

**cccTHE HONOURABLE DR. JUSTICE G. RADHA RANI**

**Criminal Revision Case No.536 of 2020**

**ORDER:**

This Criminal Revision Case is filed by the petitioner-de facto complainant aggrieved by the order dated 14.09.2016 passed in Crl.M.P. No.121 of 2016 in S.C. No.388 of 2015 by the Assistant Sessions Judge, Khammam, in allowing the discharge petition filed by the respondent No.1-Accused No.2.

2. The case of the prosecution in brief was that on 27.09.2014 at 11.00 AM, the de facto complainant (father of the deceased No.1) lodged a report before the Police, Khammam I-Town Police Station, stating that he got married his daughter with A1 on 15.11.2007. Out of the said marriage, they were having a son, aged about 3 years. His daughter and son-in-law were also living with them in the same house at Ricca Bazar, Khammam. His son-in-law (A1) was working as an Urban Mandal Revenue Inspector. Due to work load, he engaged one Sunkara Ravi - A2 to look after his personal works. A2 used to drop and pick up A1 for his duty. A2 made friendship with A1 and got addicted him to liquor and other bad vices and got developed illegal intimacy with one Priyanka – A3. At the instigation of A2, A1 started harassing his daughter. A1 was not coming home since

05.09.2014. On 26.09.2014, at about 10.00 PM, after having dinner the complainant and his wife slept in their room. His daughter and his grandson slept in another room. On 27.09.2014 at about 7.30 AM or 8.00 AM, as his daughter or grandson did not come outside, his wife went and observed from the window and found his daughter hanging to a ceiling fan and grandson lying on the bed with froth from his mouth.

3. Basing on the said report, the Inspector of Police registered a case vide Crime No.412 of 2014 under Sections 498-A, 302, 306 read with 109 IPC and issued FIR. After conducting investigation, the Inspector of Police deleted Section 302 IPC and filed charge sheet against A1 to A3 for the offences under Sections 498-A, 306 IPC and Section 3 of the Dowry Prohibition Act (for short 'DP Act').

4. The respondent No.1-A2 filed a discharge petition vide Crl.M.P. No.121 of 2016 before the court below. The Assistant Sessions Judge, Khammam observing that the material on record would not reveal that A2 played any active role in abetting the deceased No.1 to commit suicide and admittedly there was no suicide note of the deceased No.1 and only because of the reason A2 facilitated illicit intimacy between A1 and A3, he could not be said to have abetted the suicide of deceased No.1, discharged the respondent No.1-A2 from the case.

5. Aggrieved by the said discharge of A2, the de facto complainant preferred this revision contending that the trial court ought not to have discharged A2 for the offences under Sections 498-A, 306 IPC and Section 3 of the Dowry Prohibition Act. As per the material on record, there was *prima facie* accusation to frame the charges against A2. The name of A2 also would find place in the FIR and there were specific allegations against him that A1 harassed and ill-treated the deceased No.1 with the active collusion and support of A2. There were serious allegations against A2 that he was the kingpin, who facilitated and aided A1 to develop illicit intimacy with A3, which resulted in harassment and ill-treatment against the deceased No.1, who was forced to commit suicide, after killing her own son. The trial court ought to have seen that A1 to A3 were arrested in the same place i.e. at the house belonging to LW.9. The trial court ought to have observed that discharging A2 without giving opportunity to the prosecution to adduce evidence during the trial would result in gross miscarriage of justice. There were specific allegations against A2 that he was a private assistant of A1 and he was the one who requested LW.9 to let out the single bed room house to A1 and A3 stating that they were newly married couple. The trial court should have observed that though there was no direct abetment of A2 in forcing the deceased No.1 to commit suicide, he was indirectly involved in it. All the accused shared common intention

and also conspiracy in harassing and ill-treating the deceased No.1 which had driven her to commit suicide. Without conducting full trial, it was not right to discharge A2. As per Section 161 Cr.P.C. statements of the witnesses, A2 used to pick up and drop A1 at the rented house regularly where A1 and A3 were leading extra marital life and prayed to allow the revision case by setting aside the impugned order of the court below.

