

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1745 of 2012

Swarnalata Acharya and others

....

Petitioners

Mr. D.R. Swain, Advocate

-Versus-

State of Orissa

....

Opposite Party

Mr. A.P. Das, ASC

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT: 04.07.2022

1. Instant petition under Section 482 Cr.P.C. filed by the petitioners assailing the order of cognizance dated 12th April, 2012 passed in C.T. Case No.244 of 2012 arising out of Khunta P.S. Case No.75 of 2011 on the grounds inter alia that the offence of abating to commit suicide punishable under Section 306 read with 34 IPC for which the charge sheet has been filed against them to be unsustainable in law and therefore, liable to be quashed.

2. As revealed from the charge sheet, it is made to understand that petitioner No.1 developed illicit relation with accused No.1 which was when protested by the former's husband, he was mentally and physically tortured by both besides petitioner Nos.2 and 3, who are his parents-in-law, whereafter, he committed suicide. It is further revealed that the victim husband left a suicidal note fixing the responsibility on all the accused persons for his death. Subsequent to the FIR being lodged, the petitioners and the other accused were charge sheeted under Section 306 read with 34 IPC.

3. Heard Mr. D.R. Swain, learned counsel for the petitioners and Mr. A.P. Das, learned ASC for the State.

4. It is contended by Mr. Swain that the petitioners did not commit any act as a result of which the death of the deceased by suicide took place. In other words, it is contended that in abetting suicide of the deceased, the petitioners did not play any role. It is also contended that the suicidal note does not attribute any such abetment or the circumstances to suggest that the victim was forced to commit suicide. In support of such a contention, a decision of the Supreme Court in **M. Mohan Vrs. The State represented by Deputy Superintendent of Police etc. 2011 (1) CJD (SC) 161** is relied upon by Mr. Swain.

5. On the contrary, learned ASC Mr. Das submits that all the aspects with regard to the abetment and the genuineness of the suicidal note may have to be examined during trial and therefore, the order of cognizance under Annexure-1 against the petitioners is justified in law considering the nature of allegations and materials collected during the investigation which prima facie established that the deceased committed suicide after being subjected to mental and physical torture.

6. In **State of Haryana and others Vrs. Bhajan Lal and others (1992) Supp.1 SCC 335**, the Apex Court had the occasion to examine the scope of inherent power of the High Court in interfering with the investigation by the police and laid down certain guidelines and enunciated that the investigation of an offence is the domain of the police having the power to investigate as per the provisions of Chapter-XII of the Cr.P.C. and the Courts are not justified in obliterating the track of investigation and further observed that if the allegation made in the FIR do not disclose or constitute any cognizable offence or the allegations are so absurd

and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, under such circumstances, inherent power may be exercised. In **State of A.P. Vrs. Golconda Linga Swamy and another (2004) 6 SCC 522**, the Supreme Court highlighted upon the circumstances under which jurisdiction under Section 482 Cr.P.C. could be exercised (a) to give effect to an order under the Cr.P.C., (b) to prevent abuse of process of the Court; and (c) to otherwise secure the ends of justice reiterating the principles delineated in **Bhajan Lal** case (supra).

7. In **M. Mohan** case (supra), the Supreme Court held and observed 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 or direct act which led the deceased to commit suicide finding no option and the alleged act must have been intended to push the deceased into such a position that he or she committed suicide. It is further observed therein that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. However, the above decision was rendered while disposing of the appeals filed by the accused persons challenging the order of conviction confirmed by the High Court of Madras. The present case is at the stage of enquiry post taking cognizance of the offence, which means, the trial has not yet commenced. The only test which is to be applied at this point of time is, whether, considering the materials on record with the charge sheet, a prima facie case is made out against the petitioners for having abetted in the suicidal death of the victim, namely, the husband of petitioner No.1 and if at all, inherent jurisdiction may be invoked in the facts and circumstances of the case.

