

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.708 of 2017

Bijneswar Mohanty. ***Petitioner***
M/s. S.K. Padhi, Sr. Advocate, P.K. Nayak, A.K.
Mohapatra, S. Mishra, S.N. Dash, Advocates

-versus-

State of Orissa & another. ***Opposite Parties***
Addl. Standing Counsel – For the O.P.No.1-State

CRLMC No.709 of 2017

Harish Yadu. ***Petitioner***
M/s. S.K. Padhi, Sr. Advocate, P.K. Nayak, A.K.
Mohapatra, S. Mishra, S.N. Dash, Advocates

-versus-

State of Orissa & another. ***Opposite Parties***
Addl. Standing Counsel – For the O.P.No.1-State

CRLMC No.710 of 2017

Asok Nayak. ***Petitioner***
M/s. S.K. Padhi, Sr. Advocate, P.K. Nayak, A.K.
Mohapatra, S. Mishra, S.N. Dash, Advocates

-versus-

State of Orissa & another. ***Opposite Parties***
Addl. Standing Counsel – For the O.P.No.1-State

CRLMC No.711 of 2017

BSS Sreenivas. ***Petitioner***
M/s. S.K. Padhi, Sr. Advocate, P.K. Nayak, A.K.
Mohapatra, S. Mishra, S.N. Dash, Advocates

-versus-

State of Orissa & another. ***Opposite Parties***
Addl. Standing Counsel – For the O.P.No.1-State

CRLMC No.712 of 2017

Gobinda Gopal Pal. ***Petitioner***
M/s. S.K. Padhi, Sr. Advocate, P.K. Nayak, A.K. Mohapatra, S. Mishra, S.N. Dash, Advocates

-versus-

State of Orissa & another. ***Opposite Parties***
Addl. Standing Counsel – For the O.P.No.1-State

CORAM:
JUSTICE S. PUJAHARI

ORDER
13.09.2022

Order
No.

10. **1.** All these applications under Section 482 of Cr.P.C. having been filed by the petitioners, who are arraigned as accused persons in G.R. Case No.1622 of 2015 corresponding to S.T. No.7 of 2017 pending in the court of the learned Asst. Sessions Judge-cum-C.J.M., Jharsuguda, for quashing of the common order of cognizance dated 07.01.2016 passed in the said case, all of them have been taken up together to be disposed of by this common order.

2. Heard Shri S.K. Padhi, the learned senior counsel appearing for the petitioners and the learned Addl. Standing counsel appearing for the State-opposite party no.1.

3. The prosecution has been launched on the basis of the F.I.R. lodged by the Informant alleging that his only son – Somen Bhatta, hereinafter referred to as the ‘deceased’, who was employed in Vedanta Alumina Limited, Jharsuguda, committed suicide by hanging in his residence at Flat No.201, Cluster-HA, Block-Hati, Vedanta Meadow, Jharsuguda, on 14.09.2015, leaving a suicide note on e-mail that the sole reason of his taking such extreme step was due to the mental harassment caused to him by his seniors (accused-petitioners). A copy of the aforesaid e-mail of the deceased was enclosed to the F.I.R. Police registered a case and on completion of the investigation, submitted charge-sheet against the accused-petitioners under Section 306/34 of IPC. The learned S.D.J.M., Jharsuguda took cognizance of the

aforesaid offence against the accused-petitioners, and the case on being committed to the Court of Session is now reportedly pending in the court of the learned Asst. Sessions Judge-cum-C.J.M., Jharsuguda.

4. The suicide note which appears to be the basis of launching of the prosecution against the petitioners, is reproduced here below:-

“I am taking this wrong step because I can’t anymore bear the mental torture given by Mr. G.G. Pal (Head:- Plant-1), Mr. Asok Nayak (HR Head:- Technical), Mr. Bijneswar Mohanty (SBU Head:- Cast House), Mr. B.S.S. Srinivas (HOD Maintenance:- Cast House), Mr. Haris Yadu (Manager Electrical:- Cast House). This all started in the month of March-2015 when internal advertisement for Lanjigarh was published few days before performance appraisal. I have applied for the same after talking with Mr. BSS Srinivas. As I have applied for Lanjigarh so management decided to give me BELOW AVERAGE to maintain Bell Curve. After the declaration of appraisal result when I talked with Mr. Haris Yadu he said he don’t know about the result. It was all given by Mr. BSS Srinivas. Then I went to Mr. BSS Srinivas to raise the issue he clarified me he didn’t had any option but to give me BELOW AVERAGE as I have applied for Lanjigarh and to maintain Bell Curve. That time Mr. Deepak Singh (HR: Cast House) was called and told to change my grade after that he responded regarding this Mr. Asok Nayak (HR Head :- Technical) can help. That time Mr. BSS Srinivas said he will talk to Mr. Asok Nayak regarding this matter. After 2-3 days Mr. BSS Srinivas told after discussing with all the above mentioned persons the rating cannot be reversed you continue with your work we will not repeat same

mistake in next performance appraisal. After getting this assurance I continued with my work with full dedication.