6. Heard learned counsel for the petitioner-de facto complainant and the learned counsel for the respondent No.1 – A2.

7. Learned counsel for the respondent No.1-A2 submitted that the revision petition was filed with a delay of more than four years. The revision is barred by limitation. Under Article 131 of the Limitation Act, the revision had to be preferred within a period of ninety (90) days. Admittedly, the petitioner had not preferred any application for delay condonation, as such revision petition itself was not maintainable and prayed to dismiss the revision on the said ground. He relied upon the judgment of the Bombay High Court in **Praful v. Abdul Sameer and another**<sup>1</sup>.

8. Learned counsel for the revision petitioner-de facto complainant, on the other hand, contended that the petitioner was not made as a party to the

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<sup>1</sup> 2011 SCC OnLine Bom 368

discharge petition filed by A2, as such, the petitioner was not aware of the discharge of A2. The petitioner came to know about it only after receipt of notice in Crl.R.C. No.297 of 2020 filed by A3 against dismissal of her discharge petition in the month of March, 2020. Thereafter, lockdown started due to Covid-19 pandemic. The petitioner was a senior citizen. Delay also occurred in getting the certified copies of the relevant material from the trial court due to non-functioning of the courts properly. No separate application for condonation of delay need to be filed. The petitioner explained the reasons for the delay in the criminal revision case itself. Considering the same only, the criminal revision case was numbered and relied upon the judgment of the High Court of A.P. in **Smt. Sukul Yashoda v. State of A.P., rep. by Principal Secretary, Revenue Department, Amaravati and others**<sup>2</sup>, wherein it was held that:

“The question of condonation of delay will not arise if a person is not a party to the original proceedings. The issue of condonation of delay etc., is not very material in the opinion of this Court.”

9. Considering the rival submissions of both the learned counsel, though under Article 131 of the Limitation Act, a revision should be preferred within ninety (90) days, under the Code of Criminal Procedure, as the petitioner is not a party to the discharge petition filed by A2, and as per his contention, he came to know about the discharge of A2 only after

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<sup>2</sup> 2022 (6) ALT 293 (AP)

receipt of notice in Crl.R.C. No.297 of 2020 in March, 2020 filed by A3 and considering the submissions of the learned counsel for the revision petitioner that the pandemic started and lockdown was in force and the revision petitioner had mentioned the said reasons while filing the criminal revision case itself, it is considered that the date of knowledge of the petitioner itself is material on the aspect of delay in filing the revision. This Court does not find any merit in the contention of the learned counsel for the respondent No.1-A2 as to the maintainability of the revision on the ground that it was barred by limitation.

**10.** Coming to the merits of the case, on a perusal of the record, the charges alleged against the respondent No.1-A2 are for the offences under Sections 498-A, 306 IPC and Section 3 of the Dowry Prohibition Act.

**11.** Section 498-A IPC is pertaining to cruelty or harassment by the husband or relatives of the husband. The same is not applicable to the respondent No.1-A2, who is alleged to be a private assistant of A1 (husband of deceased No.1).

**12.** Section 3 of DP Act is pertaining to demand of dowry and the same is also not applicable to the respondent No.1-A2 as there were no allegations against him in the said regard.

13. The only other charge against the respondent No.1-A2 is under Section 306 IPC. The learned counsel for the respondent No.1-A2 relied upon the judgment of the Hon'ble Apex Court in **M. Mohan v. State represented by the Deputy Superintendent of Police**<sup>3</sup>, wherein it was held that:

"36. We would like to deal with the concept of 'abetment'. Section 306 of the Code deals with 'abetment of suicide' which reads as under:

"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."

