

397 and 401 of the Criminal Procedure Code (for short 'Cr.P.C.') challenging the correctness and legality of order dated 02.11.2018 passed by learned Additional Sessions Judge, Pune rejecting the Applications for discharge under Section 227 of Cr.P.C.

2. The prosecution case is as under :-

- i) The first informant is the father of deceased Sandeep More. The first marriage of deceased was dissolved by divorce. He performed second marriage on recommendation of his friend Vijay Sudhakar Koli with his sister Poonam Sudhakar Koli on 22.04.2016.
- ii) After the second marriage, Sandeep was residing with his wife Poonam at Pune in rental premises. Sandeep had informed the first informant and other family members that, his wife Poonam is not behaving properly and not discharging her domestic duties.
- iii) Sandeep had informed that, Vijay Koli (brother of Poonam) took Poonam to her parental home on 13.09.2016 and since then she is residing with her parents. He made attempts to bring her back but did not succeed. The relatives of Poonam are demanding of Rs.10 Lakhs for divorce and threatened that on failure to satisfy their demand, they would file case in the Court.
- iv) On 05.02.2017, Sandeep committed suicide at his residential premises due to harassment by his wife and her relatives by hanging to a ceiling fan.

v) The First Information Report was lodged on 08.02.2017 against Poonam Sandeep More (wife), Vijay Sudhakar Koli (brother-in-law), Sudhakar Laxman Koli (father-in-law), Mangala Sudhakar Koli (mother-in-law), Kashinath Laxman Koli (uncle) and Narayan Keshav Sapkale (maternal uncle) of deceased Sandeep More. Suicide note written by deceased was recovered during investigation. On completing investigation, charge-sheet was filed.

3. The Applicants and the co-accused Narayan Keshav Sapkale and Kashinath Laxman Koli preferred applications for discharge under Section 227 of Cr.P.C. before the Sessions Court, Pune vide Exhibit Nos. 33, 34, 35, 38, 39 & 40. The learned Additional Sessions Judge by Order dated 02.11.2018 rejected the Applications preferred by the Applicants and allowed the Applications below Exhibits 33 and 34 preferred by Narayan Keshav Sapkale and Kashinath Laxman Koli.

4. Learned Advocate for the Applicants submitted as under :-

- i) The Applicant in Criminal Revision Application No.702 of 2018, Smt. Poonam S. More is the wife of deceased Sandeep More. She was ill treated by her husband and in laws. She was subjected to physical violence. Due to constant physical and mental torture she left her matrimonial home on 13.09.2016 and went to her parents' house.
- ii) The statements of witnesses and alleged suicide note does not disclose the offence under Section 306 of the Indian Penal Code (for

short “IPC”).

iii) Assuming that the Applicants had demanded alimony in case of divorce which is legal right of any married women on the verge of divorce the said act would not attract Section 107 and 306 of IPC. The nature of alleged harassment suffered by the deceased is not disclosed by the complainant or any other witnesses.

iv) As per the version of complainant and other witnesses matrimonial discord existed between the deceased and his wife. Thus, assuming that there was demand of Rs.10 Lakhs for seeking divorce it would not constitute act of abetment to commit suicide.

v) The deceased had already gone through previous failed marriage and his second marriage was also on the brink of failure which could have shaken his mental stability and compelled him to take extreme step.

vi) The electronic evidence in terms of conversation made by the deceased before the alleged act on his phone or text records were not investigated by the Police. Plain reading of suicide note would clearly shows that, the deceased was under depression and stress. First wife had left him within short span of the marriage and second wife (Accused No.1) also left the matrimonial home which led him to frustration.

vii) The Police Investigation does not reveal that, any accused made

phone calls or had any conversation with deceased before the incident.

viii) The Accused No.1 left the matrimonial home on 13.09.2016 and the deceased had committed suicide on 05.02.2017. There is no evidence on record that, during the period from 13.09.2016, the Applicant Poonam More or any other accused had interaction with the deceased.

ix) Assuming the allegations in the statements of witnesses and the suicide note to be true, the offence under Section 306 of IPC is not made out. The Applicant cannot be subjected to trial in the absence of cogent evidence to frame charge against them.

x) There is nothing in the FIR to indicate that, there was any mens rea to abet the deceased in committing suicide.

xi) There is no evidence to show that the Applicants have committed the act to push the deceased into such a position that, the deceased had no option but to commit suicide.

xii) The learned Additional Sessions Judge has failed to appreciate what constitutes an abetment to commit suicide under Section 306 of IPC. The learned Sessions Judge failed to consider the legal principles enumerated in various decisions of the apex Court relating to the offence under Section 306 of IPC.

xiii) The order passed by the learned Sessions Judge rejecting the Applications for discharge is erroneous and deserves to be set aside.

