

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.1092 of 2020

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure for quash of the proceedings against the petitioner/accused in S.C.No.51 of 2019 on the file of learned I Senior Civil Judge, Vikarabad District, cognizance of which was taken for the offence under Section 306 of the Indian Penal Code alleging that the petitioner has abetted the suicide of the deceased.

2. The facts in brief as can be seen from the record available before this Court are as under:

a) The deceased along with his wife and children migrated to Tandur from Chincholli Taluq, Kalburagi District of Karnataka State for doing labour work at Jayasree Stone Polishing Unit at Old Tandur and was living in quarters of the Company. On 06.02.2017 at 3.20 PM deceased picked up quarrel with co-labourers and the deceased was arguing with them in very aggressive mood. In the meanwhile, the petitioner being owner of the Jayasree Stone Polishing Unit, came there and scolded all the labourers and advised them to concentrate on the work and

not to waste time. For the last one year, from the date of the alleged offence, the petitioner was not giving proper wages to the labourers and he used to abuse the labourers in filthy language. When the deceased has decided to leave Jayasree Stone Polishing Unit and search for another work, the petitioner has warned and threatened him as to how he would leave the company and that he will see their end.

b) By the utterances and acts of the accused, the deceased disgusted with his life and on 06.02.2017 at 3.20 PM, the deceased fell in front of running train at Road No.5 to Tandur Railway Station with an intention to commit suicide, as a result of it, he sustained multiple fracture injuries.

c) On 07.02.2017 at 10.30 AM GRP Vikarabad Police received a complaint from *de-facto* complainant, who is Deputy Superintendent, Tandur alleging that a person (deceased), who was injured on 06.02.2017 at 3.20 near Tandur Railway Station was admitted at Government Hospital, Tandur and the injured was referred to Gandhi Hospital, Secunderabad for further treatment. Based on the said complaint, a case in Crime No.11 of 2017 was registered under Section 174 of the Code of Criminal Procedure.

d) During the course of investigation, the investigating officer has recorded the statements of *de-facto* complainant, visited the scene of offence, which is Tandur Railway Station, secured the mediators, conducted scene of offence panchanama, prepared rough sketch, recorded the statements of blood relatives of the deceased, took photographs of the dead body, sent the dead body for postmortem examination and received postmortem examination report. The investigation of Police revealed that the petitioner was not paying proper wages to the labourers including the deceased and he used to abuse them in filthy language and when the deceased wanted to leave Jayasree Stone Cutting Unit, the petitioner has threatened the deceased with dire consequences and disgusted with his life, the deceased has committed suicide. Finally, the investigating agency has filed charge sheet against the petitioner-accused for the offence under Section 306 of the Indian Penal Code and the same was numbered as S.C.No. 51 of 2019 on the file of learned I Senior Civil Judge, Vikarabad District. Aggrieved by the same, the petitioner-accused has filed the present criminal petition to quash the proceedings against him in S.C.No.51 of 2019 on the file of learned I Senior Civil Judge, Vikarabad District, on the following grounds:

i) The factory of the petitioner is nearer to the railway track and the deceased being alcoholic has consumed alcohol on the day of the incident and under such circumstances the accident has taken place but the *de-facto* complainant is giving colour of a suicide.

ii) Even if the allegation of the prosecution that the petitioner is not paying salaries to the labourers is considered as true, it cannot, by any stretch of imagination, be said that there is an element of abetment by the petitioner to attract the offence under Section 306 of the Indian Penal Code.

iii) The wife of the deceased in her statement dated 07.02.2017 stated that her husband has picked up quarrel with his other co-workers and that the petitioner asked to stop the galata and get back to work but in her statement recorded on 04.11.2017, she stated that petitioner was not paying salary in proper way and changed her version.

iv) The presence of mensrea is concomitant of instigation to attract the offence under Section 306 of the Indian Penal code. The words uttered in a quarrel or on the spur of the moment, cannot be taken to be uttered with mensrea to attract the offence.

