

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4671 of 2011

Prafulla Kumar Mishra.

....

Petitioner

*M/s. Sanjeev Udgata, S. Udgata,
A. Mishra, Advocates*

-versus-

State of Odisha.

....

Opposite Party

Addl. Standing Counsel – For O.P.-State

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
13.09.2022**

**Order
No.**

11. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 08.09.2011 passed by the learned Sessions Judge, Sambalpur in S.T. Case No.223 of 2010, vide which a petition filed by the present petitioner (accused therein) under Section 227 of Cr.P.C. has been rejected.

2. Heard the learned counsel for both the sides and perused the relevant papers in the lower Court case record vis-à-vis the contentions raised by the petitioner vide his application at hand.

3. As it appears, U.D. Case No.169 dated 30.10.2004 was registered at Burla Police Station pursuant to a report received regarding an unknown dead body lying near the Paediatric Ward of Burla Hospital, and later on the said dead body was identified by the brother of the deceased, and inquest was held over the same by police, without any suspicion regarding any foul play. However, subsequently, pursuant to an F.I.R. lodged by the wife of the deceased, Burla P.S. Case No.205 of 2010 was registered by Burla Police under Section 302 of IPC, and after completion of investigation, charge-sheet was laid under Section 306 of IPC against the present petitioner. The learned S.D.J.M., Sambalpur took cognizance of the said offence, and subsequently the case on being committed to the Court of Sessions

was later registered as S.T. Case No.223 of 2010. At the stage of framing of charge, the petitioner moved an application purportedly under Section 227 of Cr.P.C. seeking for an order of discharge, and the learned Sessions Judge vide the impugned order rejected the said petition. Hence, the present application.

4. Admittedly, U.D. Case was registered on 30.10.2004, inasmuch as by then, there was no report with police suspecting or alleging he death to be homicidal or suicidal. However, on 31.10.2004 the wife of the deceased lodged a report with police alleging, inter-alia, that the present petitioner committed murder of the deceased for the reason that the deceased was demanding back his monetary dues from the petitioner. However, in course of investigation, the dead body of the deceased was subjected to postmortem examination, material witnesses were examined by the Investigating Officer, and ultimately, charge-sheet was filed under Section

306 of IPC against the petitioner. Vide the impugned order, the learned Sessions Judge has observed, inter-alia, that there is a prima-facie case to show the deceased to have committed suicide being frustrated of not getting back his monetary dues from the accused-petitioner. The concept of abetment widens the scope of criminal law to incorporate the criminal intentions of a person for advancing, assisting, helping or promoting commission of an offence by another person. It may not always be possible to gather direct evidence to prove abetment, but there must be circumstances to claim that the accused had the requisite *mens rea*, so as to constitute the offence of abetment.

5. In the case of ***M. Arjunan vrs. The State (represented by its Inspector of Police)***, reported in (2019) 3 SCC 315 the Apex Apex Court held as follows:-

“8. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment;

(ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation / abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C. xxxxxxxx”

6. In the case at hand, the only allegation is that the deceased became frustrated due to non-payment of his monetary dues by the accused. The same *ipso facto* does not prima-facie lead to any conclusion that the accused abetted the suicidal death of the deceased. Hence, the impugned order against the accused is found to be bad in law, and the accused is entitled to be discharged.

7. Hence, this CRLMC stands allowed and the prosecution against the petitioner is hereby quashed.

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

9. L.C.R. received be sent back forthwith.

(S.Pujahari)
Judge

MRS

