



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED:28.04.2021**

CORAM

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**Crl.O.P (MD)No.24212 of 2016**

and

**Crl.M.P (MD)No.12753 of 2016**

1.Nagaiya

2.Sonai

3.Sivakumar

4.Poongodi

5.Alagammal

6.Kalees @ Kaleeswari

7.Sivaranjani

: Petitioners / A1 to A7

Vs.

1.The Inspector of Police,  
Odaipatty Police Station,  
Theni District.  
[Crime No.182 of 2015]

: Respondent / complainant

2.Jeyaraj

: Respondent / de facto complainant

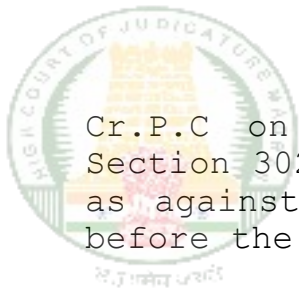
**Prayer:** Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in P.R.C.No.27 of 2016 on the file of the Judicial Magistrate, Uthamapalayam and quash the charge sheet and consequential further proceedings as against the petitioners.

|                 |                                |
|-----------------|--------------------------------|
| For Petitioners | : Mr.D.Shanmugaraja Sethupathi |
| For Respondent  | : Mr.R.Anandharaj,             |
| No.1            | Additional Public Prosecutor   |

**ORDER**

The petitioners accused Nos.1 to 7 in P.R.C.No.27 of 2016 on the file of the learned Judicial Magistrate, Uthamapalayam, filed the present petition for quashing the proceedings pending against them.

2.On a complaint dated 01.08.2015 of one Jeyaraj, pursuant to the suicide committed by the complainant's son one Anandharaj, a case was registered in Crime No.182 of 2015 under Section 174 of



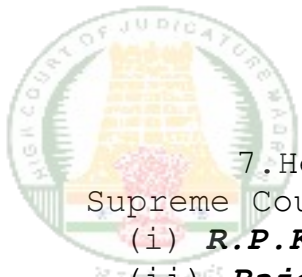
Cr.P.C on 01.08.2015. Thereafter the offence was altered under Section 302 IPC and the first respondent police filed a final report as against the petitioners for the offence under Section 306 IPC, before the learned Judicial Magistrate, Uthamapalayam.

3.The case of the prosecution is that the one Anandharaj and Rani, husband and wife were the residents of Odaipatty Village. The said Anandharaj committed suicide by consuming poison on 01.08.2015. The deceased was working as a Tailor in New Star Tailoring shop at Odaipatty. He was a drunkard and he often quarrelled with his wife. As such on 28.07.2015 at about 7.00 pm, there was an altercation between the deceased Anandharaj and his wife Rani. In that altercation, the deceased brutally attacked his wife Rani, due to the attack, she got fainted and was taken to the hospital by 108 Ambulance services at the instance of her neighbours to the hospital. On hearing this news the first petitioner and other petitioners / relatives of the deceased Rani came to the house of the deceased and abused him. They are also said to have abused the said Anandharaj to go and die. Enraged over the same, the deceased is said to have consumed poison and died in hospital on 01.08.2015.

4.On the complaint of Jeyaraj father of the deceased Anandharaj, the first respondent police initially registered a case in Crime No.182 of 2015 under Section 174 CrPC and filed the final report as against the petitioner for the offence under Section 306 IPC.

5.Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the petitioners submitted that there is no proximity between the deceased having consumed poison and the earlier incident said to have taken place on 28.07.2015. The deceased is said to have brutally assaulted his wife, she was admitted in the hospital and the deceased, out of fear on the consequences of his assault on his wife, committed suicide by consuming poison. However, the father of the deceased in order to wreak vengeance as against the relatives of the wife of the deceased foisted this false complaint, as if the petitioners / relatives of the said Rani had quarrelled with the deceased on 28.07.2015.

6.He would further submit that the complaint is not lodged based on the eye witness to the occurrence, but based on a hearsay with bald and vague allegations. There is no material available on record to show that there was any instigation or abetment by these petitioners, to constitute an offence for the offence under Section 306 IPC. According to him, the term 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, the first respondent is not justified in filing the final report as against these petitioners.



7.He also relied on the following decisions of the Hon'ble Supreme Court.

(i) **R.P.Kapur Vs State of Punjab**, reported in **AIR 1960 SC 866**.

(ii) **Rajesh v. State of Haryana**, reported in **2019 SCC OnLine SC 44**;

(iii) **Sontui Rama Krishna v. Sonti Shanti Sree & another**, reported in **AIR 2009 SC 923**.

8.Per contra the learned Additional Public Prosecutor appearing for the respondent police submitted that the investigating agency has examined five witnesses from the place of occurrence, apart from the complainant and based on the statement of the witnesses, the final report has been filed. He would further submit that only pursuant to the incident that took place on 28.07.2015, the deceased has committed suicide by consuming poison and the petitioners' innocence can be decided only during the trial and the grounds raised by the petitioners are not sufficient to entertain this petition.