37. The word 'suicide' in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. 'Sui' means 'self' and 'cide' means 'killing', thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

44. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009 (16) SCC 605, had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

45. 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 sustained.

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<sup>3</sup> (2011) 3 SCC 626

46. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 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 have been intended to push the deceased into such a position that he/she committed suicide.”

14. Learned counsel for the respondent No.1-A2 also relied upon the judgment of the Hon’ble Apex Court in **Gangula Mohan Reddy v. State of Andhra Pradesh**<sup>4</sup>, wherein it was held 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 sustained. 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 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 have been intended to push the deceased into such a position that he committed suicide.”

15. The father of the deceased No.1 lodged the complaint stating that his son-in-law Rasheed (A1) and his friend Sunkara Ravi (A2) were responsible for the death of his daughter. His son-in-law with the friendship of A2 was addicted to alcohol and was having illegal relationship with a lady introduced by A2 and was residing with her and was harassing his daughter physically and mentally that he would marry that lady. Unable to bear such torture, his daughter lost interest on life and

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<sup>4</sup> (2010) 1 SCC 750

gave poison to her son and hanged herself to the ceiling fan in the house and died.

**16.** LW.8 is a circumstantial witness who stated that he saw A1 staying with a lady in Indira Nagar, behind Kalanikethan Bazar. One day he asked A2 as to who was that lady with whom A1 was staying, then A2 told him that since there were disputes in the house of A1, he was staying with that lady. He thought of informing the matter to the complainant, but due to pressure of work, forgot to inform the same. Later, he came to know that A1 was harassing his wife due to his illegal relationship with that lady.

**17.** LW.9 was the house owner where A1 and A3 resided together. LW.9 stated that A2 approached her and stated that he required a rented house for his officer, who was newly married and paid her advance on 04.09.2014. On the next day i.e. on 05.09.2014, A2 along with another man and a lady came and joined as tenants and when she asked the name of that lady, she stated her name as Priyanka, native of Nandigama and her husband was native of Madhira village and he had three buildings in Madhira and also told that her husband was working in Irrigation department. LW.9 further stated that A2 used to take A1 on bike and drop him at home. On 28.09.2014, while reading the newspaper, she came to know that the name of the tenant of her house was Shaik Rasheed and he

was having illegal relationship with that lady and was harassing his wife physically and mentally.

**18.** As observed by the Hon'ble Apex Court in **S.S. Chheena v. Vijay Kumar Mahajan and another**<sup>5</sup> on the aspect that in order to constitute the offence under Section 306 IPC, there should be abetment to commit a person to suicide and abetment is defined under Section 107 IPC. To constitute abetment, there must be either instigation of any person to do that thing or engage with one or more other persons in conspiracy for doing the act or illegal omission in pursuance of that conspiracy or intentional aid by any act or illegal omission, the doing of that thing and while referring to its earlier judgments in **State of West Bengal v. Orilal Jaiswal**<sup>6</sup> cautioned that:

“..the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

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<sup>5</sup> 2020 (12) SCC 190

<sup>6</sup> 1994 (1) SCC 73

19. It also referred to its earlier judgment in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**<sup>7</sup>, and held that:

“This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

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 sustained. 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 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

20. Even as per the charge sheet, A2 had never come in contact with the deceased No.1. There must be a positive act on the part of the accused to instigate or aid in committing suicide. It also involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. There has to be a clear *mens rea* to commit the offence. The contents of charge sheet or the 161 Cr.P.C. statements of LWs.8 and 9 would not

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<sup>7</sup> 2009 (16) SCC 605

reveal that A2 played active role or instigated or aided the deceased No.1 in committing suicide.

21. The learned counsel for the de facto complainant relied upon the judgment of the Hon'ble Apex Court in **M.E. Sivalinga Murthy v. CBI, Bangalore**<sup>8</sup> wherein it was held that:

“The defence of the accused cannot be looked into at the stage of discharge. The accused has no right to produce any document at that stage. The court must, without making a roving enquiry into the pros and cons, consider the broad probabilities, the total effect of the materials before it, any basic infirmities appearing in the case etc. Probative value of material on record cannot be gone into. Material brought on record by prosecution has to be accepted as true. Existence of some material to entertain strong suspicion is essential to draw up a charge and refuse to discharge accused.”