8. As discussed herein above, under the situations described in **Bhajan Lal** case (supra), inherent jurisdiction of the High Court could be exercised and not otherwise. It is not that while exercising such power under Section 482 Cr.P.C., the Court is to conduct a roving enquiry as to the truthfulness of the allegations in the FIR and for that matter, in the charge sheet, wherein, the final opinion of the police is revealed. A great amount of caution is required to be observed while interfering with the investigation or enquiry as the case may be, while exercising powers under Section 482 Cr.P.C. In **Golconda Linga Swamy** case (supra), such jurisdiction by the High Court, as held by the Apex Court, should be exercised sparingly only in order to prevent abuse of process of law or to secure the ends of justice.

9. In the present case, a suicidal note has been left behind by the deceased, the contents of which have been translated in English vernacular and made a part of the record. It is being alleged in the suicidal note that the victim's wife, namely, petitioner No.1 developed illicit affair with accused No.1 and narrated the other facts relating to the ill-treatment which was meted out to him stating that all the accused persons to be responsible for his death. Even though the genuineness of the above suicidal note has been questioned but in course of argument, the primary contention was that even accepting the same at its face value along with other materials, no prima facie case appears to have been made out.

10. Mr. Swain cited one more decision of the Supreme Court in the case of **Sonti Rama Krishna Vrs. Sonti Shanti Sree and another AIR 2009 SC 923**, wherein, the proceeding was quashed as against the fact that the accused wife alleged to have openly insulted her husband by calling him ugly looking and impotent, where after, the latter committed suicide but without leaving any suicidal note and

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again when it was held to be without the requisite intention. However, in the instant case, the facts are slightly different as the deceased husband left a suicidal note alleging the overt acts of all the accused persons claiming them to be responsible for his death. As it appears, the victim committed suicide after having objected the illicit relationship developed by his wife and the other accused and in the process was subjected to mental stress and physical torture. Whether the petitioners did the acts or continued to involve themselves in such manner which compelled the deceased to commit suicide is a fact which is to be finally examined and adjudicated upon during trial. The charge sheet and the connected materials, such as, the statements of witnesses recorded under Section 161 Cr.P.C. besides the suicidal note prima facie indicate that the victim was mentally and physically tortured on number of occasions which left him with no option but to end his life. Each and every connecting circumstance is to be examined before fixing any responsibility vis-à-vis the petitioners for having abetted commission of suicide by the deceased with the requisite mens rea which can only be ensured at the end of the trial. It might as well be a case that the victim out of despair or frustration committed suicide after having failed in his attempt to prevent the continuance of the illicit relation between his wife and accused No.1 which can be elicited after evaluation of the entire evidence.

11. From the materials collected during investigation, it is made to suggest that not only petitioner No.1 did have the illicit relation with the other accused, petitioner Nos.2 and 3 alleged to have supported their daughter and in the process misbehaved and ill-treated the deceased driving him to commit suicide which may be a conclusion possibly be drawn therefrom. Of course, the suicidal note with all other evidence shall have to be examined for fastening the responsibility on the petitioners which is to happen at

the end of the trial. In great detail, the evidence cannot be subjected to scrutiny at this stage even before the commencement of trial. Applying the settled principles of law in **Bhajan Lal** and also **Golconda Linga Swamy** (supra) and having regard to the fact that mental and physical torture has been alleged against the petitioners and the fact that for the illicit relation between petitioner No.1 and accused No.1, which appears to be the reason behind the death, a prima facie case can be said to have been made out for the purpose of trial.

12. For the reasons stated above, the Court arrives at a logical conclusion that the criminal proceeding and its continuation cannot be scuttled in exercise of the inherent jurisdiction of the Court having regard to the peculiar facts and circumstances of the case.

13. Accordingly, it is ordered.

14. In the result, the petition under Section 482 Cr.P.C. filed by the petitioners stands dismissed.

(R.K. Pattanaik)
Judge

TUDU