



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.20781 of 2021

and

Crl.M.P. (MD)No.11875 of 2021

Elaikadi Saravanan @ Pushpa Raja ...Petitioner/Accused No.1
Vs.

1.The State represented by
The Sub Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.
(Crime No.496/2021) ...1st Respondent/Complainant

2.D.Karthikeyan ...2nd Respondent/
De-facto Complainant

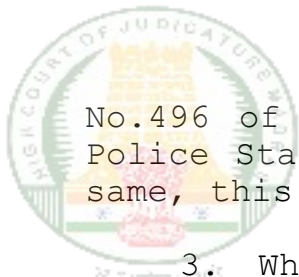
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the above first information in Crime No.496 of 2021 on the file of the first respondent police and quash the same.

For Petitioner : Mr.A.Robinson
For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor
For R2 : Mr.G.Dinesh

ORDER

Heard the learned Counsel for the petitioner, learned Additional Public Prosecutor for the first respondent and the learned Counsel for the second respondent.

2. The prosecution case is that the brother of the defacto complainant had taken from the petitioner herein a loan of Rs.5,00,000/-. The defacto complainant's brother could not clear liability in full. Under pressure from the petitioner, the deceased was made to part with the title document. Notwithstanding the same, the accused continue to put pressure on the deceased to clear the loan liability. Unable to bear the same, he consumed insecticide on 14.09.2021 and died. He had left a suicidal note implicating the accused. Based on the complaint of the defact complainant, Crime



No.496 of 2021 was registered on the file of the Karaikudi North Police Station for the offence under Section 306 IPC. To quash the same, this Criminal Original Petition has been filed.

3. When the matter was taken up for hearing, the defacto complainant as well as his mother appeared before this Court and informed the Court that the title document taken by the petitioner has since been returned to them. The second accused have gone abroad and immediately upon his arrival, it has been agreed that the property will also be reconveyed in the name of the mother of the defacto complainant. It has also been clarified that the defacto complainant's family does not owe any money to the accused. A compromise has also been entered into between the parties. The petitioner's counsel states that he has filed the same before the Registry. The defacto complainant as well as his mother categorically stated that they have no objection for quashing the impugned FIR.

4. Even though, the contestants may not have an objection for quashing the FIR, this Court cannot do so based on the strength of compromise entered into between the parties. Since the case on hand also involves an offence under Section 306 of IPC, it will have to be necessarily dealt with on merits.

5. The learned Counsel for the petitioner reiterated all the contentions set out in the memorandum of ground and he has also filed a elaborate return notes called upon this Court to quash the impugned FIR, to secure the ends of justice.

6. Per contra, the learned Additional Public Prosecutor for the first respondent submitted that no case for quashing has been made out.

7. I carefully considered the rival contentions and went through the materials on record.

8. As rightly pointed out by the learned Counsel appearing for the petitioner even according to the prosecution case, while the suicide took place on 14.09.2021, the coercive pressure exerted by the petitioner is alleged to have taken place ten days earlier. Thus there was no immediate abetment for committing suicide. The Hon'ble Supreme Court in the decision made in Crl.A.No.93 of 2019 dated 18.01.2019 (Rajesh Vs State of Haryana) held as follows:

"8.Conviction Under Section 306 Indian Penal Code is not sustainable 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. In order to bring a case within the purview of Section



306 Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

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Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted Under Section 306 Indian Penal Code. (See Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707).

9.The term instigation Under Section 107 Indian Penal Code has been explained in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367) as follows:

"16.Speaking for the three-Judge Bench in Ramesh Kumar case [MANU/SC/0654/2001 : (2001) 9 SCC 618: 2002 SCC (Cri.) 1088], 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 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 the doing of an act by the other by "goad" 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



Edn.) .

10. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (See *Praveen Pradhan v. State of Uttaranchal* : (2012) 9 SCC 734).

11. We are of the opinion that the evidence on record does not warrant conviction of the Appellant Under Section 306 Indian Penal Code. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the Appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit suicide. As the allegations against all the three Accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two Accused."

9. The accused can be prosecuted for the offence under Section 306 IPC if there are *prima facie* materials to show that the accused had an intention that the victim should die. In the case on hand, there is absolutely nothing on record to show that the accused entertained such a intention or carried out any act with that object in view. There has been no harassment or positive action proximate to the time of occurrence on the part of the accused. Since the elementary ingredients of the offence under Section 306 of IPC are absent in this case, the continuation of the impugned proceedings against the petitioner will constitute an abuse of legal process.

10. In this view of the matter, the impugned FIR is quashed. This Criminal Original Petition is allowed. The benefit of the order will enure in favour of the non-petitioning accused also. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

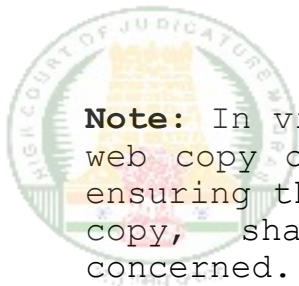
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/ /2022

Sub Assistant Registrar(CS)

Enclosed herewith Copy of the Joint Compromise Memo

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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.

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To

- 1.The Sub Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.
(Crime No.496/2021)
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.ROBINSON, Advocate (SR-713[F] dated 07/01/2022)

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RD(24.01.2022) 5P 4C