There is no evidence to proceed against the Applicants.

5. Learned Advocate for the Applicants has relied upon the following decisions :-

- i) Kishori Lal V. State of M.P.¹
- ii) Randhir Singh and Another V. State of Punjab²
- iii) Gangula Mohan Reddy V. State of Andhra Pradesh³
- iv) Amalendu Pal @ Jhantu V. State of West Bengal⁴
- v) Sri Yerneni Raja Ramchander @ Rajababu V. State of A.P. & Ors.⁵
- vi) Balasaheb Ganpati Jadhav & Ors. V. The State of Maharashtra⁶
- vii) Praveen Pradhan V. State of Uttaranchal and Another⁷
- viii) Sanju Alias Sanjay Singh Sengar V. State of M.P.⁸

6. Learned A.P.P. submitted that, the Sessions Court has rightly rejected the Applications for discharge. The grounds for discharge urged by the Applicants are required to be considered during trial. Prima facie case is made out against the Applicants to proceed against them by framing charge. At the stage of framing of charge, the Court is not required to conduct detailed inquiry. The Court is not required to appreciate the evidence. The prosecution would examine witnesses in support of its case

1 AIR 2007 SC 2457

2 (2004) 13 SCC 129

3 (2010) 1 SCC 750

4 2009 All MR (Cri) 3755 (S.C.)

5 2009 ALL MR (Cri) 3761 (S.C.)

6 2016 (All MR (Cri) 3964

7 (2012) 9 SCC 734

8 AIR 2002 SC 1998

and the defence would have an opportunity to cross examine the witnesses. The suicide note indicates the reasons for committing suicide. The Applicants had instigated the deceased to take extreme step. There was harassment from the accused to the deceased. There was demand of Rs.10 Lakhs for dissolving the marriage and threat for initiating the proceedings in the Court. The charge-sheet contains all the ingredients to constitute alleged offence. The learned Sessions Judge has assigned reasons while rejecting the Applications for discharge which does not call for interference.

7. The FIR has been registered by the father of deceased on 08.02.2017 vide C.R. No.64 of 2017 for offences under Sections 306, 506 r/w Section 34 of IPC. The facts emanating from the documents on record would indicate that, the first marriage of deceased Sandeep More was dissolved by divorce. The second marriage was performed with the Applicant-Poonam More. She is the sister of Applicant-Vijay Koli. As per the version of first informant, Vijay Koli was friend of deceased Sandeep More. From 01.05.2016, Sandeep More and Poonam More were residing in rental premises at Sangavi Pune. Poonam More left the matrimonial home on 13.09.2016. The incident of suicide had occurred on 05.02.2017. The statement of other witnesses who are relatives of the deceased are similar. Suicide note was recovered from the residential premises, which reflects that the deceased was frustrated. He trusted Vijay and Kashinath Uncle apparently while performing marriage with Poonam More.

8. It is pertinent to note that, Kashinath Koli has been discharged by the trial Court vide Order dated 02.11.2018. Assuming the contents of the suicide note to be true, it is difficult to accept that it would constitute an offence of abetment to commit suicide. The statement of witnesses and the entire charge-sheet does not support the charges levelled against the Applicants. Prima facie there is no evidence to frame charge against the Applicants.