3. In spite of service of notice on respondent No.2, none appeared on behalf of respondent No.2. Heard Sri Baglekar Akash Kumar, learned counsel representing Sri Vivek Jain, learned counsel on record for the petitioner and Sri S. Ganesh, learned Assistant Public Prosecutor.

4. Now the point for determination is:

“Whether the proceedings against the petitioner-accused in S.C.No.51 of 2019 on the file of learned I Senior Civil Judge, Vikarabad District, can be quashed under Section 482 of the Code of Criminal Procedure?

5. It is alleged by the prosecution that the deceased was working as labour in the stone polishing unit at Tandur belonging to the petitioner-accused. On 06.02.2017 at 3.20 PM, when the deceased and other labourers were quarrelling among themselves, the petitioner being owner, has advised them to stop quarrelling among themselves and directed them to concentrate on the work. It is also the case of the prosecution that the petitioner never used to give proper wages and remuneration to the deceased and other labourers and on which heated exchange of discussion took place between the deceased and the petitioner and when the deceased expressed his

intention to go out of the unit and work elsewhere, the petitioner stated to have threatened the deceased that in case if the deceased leaves the company, the petitioner would see end of deceased and with the said frustration, the deceased went out of the unit and fell under the train and committed suicide.

6. On the other hand, learned counsel for the petitioner has submitted that the deceased was in a drunken condition and he has not scolded the deceased and that he is not responsible for the death of the deceased.

7. Originally on receiving the information from Government Hospital, Tandur, the Police have registered a case in Crime No.11 of 2017 under Section 174 of the Code of Criminal Procedure and proceeded with the investigation including recording statements of the *de-facto* complainant on 07.02.2017, wherein she has stated that on 06.02.2017 when her husband i.e., the deceased was quarrelling or discussing with other unit workers, the petitioner has admonished them and shouted on them as to why they were quarrelling and on which the deceased went out of the unit at 3.00 PM and fell under the train and received multiple grievous injuries and the deceased was shifted to hospital and while undergoing

treatment, he died. However, after recording the statement of the *de-facto* complainant and also other witnesses, the police have converted section of law from Section 174 of the Code of Criminal Procedure to Section 306 of the Indian Penal Code. Again wife of the deceased was examined on 08.11.2017, wherein she has stated that after admonishing by the petitioner, her husband felt bad and he went inside the residential house, where they used to stay and the petitioner has not allowed her husband to work and also scolded the deceased to leave the unit. She further stated that at 3.00 Pm the petitioner, who was at the railway station, has called her husband over phone and both of them spoke at the railway station and then her husband fell under the train and received multiple injuries. She further stated that she went to her husband, who has received grievous injuries and asked him as to why he fell under the train, the deceased stated that the petitioner asked him to leave the company or to die by falling under the train.

8. It is also submitted by the learned counsel for the petitioner that even if the petitioner has stated to have admonished the deceased to die, that does not amount to an offence under Section 306 of the Indian Penal Code, unless there is explanation as defined under Section 107 of the Indian

Penal Code and in support of his contention, learned counsel for the petitioner has relied upon an authority in **Sanju Alias Sanjay Singh Sengar v. State of M.P.**¹, wherein the Honourable Supreme Court held as follows:

“Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement

¹ (2002) 5 Supreme Court Cases 371

or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

9. Learned counsel for the petitioner has relied upon an authority in **Madan Mohan Singh v. State of Gujarat and**

another², wherein the Honourable Supreme Court held as follows:

“9. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306, IPC, much more material is required. The Courts have to be extremely careful as the main person is not available for cross-examination by the appellant/accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant/accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai Dutta Vs. State of W.B. [2005 (2) SCC 659], this Court had quashed the proceedings initiated against the accused.”

² (2010) 8 Supreme Court Cases 628

10. In the above said citation, the accused was facing an appeal, wherein the Honourable Apex Court held that in prosecution under Section 306 of the Indian Penal Code, much more material is required. In the case on hand, the trial has not yet commenced, so as to consider the evidence adduced on behalf of the prosecution.