9.This Court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

10.According to the case of the prosecution the deceased was a drunkard and often quarrelled with his wife. Even in an inebriated condition there was an incident on the previous night on 28.07.2015 at about 7.00 pm, where there was an altercation between the deceased and his wife Rani. The deceased is said to have attacked his wife brutally and consequently, she got fainted. At the instance of her neighbours, she was taken to the hospital in 108 Ambulance. The petitioners / relatives of the said Rani are said to have abused and intimidated the deceased for his act. It is alleged that the petitioners have also abused the deceased go and die, otherwise he would face dire consequences and therefore, the deceased is said to have committed suicide by consuming poison.

11.The earlier occurrence of the quarrel between the petitioner husband and the wife had taken place on 28.07.2015 at about 07.00 pm in the residence of the deceased, where the deceased wife Rani was assaulted by the petitioners. She got fainted and was taken to the hospital. On hearing the news the relatives of Rani / the petitioner's herein are said to have abused the deceased around 9.30 pm on the same day. Thereafter, the deceased is said to have consumed poison on 29.07.2015 at about 07.00 pm near his tailor shop. He was taken to the Government hospital, Chinnamanoor on 29.07.2015 at 08.10 am and thereafter he was referred to the Government hospital, Theni, wherein he died on 01.08.2015 at 10.15 am. Only thereafter, the case in Crime No.182 of 2015 was registered at the instance of the deceased father Jeyaram on 01.08.2015 at about 10.15 am.



12.As stated by the learned Counsel for the petitioners, there is no proximity between the two incidents. The deceased is said to have consumed poison on 29.07.2015 at about 7.00 pm, near his tailor shop, whereas, the previous day occurrence had taken place on 28.07.2015 at about 9.30 pm in the residence of the deceased. The deceased had assaulted his wife, she got fainted and she was admitted in the hospital at the instance of her neighbours. As pointed out by the learned Counsel for the petitioners there is every possibility for the deceased to have committed suicide out of fear that the life of his wife is endangered by his act.

13.The prosecution has projected the case, as if the deceased consumed poison at the instigation of the petitioners that they abused the deceased on 28.07.2015 and they also intimidated him to go and die or otherwise, he would face the consequences. Mere uttering words such as go and die, would not make out a case of abetment for suicide and the same will not constitute an offence under section 306 IPC as per the dictum laid down by the Hon'ble Supreme Court in the below mentioned cases.

14.The Hon'ble Supreme Court, in its latest decision, in **Rajesh v. State of Haryana**, reported in **2019 SCC OnLine SC 44** has held as follows:

"9. Conviction under Section 306 IPC is not sustainable 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. 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. (See *Amalendu Pal alias Jhantu v. State of West Bengal*, reported in (2010) 1 SCC 707).

10. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, reported in (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367, as follows:

"16. Speaking for the three-Judge Bench in *Ramesh Kumar* case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088], R.C.Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

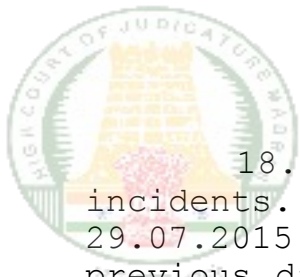
17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See Oxford Advanced Learner's Dictionary, 7<sup>th</sup> Edn.)."

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. [See *Praveen Pradhan v. State of Uttaranchal*, reported in (2012) 9 SCC 734]"

15. The Hon'ble Supreme Court in ***Sontui Rama Krishna v. Sonti Shanti Sree & another***, reported in ***AIR 2009 SC 923***, has held that to constitute an abetment, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the woman to commit suicide. Mere uttering of words 'go and die' itself will not constitute such abetment.

16. Even this Court has taken a similar view, in its latest decision, in the case of ***S.A. Margaret Angel and another v. State and another***, in Crl.O.P. (MD) No.15407 of 2016 decided on 05.10.2018.

17. The words like 'go and die', 'better die today than tomorrow' are uttered during quarrels. Such words cannot be given literal meaning so as to say that the accused had abetted the commission of suicide. To constitute the abatement, it should be established by means of acceptable evidence by the prosecution that the accused had the animus to drive the deceased to commit suicide. Mere uttering of such words, by itself will not constitute such abetment. The words uttered due to outburst of one's own fatuity or anger or consternation without any intention or knowledge will not constitute an offence.



18. As already held there is no proximity between the two incidents. The deceased is said to have consumed poison on 29.07.2015 at about 7.00 pm, near his tailor shop, whereas, the previous day occurrence had taken place on 28.07.2015 at about 9.30 pm in the residence of the deceased and considering the fact that there is no proximity between the incidents and also applying the ratio laid down by the Hon'ble Supreme Court that mere uttering the words 'go and die' would not constitute an offence under Section 306 IPC, this criminal original petition is allowed. The proceedings in P.R.C.No.27 of 2016 on the file of the learned Judicial Magistrate, Uthamapalayam is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.  
To

1.The Judicial Magistrate,  
Uthamapalayam.

2.The Inspector of Police,  
Odaipatty Police Station,  
Theni District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate ( SR-17971[F] dated 29/04/2021 )

**CrI.O.P(MD)No.24212 of 2016**  
**28.04.2021**

NA (CO)

TR(29.06.2021) 6P 5C