

26.07.2022

CRR 373 of 2011
Nalini Ranjan Bal
Vs.
The State of West Bengal & Anr.

Mr. Kallol Mondal,
Mr. Krishan Ray,
Mr. Souvik Das,
Ms. Anamitra Banerjee.

... for the Petitioner

Mr. Madhu Sudan Sur, Ld. APP,
Mr. Manoranjan Mahata, Advocate.

... for the State

The instant application is filed under section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the First Information Report being Hasnabad P.S. Case No.355 of 2009 dated 26/11/2009 under section 306 of the Indian Penal Code.

Genesis of the case is the written complaint dated 26/11/2009 written by the Opposite Party No.2/de-facto complainant addressed to the Officer-in-Charge, Hasnabad Police Station. It is the case of the Opposite Party No. 2 that his younger daughter, Ankita Halder, was a student of Barunhat High School. In the course of Madhyamik test examination on geography, the Petitioner herein rebuked and humiliated the said Ankita. She came back to home and narrated the incident to her parents. Later in absence of her father, Opposite Party No. 2, in the residence, she committed suicide by hanging herself. With heavy heart the Opposite Party No.2 submitted the written complaint in Hasnabad Police Station. On the basis of the written complaint, formal

F.I.R was drawn up and numbered as Hasnabad P.S. Case No. 355 of 2009 dated 26/11/2009 under section 306 of the Indian Penal Code.

It is the case of the Petitioner that on the day of the examination of geography, as mentioned in the written complaint, the Petitioner was one of the invigilators. He found that the deceased Ankita was copying her answers from a piece of paper which she brought before entering into the examination hall. The Petitioner objected to that act and took her answer sheet along with the piece of paper and submitted the same to the Principal of the institution with a note. The Petitioner did the aforesaid act in discharge of his official duty without any intention to instigate or to provoke the deceased to commit suicide. Therefore, the Petitioner filed the instant application praying for quashing of the unjustified prosecution.

Mr. Mondal, appearing for the Petitioner, submitted that to constitute offence under section 306 of the Indian Penal Code, intention and involvement of the accused to aid or instigate commission of suicide is imperative. Anything short of these requirements would nullify the charge of abetment. In the instant case, the Petitioner was invigilator in the examination hall. The deceased was indulged in unfair practice which, the Petitioner, in discharge of his official duty and as a part of disciplinary measure, resisted. Under no circumstance such an act of the Petitioner can be said to abet or to instigate committing suicide. A prosecution like the instant one would not only discourage the Petitioner but also all the invigilators to discharge the task of invigilation in proper and fearless manner. The

ingredients of abetments are altogether absent in this case. Mr. Mondal explained the principle of law with reference to the following cases:

Annakali Dutta & Ors. vs. the State [1990 SCC Online, Cal 80],

Sanju alias Sanjay Singh vs. State of M.P. [(2002) 5 SCC 371],

Subha Narayan vs. State of West Bengal & Ors. [(2006) 3 CHN 651],

Bishnu Chakraborty vs. State of West Bengal [2007 (3) CHN 754],

Madan Mohan Singh vs. State of Gujarat [(2010)8 SCC 628]

Sri Swapan Roy vs. State of West Bengal & Ors. [2016 SCC Online Cal 1790]

State of West Bengal vs. Indrajit Kundu [(2019) 10 SCC 188]

Geo Verghese vs. State of Rajasthan & Anr. [2021 SCC Online SC 873].

In nutshell, Mr. Mondal prayed for quashing of the impugned F.I.R.

Per contra Mr. Mahato appearing for the State submitted that statement of the students, recorded under section 161 of the Code of Criminal Procedure who were present on the spot, reveal that the deceased was rebuked, chastised and insulted by the Petitioner for her act of copying. This caused mental stress and trauma goading her to commit suicide. According to Mr. Mahato, there are incriminating elements. The F.I.R, on the face of it, reveals commission of the alleged offence which does not warrant quashing of the F.I.R. According to him, the instant petition is liable to be rejected.

I have heard rival submissions.

Section 306 of the Indian Penal Code states:

“306. Abetment of suicide.—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.”

Section 107 of the Indian Penal Code defines abetment in the following terms:

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 1. — A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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.

Conjoint reading of section 107 and section 306 yields an interpretation that there must be a suicide and that there must be direct involvement of the accused person or persons in the commission of that suicide in order to attract punishment for offence under Section 306 IPC. It must be established that the accused person/persons instigated and incited the victim, by his or their positive act, to commit suicide. The accused must have 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 instigation may have been inferred, as observed by the Supreme Court of India in **Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618**. Earlier, in **State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73** it was observed by the Supreme Court of India:

“17....We may add here 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 transpires 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.”