Now 2-3 days back the above mentioned person called me and said you give resignation or we will terminate you as you are under performer. That time I told them what about the promise you people made me in the month of May the reply came that was past we cannot do anything now. That time we could have changed your rating now past is gone and you have to resign from this company within 2 days. I plead to them give me sometime so that I can get a new job for me. They are not in a mood to hear my plea. After that Mr. BSS Srinivas had a chat with me in which he said you can scold me as you like but nothing can be done now you have to give resignation anyhow. For the last 2 days they are pressurizing me to give resignation or else they will terminate me and spoil my career. I always tried to give my 100 percent what ever was told me to do. If after working with full dedication these person are saying to resign and not willing to help I don't find any other way except this. I also don't know what will happen to my family after me and who will look after them.

Please take this note seriously and take some action against them so that no other employee of this company don't take same kind of step."

5. The learned senior counsel appearing for the petitioners submitted, inter-alia, that the employer-company has a performance appraisal system and allied the other employees, he was also subjected to the said system, and the appraisal rating was awarded to him on the basis of the performance rendered by him. It is his further submission that the

petitioners being the employees of the company discharged their duty by rating the performance of the deceased who at the relevant time was working as Associate Manager. It is further contended that there was no any ill-intention much less *mens rea* with the petitioners and that the “below average” performance appraisal was also not challenged by the deceased before any Court of law or forum. It is further submitted by the learned counsel that even if it is assumed that the deceased employee was asked to resign, the same could not have been treated as an act of abetment to commit suicide, inasmuch as there are many instances where underperforming employees of Government or Private establishments are asked to proceed on leave or resign from service for sake of their future career or avoidance of stigma arising out of dismissal from service. According to the learned senior counsel, the allegations made in the F.I.R. and e-mail note are vague and baseless and even if they are taken at their face value, no prima-facie case under Section 306/34 of IPC is made out

against the petitioners, and that continuance of the criminal proceeding against them would not only be prejudicial to the petitioners, but the same would also amount to abuse of the process of the Court. He has relied on several authoritative pronouncements in support of his contentions.

6. On the other hand, the learned Addl. Standing counsel appearing for the State-opposite party no.1 submits that the available materials on record being sufficient to make out a prima-facie case under Section 306/34 of IPC against the petitioners, the contentions raised on behalf of the petitioners do not merit any consideration, and it would not be proper for this Court to interfere with the impugned order in exercise of inherent jurisdiction under Section 482 of Cr.P.C. According to him, there being no factual dispute that the petitioners were the seniors of the deceased, and the suicidal note being a material piece of evidence to support the allegation against the petitioners, they cannot claim that there is no prima-

facie case against them. The learned counsel for the State has also cited certain authoritative pronouncements in support of his contentions.

7. In the case of ***Madan Mohan Singh vrs. State of Gujarat***, reported in (2010) 8 SCC 628 (cited by the learned counsel for the petitioners), the Apex Court held as follows:-

“9. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Dutta Vs. State of W.B.* [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.

10. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his

boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work.”

8. In the case of ***State of Kerala vrs. S. Unnikrishan Nair and others***, reported in (2015) 9 SCC 639 (relied on by the petitioners), the Apex Court held as follows:-

“13. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it herein-before. On a plain reading of the same, it is difficult to hold that there has been any abetment by the respondents. The note, except saying that the respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reason, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate.”

9. The aforesaid two cases as relied on by the learned senior counsel for the petitioners on the aspect of suicidal note, appear to be distinguishable from the present case, if the contents of the suicide note referred to by the prosecution is taken into consideration. The other cases cited by the learned senior counsel for the petitioners also are in different footings.

10. In the case of **Chitresh Kumar Chopra vrs. State (NCT) of Delhi**, reported in (2009) 16 SCC 605 (cited by the learned counsel for the State), the Apex Court held as under:-

“16. Speaking for the three-Judge Bench, 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 (2001) 9 SCC 618 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 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 - 7th Edition).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

11. It needs no mention that at the stage of taking cognizance which is the threshold of a criminal proceeding, the Court is not required to make a threadbare analysis of the materials placed on record for the purpose of proceeding against the accused. What all that is necessary at this stage is to find out, as to whether there is a prima-facie case to proceed against the accused for the offence(s) alleged against him. When the case reaches the stage of framing of charge, the accused while participating in the hearing can raise his contention, if any, urging the Court for his discharge. The scope of the Court to consider the materials on record becomes wider at the stage of taking up the question of framing of charge, inasmuch as at that point of time opportunity of hearing has to be given not only to the prosecution but also to the accused. Having taken into consideration the suicide note purportedly left by the deceased and the other materials available on record, this Court hardly finds any reason to interfere with the impugned order of cognizance. It is hoped that at

the stage of framing of charge, the learned trial Court shall give due regard to the contentions, if any, advanced by the accused-petitioners, while addressing the question as to whether or not the materials on record are capable of drawing a presumption of guilt under Section 306/34 of IPC against the petitioners. Needless to say that the trial Court at that stage while considering any submission made to discharge by the petitioners shall consider the materials vis-à-vis the contentions raised without being influenced by the order of this Court, but in the manner known to law.

12. With the observation as above, all the CRLMCs stand dismissed.

13. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS