



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2022

Delivered on : 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.3435 of 2019

and

Crl.M.P.(MD)Nos.1951 & 1952 of 2019

1.Murugan
2.Karuppasamy @ Karthick ... Petitioners/A1 and A2

vs.

1.The State rep.by
The Inspector of Police,
Karivalamvathanallur Police Station,
Tirunelveli District.
(In Crime No.164 of 2015.) ... 1st Respondent/Complainant
2.Stalin ... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating in S.C.No.251 of 2019 on the file of the learned Assistant Sessions Judge, Sankarankovil, Tirunelveli District and quash the same.

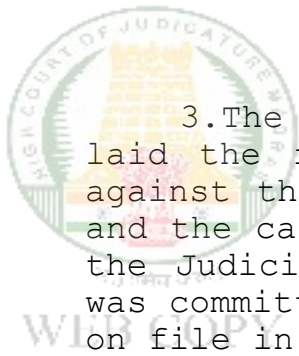
For Petitioners : Mr.V.Kathirvelu, Senior Counsel,
for Mr.Prabhu.

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl. side) for R1.
: No appearance for R2

O R D E R

The Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.C.No.251 of 2019 on the file of the learned Assistant Sessions Judge, Sankarankovil, Tirunelveli District and quash the same.

2.The petitioners are the accused 1 and 2 in S.C.No.251 of 2019 on the file of the learned Assistant Sessions Judge, Sankarankovil, Tirunelveli District. On the basis of the complaint lodged by the second respondent, FIR came to the registered in Crime No.164 of 2015 against the petitioners herein for the offence under Section 306 IPC.



3.The first respondent after completing the investigation has laid the final report under Section 173 Cr.P.C, dated 25.11.2015 against the petitioners for the same offence under Section 306 IPC and the case was taken on file in P.R.C.No.5 of 2019 on the file of the Judicial Magistrate Court, Sankarankovil. Thereafter, the case was committed to the Principal Sessions Court and the case was taken on file in S.C.No.251 of 2019 and that the same was made over to the Assistant Sessions Court, Sankarankovil and the same is pending.

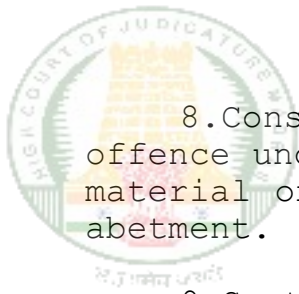
4.Admittedly, the defacto complainant is the father of the deceased Pandian and that both the accused are the friends of the deceased Pandian.

5.The case of the prosecution is that four days prior to the occurrence, the deceased Pandian was found chatting with one Muthumari, D/o.Natarajan, that the said Natarajan, after noticing the same, has warned the deceased and also informed the accused and directed them to warn the deceased, that on 30.05.2018 at about 08.20 pm, the petitioners/accused came to the house of the defacto complainant with intention to attack the defacto complainant and attacked him by saying that if the defacto complainant is killed, his son would appear, that the defacto complainant had closed the door and hence, the petitioners after abusing them in filthy language went away, that subsequently, the petitioners/accused had also gone to the Hotel, where the defacto complainant was working and asked him as to where he had concealed his son and that subsequently, when the deceased Pandian had returned after completing his mill work at about 09.30 pm, the petitioners/accused at the place near Esakkiamman Temple, Anna Nagar had harassed and attacked him and that the said Pandian unable to tolerate the humiliation caused at about 10.00 pm, he had committed suicide by hanging.

6.In the complaint, the defacto complainant has narrated all the incidents and further stated that his son Pandian had returned after attending the Mill work and at about 09.30 pm, when the said Pandian was chatting with his friends, the petitioners/accused attacked him in front of his friends and others and that unable to bear the humiliation, he had committed suicide by hanging at about 10.00 pm on that day.

7.Before entering into further discussion, it is necessary to refer Section 306 IPC, which is 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."



8.Considering the above provision, it is clear that for the offence under Section 306 IPC, it is essential that there must exist material on record to establish that the act was done on account of abetment.

9.Section 107 IPC defines the abetment and it has three clauses and if an act of a person falls within the purview of any of them, it would amount to abetment. As per Section 107 IPC, abetment is constituted by 1) instigating a person to commit an offence; or 2) engaging in a conspiracy to commit an offence; or 3) intentionally aiding a person to commit an offence.

10.It is pertinent to note that in order to proceed against a person for the offence under Section 107 IPC, it is the duty of the prosecution to prove the element of *mens rea*. To put it in short, an act of abetment may take place in one of the three ways 1) Instigation 2) Conspiracy or 3)Intentional aid. Any person can be charged with abetment only if he instigates another to do a criminal act or intentionally aids by any act or illegal omission for the doing of a thing or engages somebody with a purpose to do an illegal act.

11.It is pertinent to mention that by mere association of the accused persons in the case, who are charged for an offence of abetment of the main offender, in the absence of any material to show that there was an instigation by the petitioner or that there was any intention either in aiding or in commission of an offence committed by the accused, it cannot be said that he has committed the offence of abetment. It is well settled law that mere presence at the commission of a crime cannot amount to intentional aid, unless it was intended to have that effect.

12.The Hon'ble Supreme Court in **Arnob Manoranjan Goswamy Vs. State of Maharastra** and others reported in **2020 SCC on line SC 964**, has elaborately discussed the scope of Section 306 IPC r/w 107 IPC and the relevant passages are extracted hereunder.

"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. The Court noted that before a person may be said to have abetted the commission of suicide, they must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide."

13.It is pertinent to note that before a person may be said to have abetted the commission of suicide, they must have played an

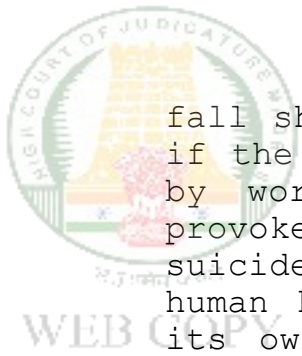


active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

14. In **Ude Singh and others Vs. State of Haryana** reported in 2019 (17) SCC 301 the Hon'ble Supreme Court expounded on the ingredients of Section 306 IPC and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision in the following words.

" 16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than



fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

15.It is pertinent to note that in case, if the prosecution proves that if the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which drives the victim to commit suicide, the accused may be held guilty of abetment of suicide.

16.The Hon'ble Supreme Court **Niranjan Singh Karam Singh Punjabi and Ors. Vs. Jitendra Bhimraj Bijja and Ors** reported in **1990 4 SCC 76**, has held that the Court is required to evaluate the materials and documents on record with a view to finding out if the facts emerging there-from, taken at their face-value disclose the existence of all the ingredients constituting the alleged offence or offences and for the limited purpose, the Court may shift the evidence as it cannot be expected even at the initial stage, to accept as gospel truth all that the prosecution states. But at that stage, the Court has to consider the material only with a view to find out, if there is ground for presuming that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to made to a conviction.

17.Bearing the above legal position in mind, let us consider the case on hand.

18.It is the specific case of the prosecution that since the deceased was found chatting with one Muthumari, her father Natarajan had warned the deceased and also directed the petitioners to warn him and that thereafter, the petitioners/accused came to the house of the defacto complainant and abused him, that thereafter, they went to the Hotel where the defacto complainant was working and they had also abused the defacto complainant and asked whereabouts of the deceased.

19.As already pointed out, after returning from the mill, when the deceased Pandian was chatting with his friends at about 09.30 p.m., the petitioners came to that place and abused and attacked the deceased in front of his friends and others and that, that was the reason advanced by the prosecution for committing suicide.

20.The learned Senior Counsel for the petitioners would submit that the entire reading of the charge sheet would show that the



petitioners had not instigated the deceased to commit suicide and that there was no *mens rea* on the part of the petitioners.

21.The learned Government Advocate (Criminal Side) would submit that the defacto complainant has given statement under Section 161 Cr.P.C reiterating the contentions raised in the complaint. According to the prosecution, the witnesses Sakthi Murugan, Vel Murugan and Mariselvam were present at the occurrence place and witnessed the occurrence.

22.As rightly contended by the learned Government Advocate (Criminal Side), the said witnesses had also given statement under Section 161 Cr.P.C reiterating the version of the defacto complainant.

23.The learned Government Advocate (Criminal Side) would submit that three eye witnesses have specifically stated in their statements that both the petitioners had beaten the deceased Pandian with their hands and also abused him.

24.The Hon'ble Supreme Court in **Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and Ors.** reported in 2019 18 SCC 191, after considering the decision of the Supreme Court in **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.** reported in 1992 Supp(1) 335 has held that exercise of powers under Section 482 Cr.P.C to quash the proceedings is an exception and not a rule and that inherent power under Section 482 Cr.P.C, though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the Section itself.

25. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition under Section 482 Cr.P.C, for quashing the criminal proceedings and that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceedings. Though there are no limits of the power of the Court under Section 482 Cr.P.C, but more the power, more due care and caution is to be exercised, while invoking this powers and the power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

26.It is pertinent to note that the Courts cannot examine the facts, evidence and materials on records to determine whether there is sufficient material on the basis of which, the case would end in a conviction but the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and that it is neither necessary nor is the Court called upon to held a full fledged enquiry or to appreciate evidence collected by



the investigating agency to find out whether it is a case of acquittal or conviction.

27. In the case on hand, a perusal of FIR, charge sheet and the statements recorded by the Investigating Officer and other materials collected during the investigation, on the basis of which, the final report has been laid, makes out a *prima facie* case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused.

28. Considering the above, this Court does not find any justification to quash the charge sheet or the proceedings against the petitioners arising out of them as the case does not fall in any of the categories recognized by the Hon'ble Supreme Court, which may justify their quashing.

29. Moreover in the case on hand, the trial has already been commenced and the prosecution has already examined 10 witnesses out of 12 witnesses cited in the final report. Hence, this Court is not inclined to interfere with the proceedings and this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

30. In the result, the Criminal Original Petition is dismissed and the learned Assistant Sessions Judge, Sankarankovil, Tirunelveli District, is directed to complete the trial and dispose of the case as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

das

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Assistant Sessions Judge, Sankarankovil,
Tirunelveli District.

2.The Inspector of Police,
Karivalamvanthanallur Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-16231[F]
dated 01/04/2022)

order made in

Crl.O.P. (MD)No.3435 of 2019

and

Crl.M.P. (MD)Nos.1951 & 1952 of 2019

31.03.2022

NA (CO)

GC (25.04.2022) 8P 5C