In **S.S. Chheena vs. Vijay Kumar Mahajan, (2010) 12 SCC 190** the Supreme Court of India held:

“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 mensrea 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.”

In **Geo Varghese vs. State of Rajasthan 2021 SCC Online SC 873**, the facts and circumstances are similar to the present case. In that case the Physical Training Instructor of the school who was also a member of the disciplinary committee of the school, rebuked and insulted in

presence of others a fourteen years old boy who was student of class 9th of that school. He came back home and committed suicide leaving a suicide note naming the said teacher. The High Court refused to quash the F.I.R. The Supreme Court of India, while quashing the F.I.R considered the scope of section 306 of the Indian Penal Code in the following language:

“23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

It was observed by the Supreme Court of India that in the absence of any material on record even, *prima facie*, in the F.I.R. or statement of the complainant, pointing out any such circumstances showing any such

act or intention that he intended to bring about the suicide of his student, it would be absurd to even think that the Petitioner had any intention to place the deceased in such circumstances that there was no option available to him except to commit suicide.

It is said that the teachers train the mind of the students. It is traditionally regarded a solemn duty of the teachers to instil and inculcate discipline in the minds of the students, to guide and nurture them to be honest, fair and righteous in future life so that they can be good citizens of the country. It is not unlikely that the teachers use to rebuke the students or sometimes become harsh to the students in order to discipline and control them, if erring. The Petitioner of the case did the same thing. The deceased adopted unfair means in examination hall which is not only opposed to rules of examination but also a wrong subversive to the discipline of the institution. If allowed, such a misdeed will encourage other students also to adopt the same misadventure. Statements of witnesses, in particular the students present on spot contained nothing to indicate that the Petitioner did any act encouraging or inciting the deceased to commit suicide or that act of the Petitioner had direct nexus with the commitment of suicide. The written complaint discloses nothing in this regard. The deceased might have been hypersensitive or suffered emotional trauma or stress for taking disciplinary action against her by the Petitioner. But the act was done as a measure of disciplinary action against an erring student. Nothing is there in the case diary to show that the Petitioner acted in excess for which he could be blamed. If a teacher is entangled in criminal prosecution for taking disciplinary action against an erring student

imperilling his respect and reputation then not only a wrong message will go to the society but would also discourage and inhibit other teachers to discharge their solemn duty. This would not only cause prejudice but also aberration of justice.

Section 482 of the Code of Criminal Procedure saves the inherent power of the High Court. Such power can be used to prevent abuse of the process of the court and to secure justice. In **State of Haryana vs. Bhajan Lal** [1992 Supp (1) SCC 335] the matter was examined in details and various grounds were discussed on which power under Section 482 of the Code of Criminal Procedure can be exercised to quash the criminal proceedings. Two of the grounds mentioned therein are (1) where the allegations made in the First Information Report or 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, (2) where the uncontroverted allegations made in the First Information Report 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. A rider was added by the Supreme Court of India that such power is to be exercised with great circumspection and caution.

The principle laid down in Bhajan Lal's case was followed and reiterated in catena of judgments like (1) *CBI vs. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], (2) *Rajesh Bajaj vs. State (NCT of Delhi)* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] and (3) *Zandu Pharmaceutical Works Ltd. vs. Mohd. Sharaful Haque* [(2005) 1 SCC 122 :

2005 SCC (Cri) 283]. In *Rishipal Singh vs. State of U.P.*, (2014) 7 SCC 215, referring to various authorities, the Supreme Court of India reiterated the same principle:

“13. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 Code of Criminal Procedure, 1973. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact.”

As discussed above, neither the written complaint nor the statement of the witnesses disclose anything which establish *prima facie*, a direct or even any indirect nexus between the alleged act of the Petitioner namely taking disciplinary measure and commitment of suicide by the deceased. Therefore, this is a fit case where this Court can

exercise power conferred by section 482 of the Code of Criminal Procedure.

In nutshell, the instant application is allowed.

The First Information Report being Hasnabad P.S. Case No. 355 of 2009 dated 26/11/2009 under section 306 of the Indian Penal Code is hereby quashed.

A copy of this order may be sent to the Court of Additional Chief Judicial Magistrate, Bashirhat. Case diary be returned.

The instant criminal revision is disposed of accordingly.

(Sugato Majumdar, J.)