22. He also relied upon the judgment of the Hon'ble Apex Court in **Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy and others**<sup>9</sup>, wherein it was held that:

“The High courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in *State of Haryana Vs. Bhajan Lal* [1992 Supp (1) SCC 335].

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<sup>8</sup> 2020 (2) SCC 768

<sup>9</sup> 2011 (12) SCC 437

It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath to be verified in full and materials put forth in the charge sheet ought to be taken note of as a whole before arriving any conclusion. It is the material concluded during the investigation and evidence led in court which decides the fate of the accused persons.”

23. He further relied upon the judgment of the Hon’ble Apex Court in **Priti Saraf and Ors. v. State of NCT, Delhi and Ors.**<sup>10</sup> on the aspect that:

“Whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 Cr.P.C. for quashing such proceedings.”

24. He also relied upon the judgment of the Hon’ble Apex Court in **Dinesh Tiwari v. State of U.P.**<sup>11</sup>, wherein it was held that:

“19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material

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<sup>10</sup> AIR 2021 SC 1531

<sup>11</sup> 2014 (13) SCC 137

on record and the facts would be compatible with the innocence of the accused or not.”

25. He also relied upon the judgment of the Hon’ble Apex Court in **Palwinder Singh v. Balwinder Singh and Ors.**<sup>12</sup>, wherein it was held that:

“Jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time.”

26. He also relied upon the judgment of the **State of Rajasthan v. Ashok Kumar Kashyap**<sup>13</sup>, wherein it was held that:

“It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.... At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.”

27. The Hon’ble Apex Court in **Amith Kapor v. Ramesh Chander and another**<sup>14</sup> held that:

“The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of

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<sup>12</sup> AIR 2009 SC 887

<sup>13</sup> 2021 (2) MLJ CrI.471

<sup>14</sup> 2012 (9) SCC 460

the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

**28.** The facts of the case would disclose that A1 engaged A2 for his personal work and had taken sim in the name of A2 and was using the same for his personal purposes and was using A2 for dropping and picking him. The other allegation against A2 was that he approached LW.9 and had taken the house on rent stating that the said portion was required for his officer, whose marriage was performed recently and on the next day A2 came along with A1 and A3, who occupied the rented portion and that he used to drop A1 at the said place. Other than this, there were no other allegations against the respondent No.1-A2 to show that he abetted A1 in causing harassment to the deceased No.1.

**29.** The contention of the learned counsel for the petitioner-de facto complainant that the respondent No.1-A2 though directly had not forced the deceased to commit suicide, he indirectly did it, has no force as the same would not constitute the offence under Section 306 IPC. As such,

this court does not find any merit in the contention of the learned counsel for the petitioner-de facto complainant. The citations relied by him are not applicable to the facts of this case. It would be a travesty of justice to compel the respondent No.1-A2 to face the criminal trial without any material to frame charges for the offences under Sections 498-A, 306 IPC and Section 3 of the DP Act.

**30.** Hence, this Court does not find any merit in the contention of the learned counsel for the revision petitioner-de facto complainant to frame charges against the respondent No.1-A2 and to set aside the orders of the trial court in dismissing the discharge petition against A2.

**31.** In the result, the Criminal Revision Case is dismissed confirming the order dated 14.09.2016 passed in CrI.M.P. No.121 of 2016 in S.C.No.388 of 2015 by the Assistant Sessions Judge, Khammam, in allowing the discharge petition filed by respondent No.1 – A2.

**32.** As a sequel, miscellaneous petitions pending if any, shall stand closed.

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**Dr. G.RADHA RANI, J**

**December 09, 2022**  
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