

05.12. 2022
item No.23
n.b.
ct. no. 551

CRR 3093 of 2018

with
IA NO. CRAN 2 of 2019(Old NO. CRAN 3345 of 2019)

Sabita Panja & Anr.
Vs.
State of West Bengal & Anr.

Mr. Subhasish Pachhal,
Mr. Rameswar Sinha
... for the petitioner.
Mr. Anwar Hossain,
Ms. Sujata Das,
.... For the State.

Mr. Anwar Hossain, learned advocate appears on behalf of the State along with the memo of evidence and the Case Diary.

Mr. Subhasish Pachhal, learned advocate appearing on behalf of the petitioner.

Heard the matter at length.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure preferred against the order dated August 28, 2018 passed by the learned Assistant Sessions Judge, Uluberia, Howrah in S.T. Case No.01 of 2018 arising out of Uluberia Police Station Case No.604 of 2016 dated 30.9.2016 under Sections 364/120B/34 of the Indian Penal Code and subsequently charge sheet submitted under Section 306 o/34 of the Indian Penal Code.

Learned advocate for the petitioners submits before this Court that the present petitioners were falsely implicated in his case and the charge sheet submitted by the police after completion of investigation is perfunctory. The allegation against the present

petitioner under Section 306/34 of IPC cannot be substantiated in eye of law. Accused persons submitted the application for discharge before the learned Court below but the learned Court below by passing the impugned order has rejected the prayer against which the revisional application has been preferred.

Learned advocate for the petitioner submitted before this Court that the learned Court below has failed to appreciate the facts and circumstance of this case and come an erroneous finding. He further submitted that the impugned order passed by the learned Court below suffers illegality. It is improper to hold that the present petitioner has committed any offence under Section 306 of the IPC. He further pointed out that the evidence collected by the I.O. cannot substantiate the offence against the present petitioner. He again argued that impugned order cannot be stand the instant criminal revision is liable to be allowed.

Learned advocate on behalf of the State raises strong objection and submitted before this Court that after completion investigation police has submitted charge sheet. Through initially the case was filed under Section 364/120B/34 IPC, but after completion of investigation and after collection of evidences the police has submitted charge sheet under Section 306/34 of IPC. He again submitted that during the course of investigation police has recorded the statement of available witnesses wherefrom the FIR has successfully proved. He again pointed that at this stage the prima facie materials has sufficiently collected by the police against the present petitioner on the basis of which the charge sheet has been submitted. It is the argument of the learned state

advocate that without completion of the trial the entire matter cannot be assessed. So, the instant revisional application has no merit to entertain.

Heard the learned advocate perused the materials on record during the course of argument Learned Counsel appearing on behalf of the petitioner has cited the decision of Hon'ble Supreme Court reported in **AIR 2021 SC 4313(AIR Online)2021 SC 730**. I have gone through the citation. Paragraph 9 of the citation reads as follows:

"9. Having heard learned counsel on both sides, we have perused the impugned order and other material placed on record. Except the self-serving statements of the complainant and other witnesses stating that deceased was in love with the appellant, there is no other material to show that appellant was maintaining any relation with the deceased. From the material placed on record it is clear that on the date of incident on 04.05.2018 deceased went to the house of the appellant and consumed poison by taking out from a small bottle which he has carried in his pocket. Merely because he consumed poison in front of the house of the appellant, that itself will not indicate any relation of the appellant with the deceased. 'Abetment' involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under [Section 306, IPC](#). To

proceed against any person for the offence under [Section 306](#) IPC it requires an active act or direct act which led the deceased to commit suicide, seeing no CrI.A.@S.L.P.(CrI.)No.7554 of 2019 option and that act must have been intended to push the deceased into such a position that he committed suicide. There is nothing on record to show that appellant was maintaining relation with the deceased and further there is absolutely no material to allege that appellant abetted for suicide of the deceased within the meaning of [Section 306, IPC](#). Even with regard to offence alleged under [Section 3\(2\)\(v\)](#) of the Act it is to be noticed that except vague and bald statement that the appellant and other family members abused deceased by uttering casteist words but there is nothing on record to show to attract any of the ingredients for the alleged offence also. This Court in the case of [Chitresh Kumar Chopra v. State \(Govt. of NCT of Delhi\)](#)¹ had an occasion to deal with the aspect of abetment. In the said case this Court has opined that there should be an intention to provoke, incite or encourage the doing of an act by the accused. Besides, the judgment also observed that each person's suicidability pattern is different from the other and each person has his own idea of self-esteem and self-respect. In the said judgment it is held that it is impossible to lay down any straightjacket formula dealing with the cases of

suicide and each case has to be decided on the basis of its own facts and circumstances. In the case of 1 (2009) 16 SCC 605