9. A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to do the act by any means of language, direct or indirect, whether it takes form of express solicitation or of hints, insinuation or encouragement. The material on record does not depict mens rea or any positive act on the part of the accused to suggest that, they have instigate the deceased in committing suicide. As per the FIR, the Accused No.1 Poonam More left the matrimonial home on 13.09.2016 and suicide was committed on 05.02.2017. Thus, at the time of incident, wife of the deceased was at her parental home for a period of about five months. There is no evidence on record to indicate that, during the said period there was any interaction between the Applicants and the deceased. It appears that, the victim was frustrated on account of his failure in the first marriage and differences with second wife. Assuming that, there was demand of alimony of Rs.10 Lakhs from the deceased, which was allegedly for dissolving the marriage, it cannot be termed as instigation to commit

suicide.

10. Abetment has been defined under Section 107 of the IPC, as follows :-

“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.”

11. Section 306 of IPC reads as follows :-

“ 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.”

12. The offence of abetment is separate and distinct offence. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment to crime. The word instigate means to provoke, incite, urge on or

bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in Section 107 of IPC. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide.

13. In the case of *Randhir Singh and Another V. State of Punjab* (supra) it was observed that, abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 of IPC.

14. In the case of *Gangula Mohan Reddy V. State of Andhra Pradesh* (supra) it is observed that, 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 suicide. 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 of 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 this act must be intended to push the deceased into such a position that he commits

suicide.

15. In the case of *Amalendu Pal @ Jhantu V. State of West Bengal* (supra) it is held that, before holding an accused guilty of an offence under Section 306 of 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 allegations of harassment without there being 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 of IPC is not sustainable. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 of IPC. Section 109 of IPC provides that, if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence.

16. In the case of *Praveen Pradhan V. State of Uttaranchal and Another* (supra) it is observed that, instigation has to be inferred from the circumstances of a particular case. No straitjacket formula can be laid

down to find out as to whether in a particular case there has been instigation which forced a person to commit suicide.

17. In the case of *Sanju Alias Sanjay Singh Sengar V. State of M.P* (supra) it was held that, presence of mens rea is necessary concomitant of instigation. The fact that, deceased committed suicide after two days of quarrel during which accused told the deceased 'to go and die' would show that, suicide was not direct result of quarrel. The charge framed against the acts under Section 306 of IPC was set aside. It was observed that, even if it is accepted that, the accused told the deceased to go and die that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite.

18. In the case of *Ramesh Kumar V. State of Chattisgarh*⁹ the three Judge Bench of apex Court had an occasion to deal with a case of similar nature. In a dispute between the husband and wife. The husband uttered "your are free to do whatever you wish and go wherever you like". Thereafter the wife committed suicide. In Paragraph 20 of the Court has examined different shades of the meaning instigation. Paragraph 20 reads as under :

" 20. 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

9 2002 SCC (Cri) 1088

effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

19. In the case of *Chitresh Kumar Chopra V. State (Govt of NCT of Delhi)*¹⁰, the Apex Court had an occasion to deal with the aspect of abetment. The Court opined that, there should be intention to provoke, incite or encourage the doing of an act by the latter.

20. Considering the aforesaid precedents and applying principles enunciated therein to the present case, I am of the opinion that, the prosecution has not made out a case to frame the charge for the aforesaid offences against the Applicants and they deserved to be discharged. The purpose of Section 227 of the Code is to ensure that, the Court should be satisfied that the accusations made against the accused is not frivolous and that there is some material for proceedings against him. If there is no legal evidence, than framing of charge would be groundless. While exercising jurisdiction under Section 227 of Cr.P.C. the Court cannot act as a post office or a mouthpiece of the prosecution, but has to consider the broad

¹⁰ (2009) 16 SCC 605

probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if the Court is conducting trial¹¹.

21. In the light of the aforesaid observations, I pass the following order :

ORDER

- (i) Criminal Revision Application Nos. 700, 701, 702, 703 of 2018 are allowed.
- (ii) The impugned common order dated 02.11.2018 passed by the learned Additional Sessions Judge, Pune rejecting the applications for discharge preferred by Applicants in Sessions Case No. 724 of 2017 are quashed and set aside and the Applicants are discharged in Sessions Case No. 724 of 2017 pending in the Sessions Court, Pune.
- (iii) Criminal Revision Applications stand disposed off.

(PRAKASH D. NAIK, J.)

¹¹ Dilawar Babu Kurane V. State of Maharashtra AIR 2002 SC 564.