11. Learned counsel for the petitioner has relied upon an authority in **S.G.Munia and others v. State of Gujarat and another**³, wherein the Honourable Supreme Court held as follows:

“Applying the principles laid down by the Supreme Court in the judgments referred to above and the evidence in the nature of two dying declarations which have been discussed at length in the foregoing Paragraphs, there is no hesitation in holding that as superior officers at times the juniors are reprimanded for their lapse or dereliction of duty, but that does not mean that the person who is reprimanded if feels bad and commits suicide the superior is to be punished for abetment. Many times, teachers reprimand a student for not being attentive in the class or not being upto the mark in studies and for any reason if a student is mentally weak or say very emotional or sentimental commits suicide,

³ (2002) 5 Supreme Court Cases 371

the teacher cannot be held liable for the same. Police department is a symbol of discipline. As a part of disciplinary measures even if the deceased is told something or for any reason even if there is any talk in the Head Quarters about mismanagement of the mess for the quality of food that by itself is not sufficient to draw an inference that the same was with the intention to harass the deceased and lead him to commission of suicide, and therefore, continuation of prosecution of the petitioners who are police officials will amount to abuse of process of law and will lead to serious miscarriage of justice. Judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the person needlessly. In the present case, the complaint on the basis of which the process has been issued can be said to be filed as vendetta to harass the accused persons needlessly, and, therefore, both the impugned orders deserve to be quashed and set aside and the accused persons be discharged from the prosecution in exercise of powers conferred under Section 482 of the Code by quashing Criminal Complaint being Inquiry Case No. 72 of 1999 arising out of M. Case No. 21 of 1999 at

Bhuj City Police Station, and hence, the petition deserves to be allowed.”

12. The wife of the deceased was examined initially at the time of registering the crime under Section 174 of the Code of Criminal Procedure and subsequently when the section was altered to Section 306 of the Indian Penal Code. It is true that there is variation in the statement of the wife of the deceased and in fact, she has improved her version making certain allegations against the petitioner connecting him to the offence under Section 306 of the Indian Penal Code. However, while considering the application under Section 482 of the Criminal Procedure Code, this Court cannot conclude that because there are improvements in the version of the wife of the deceased, the case against the petitioner will not sustain.

13. However, the statements of other witnesses would go to show that the petitioner has scolded and admonished the deceased and other labourers when they were quarrelling with each other. The allegation against the petitioner is that he has not been paying proper wages and thereby all the labourers including the deceased were not happy and during that period, the petitioner stated to have chastised/admonished and there was heated exchange of discussion took place between them.

During the said period, according to the wife of the deceased, the petitioner has asked the deceased to die. It is also the statement of the wife of the deceased that just before committing suicide, near railway station, discussion took place between petitioner and deceased and immediately after the discussion, the deceased has committed suicide.

14. The other important aspect to be considered is, as per the statement of wife of the deceased, she has asked her husband i.e., the deceased as to why he has gone to the extent of falling under the train, for which the deceased has stated that because of utterances made by the petitioner and since the petitioner asked him to die, he fell under the train. Therefore, there is clear nexus between the death of the deceased and to that of the allegations of admonishing or chastising the deceased made by the petitioner.

15. The statement given by the deceased to his wife is the last statement, which explains the circumstances leading to his death. Hence, the statement of the deceased, may also be considered as dying declaration under Section 32 of the Indian Evidence Act.

16. All the issues raised by the prosecution, which are denied by the petitioner, have to be dealt with or tried before the trial Court in order to reach a conclusion, as to whether abetment was really there as defined under Section 107 of the Indian Penal Code. Therefore, since there is a strong *prima-facie* case against the petitioner, this Court is not inclined to consider the petition favourable to that of the petitioner. Therefore, the criminal petition is liable to be dismissed.

17. Accordingly, the Criminal Petition is dismissed. The trial Court is directed to proceed with the case against the petitioners in S.C.No.51 of 2019 on the file of learned I Senior Civil Judge, Vikarabad District on merits, uninfluenced by the observations and comments made by this Court in this order.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

Date: 19.10.2022
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DR. D.NAGARJUN, J