Crl.A.@S.L.P.(Crl.)No.7554 of 2019 [Amalendu Pal @ Jhantu v. State of West Bengal](#)² in order to bring a case within the purview of [Section 306, IPC](#) this Court has held as under :

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under [Section 306](#) IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely 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, conviction in terms of [Section 306](#) IPC is not sustainable.

13. 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.” In the judgment in the case of [S.S. Chheena v. Vijay Kumar Mahajan & Anr.](#)³ this Court reiterated the ingredients of offence of [Section 306](#) IPC. Paragraph 25 of the judgment reads as under:

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive 2 (2010) 1 SCC 707 3 (2010) 12 SCC 190 CrI.A.@S.L.P. (CrI.)No.7554 of 2019 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 mens rea 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 the judgment in the case of [Rajiv Thapar & Ors. v. Madan Lal Kapur](#)⁴ this Court has considered the scope of the provision under [Section 482, Cr.PC](#) and has laid down the steps which should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings in exercise of power under [Section 482, Cr.PC](#). Paragraph 30 containing the four steps read as under :

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under [Section 482](#) CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the 4 (2013) 3 SCC 330 CrI.A.@S.L.P.(CrI.)No.7554 of 2019 material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under [Section 482](#) CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

On carefully perusing the above mentioned dictum of the Hon’ble Supreme Court it appears to me that on the similar facts and circumstances the Hon’ble Supreme Court has been formulated that in a case of abatement the proper instigation by the accused persons must have to be proved. It has also been formulated by the Apex Court that the abatement involves mental process of instigating a person or intentionally adding a person in doing of them.

Let me consider the Case Diary on the basis of the FIR facts. It has been alleged in the FIR that the present accused persons has instigated victim to commit suicide on the ground that they put pressure upon the victim so that the divorcee lady/accused Dalia Panja may be marry the victim. It has specifically stated on the day of occurrence the victim was at the house of the accused persons and after sometime the victim left the house putting the mobile phone and money purse, key etc at the house and victim. During course of investigation the I.O. has collected the statement of available witnesses and their statement

was recorded under Section 161 of the Code of Criminal Procedure. The statement indicated that there are some intimacy with the victim along with accused Dalia Panja but none of the statement of available witnesses suggested that the accused Dalia Panja was actually intended to marry the victim or not.

After perusing the statement collected by the I.O. it appears that there may be some pressure to marry on the part of the accused no.1 and the victim himself may want to marry Dalia Panja, but the accused Dalia Panja had no intention to marry the victim.

That being the situation let me consider what are ingredients of offence punishable under Section 306 of IPC. Section 306 state as follows:

“306. Abatement 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.”

The Ingredients of the offence under Section 306 of IPC are as follows:

- i. There was suicide of a person.
- ii. It was committed in consequence of abatement by the accused.

In the entire case diary as well as the evidence collected by the prosecution it appears to me that instigation by the accuse persons to commit suicide of the victim is absent. Thus, the charge sheet filed by the police against the accused persons appears to me groundless. This is the fit case where this court can exercise its

inherent power; further proceeding of the criminal case would be abuse of the process of this Court. Considering the same, I find that there is merit to entertain the revisional application and it is liable to be allowed.

The impugned order passed by the Court below dated August 28, 2018 is hereby set aside. The Criminal Proceeding being. S.T. Case No. 01 of 2018 arising out of Uliberia Police Station case no. 604 of 2016 dated 30.9.2016 is quashed. The accused/petitioners are discharged from the proceeding.

Let the copy of this order be sent down to the Learned Court below for his information.

Any order of stay passed by this Court is also hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)