 306 of IPC. The

statement given by the petitioner was to the effect that he had a relationship with one Krishnaveni, who has already married. The husband of the said Krishnaveni has employed at Saudi Arabia and the petitioner and the deceased Krishnaveni seemed to have developed an illicit intimacy. This fact had reached the ears of the husband of the deceased and he was planning to come back to India. The deceased fearing consequences decided to commit suicide. She got into an Auto rickshaw and during the travel she informed the petitioner about her intention to commit suicide. The petitioner immediately told her that he will also accompany her and both of them can commit suicide together. Thereafter, the petitioner is said to have purchased pesticide in a shop and picked up the deceased in his motorbike. Both of them went to the scene of crime and consumed pesticide. The deceased succumbed to the poison and the petitioner fortunately survived after he was given treatment in the hospital. This statement given by the petitioner resulted in the criminal law being set in motion.

3. On completion of the investigation, a final report was filed before the Court below against the petitioner for an offence under Section 309 IPC. The final report was taken on file in STC No.307 of 2009 and 34 witnesses were examined and 25 exhibits were marked. At this stage, the Court below decided to exercise its jurisdiction under Section 216 of Cr.P.C., and alter the charges by adding the offence under Section 306 IPC along with the existing charge under Section 309 IPC.

4. Heard Mr. Ravi, learned counsel for the petitioner and Mr. Balamurugane, learned Additional Public Prosecutor appearing on behalf of the respondent.

5. The substratum of the case of the prosecution is available even in the FIR that was registered by the respondent police. It is an admitted case that the deceased had already arrived at a mental state to commit suicide. She also started travelling in a vehicle and on the way, she informed the petitioner about her intention to commit suicide. The petitioner in turn had informed the deceased that he will also join her and both of them can commit suicide together. Thereafter, the petitioner purchase pesticide and both the petitioner and the deceased consumed the pesticide. Till this stage, each of the parties independently had a mental state to commit suicide and both of them did not abet each other to commit suicide. In other words, it was an independent decision taken by each party which was never instigated by the other party. Unfortunately, the deceased succumbed to the poison and the petitioner was lucky enough to survive due to the treatment given in the hospital.

6. On the face of the materials collected in the course of investigation and the evidence let in before the Court below, there is a prima facie case for attempt to commit suicide under Section 309 of IPC. The Court below had come to a conclusion that the petitioner had abetted the suicide of the deceased mainly on the ground that he did not take any steps to save the life of the deceased and therefore, there was a illegal omission. Interestingly, the Court below takes the aid of Section 32 of IPC and comes to a conclusion that the word "act" will also include illegal omission. According to the Court below, the "act" of the petitioner in not preventing the deceased from committing the suicide was an illegal omission and therefore, the petitioner can be brought within the purview of Section 107 of IPC, which is punishable under Section 306 of IPC.

7. The Court below lost sight of the fact that in order to constitute an offence of abatement, the abettor must be shown to have intentionally aided the commission of the crime. In the present case, the deceased and the petitioner were independently consuming pesticide in order to commit suicide. Both of them were in a mental state to commit suicide and leave this world. Under such circumstances, it will be too unnatural to expect the petitioner to prevent the deceased from committing suicide and it will be too far fetched to act upon this omission and try to bring this case within the scope of abatement against the petitioner. The prosecution was perfectly right in laying the final report for an offence under Section 309 IPC.

8. In view of the above discussion, this Court finds that there was no material to alter the charge and add Section 306 of IPC along with existing charge under Section 309 IPC. Accordingly, the order passed by the Court below dated 29.11.2017, is hereby set aside. The Court below is directed to proceed further with the case for the existing charge under Section 309 of IPC. The proceedings shall be completed within a period of two months from the date of receipt of a copy of this order.

9. This criminal original petition is allowed with the above directions. Consequently, the connected miscellaneous petitions are closed.

sd/-
Assistant Registrar(CO)

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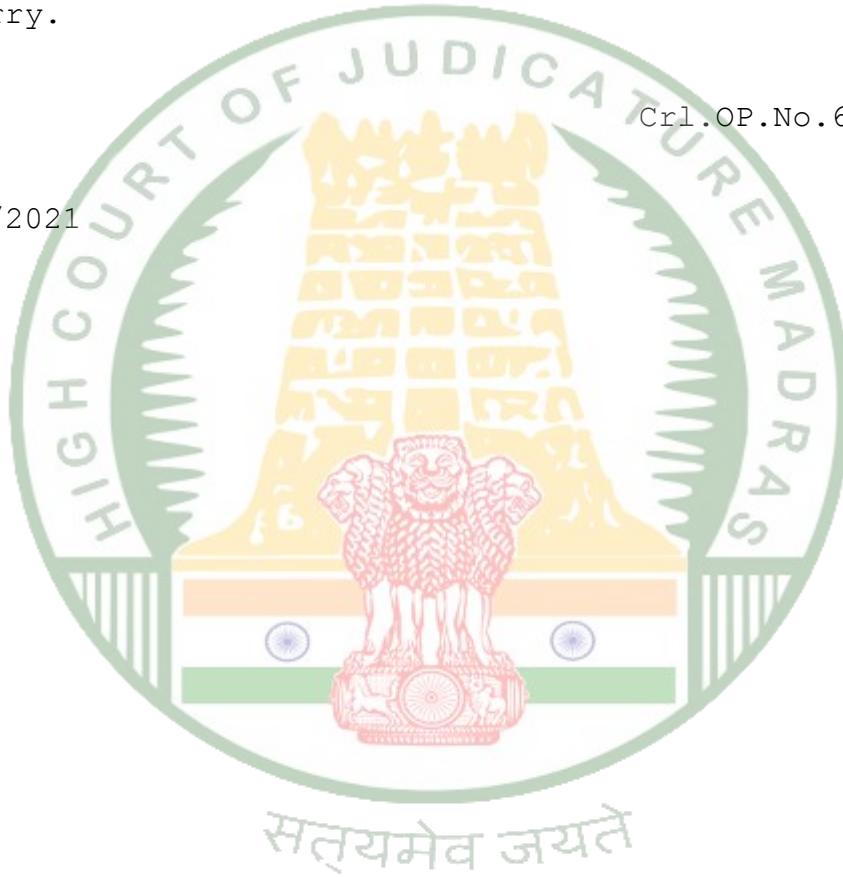
Sub Assistant Registrar

KP
To

- 1.The Station House Officer,
Yanam Police Station,
Yanam, Puducherry.
- 2.The Judicial Magistrate,
Yanam.
- 3.The Public Prosecutor
Puducherry.

Cr1.OP.No.6968 of 2018

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