

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.1156 of 2022(O&M)

Date of Decision: August 31, 2022

Rajan Bhardwaj

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.R.S.Rai, Senior Advocate assisted by
Mr.Farhad Kohli, Advocate for the petitioner.

Mr.Saurabh Girdhar, AAG, Haryana.

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HARINDER SINGH SIDHU, J.

By filing the present Revision, the petitioner has challenged the order dated 23.03.2022 passed by Ld. Additional Sessions Judge, Gurugram, whereby, charges under Section 306 read with Section 34 of the Indian Penal Code have been framed against him.

FIR No.464 dated 09.10.2019 under Sections 306/34 IPC was registered on the complaint of Anupam Dutt r/o B4-802 Unitech The Residences, Sector-33, Gurugram. He informed the Police that his younger brother Neeraj Dutt resident of Tulip Voilet B3-704 had committed suicide. On getting information, the complainant and others rushed to his house where security guard told them that Neeraj Dutt had committed suicide by hanging himself on the 14th floor. He had left a suicide note which blames his wife (Priyanka) and Rajan Bhardwaj (petitioner) for his suicide. The suicide note was also shown to the complainant, wherein, he had blamed his

wife and the petitioner for having an extra marital affair and making his life (that of the deceased) miserable as a reason for committing suicide.

On the basis of aforesaid, the Police registered the FIR on 09.10.2019 (Annexure P1) against the petitioner and Priyanka, wife of the deceased. However, Priyanka committed suicide on 15.11.2019. The Police filed charge-sheet against the petitioner, wherein, the Ld.Trial Court framed charges against him. Hence, this petition.

Mr.Rai, Ld. Senior Counsel for the petitioner states that the petitioner is a Commercial Pilot, associated with Air India since 2009. His wife is a homemaker and they are blessed with two daughters, aged about 24 and 14 years. False allegations have been levelled against the petitioner in the FIR. The petitioner has nothing to do with the alleged crime, except that he was a family friend of the deceased and his family. The deceased Neeraj Dutt and Priyanka were in love with each other. They solemnised marriage on 12.12.2012. Soon after the marriage, Neeraj Dutt started beating Priyanka after consuming liquor. Priyanka continued to suffer and bear with it in the hope that he would mend his ways. When the things did not improve, the couple started living separately w.e.f. 02.05.2018.

Later, with the intervention of the well-wishers, the couple entered into a Memorandum of Understanding to get divorce with mutual consent. A Petition under Section 13-B of the Hindu Marriage Act bearing No.HMS/698/2019 was filed in the Court at Gurugram along with their respective affidavits dated 23.05.2019 (Annexure P4). The next date was 26.11.2019 for recording the statement for the second motion. It is stated that before that date, the deceased harassed Priyanka and threatened her on

phone and through Whatsapp that he was performing second marriage but would not allow her to perform marriage and that he would upload her objectionable pictures on social media and would tarnish her image. He demanded Rs.10 lacs if she wanted him not to do so. Regarding this incident, Priyanka submitted Complaint dated 08.07.2019 at Police Station Kherkadaula, Gurugram (Annexure-P5). Priyanka also moved an application withdrawing her consent in the petition under Section 13-B of the Hindu Marriage Act (Annexure P6). The petition was dismissed on 04.10.2019 (Annexure P7).

Mr.Rai has argued that there is no material against the petitioner except the alleged suicide note. In the suicide note it is alleged that the petitioner was having extra marital affair with Priyanka, wife of the deceased. They had made life hell for him. Even if all that as alleged in the suicide note is taken to be true, the offence under Section 306 IPC is not made out. He argued that admittedly, the deceased and Priyanka had decided to part ways by filing petition under Section 13-B of the Hindu Marriage Act. She was living separately from the deceased. It is argued that the Trial Court without going into the material collected by the Police, framed the charge against the petitioner in a mechanical way. Further, there is absolutely no material that there was any contact between the petitioner and the deceased. In the absence thereof, there is no question of any threat and consequential abetment.

He argued that a totally false case had been made out against the petitioner and co-accused Priyanka. Priyanka, the co-accused could not bear the burden of false case and thus, committed suicide on 15.11.2019

during the investigation of the case.

The alleged suicide note reads :

“Please do not trouble Mummy and Papa.

03.10.2019

Priyanka and Rajan has made my life a living hell. What is the point of living when you can't feel alive. To hide their affair, they will keep on spoiling my and my family name. So it is better to end my live. Just inform them. Please do not harass Mummy and Papa. Rajan Bhardwaj Phone No.9312444986. Priyanka ka phone number – I don't have. Rajan Bhardwaj given her new number. Reason to end my life is Rajan Bhardwaj and Priyanka only. From the past 15 days I am planning. I even thought what will happen to family will go through when they will know that I killed myself. I was a strong man never thought I will do this. But I cannot face more public humiliation and character assassination. And Rajan Bhardwaj and my unfaithful wife Priyanka will not stop. Every second day I come to know that Rajan Bhardwaj and Priyanka are plotting something against me. They are also tarnishing image of my innocent mother. My mother is a very simple lady. She has never done anything wrong in her life. So enough is enough I am ending my life.

I am ending my life because there is no reason to live. From the past 1 year my wife Priyanka and Rajan Bhardwaj have made my life hell. They are having extra-marital affair. All my friends and colleagues make fun of me. In May this year Priyanka agreed to file divorce on mutual consent. After the divorce was filed a ray of hope came in my life. Within a month I found a nice girl also and we decided to get married after 26th November when divorce will get final. (Sorry I am not mentioning her name because I don't want to spoil her life).

But Priyanka and Rajan Bhardwaj took her pictures from my facebook account and filed a false complaint in Sector 88 Police station. After investigation the Police also found all allegations false on me. But because they submitted pictures of that girl in the Police Station she had no problem but when her parents came to know about this my relationship with her also ended. And now Priyanka has filed a petition xxxx she does not want divorce. To maintain their affair they will keep on targeting me. The reason I am ending my life is Rajan Bhardwaj and Priyanka xxxx.

The reason that there difference in date on the 2 letters, because every day I tried different methods but failed. The day I am dead that should be considered the final day. And the reason one letter is slightly damaged because every I take the 2 letters out and put xxxx again because I don't want my maid to see it.”

The question is whether on considering the suicide note and the other material available on record a prima facie case for alleged commission of offence punishable under section 306 of the IPC is made out against the petitioner?

Section 306 of the IPC 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.”

Section 107 of the IPC reads as under:-

“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 persons in any conspiracy for the doing of that thing, if any 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.”

It is well settled that to constitute the offence of abetment of suicide the person who is alleged to have abetted the commission of suicide must have played an active role by an act of instigation to facilitate the commission of suicide. There has to be a clear mens rea to commit an offence. There ought to be an active or direct act leading the deceased to commit suicide, being left with no option.

In M. Mohan vs. State Represented by the Deputy Superintendent of Police, (2011)3 SCC 626, the Supreme Court observed as under:

“44. This Court in Chitresh Kumar Chopra vs. 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.

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, Indian Penal Code 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 seeking no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

47. In V.P. Shrivastava vs. Indian Explosives Limited and others, (2010) 10 SCC 361, this Court has held that when prima facie no case is made out against the accused, then the High Court ought to have exercised the jurisdiction under Section 482 of the Criminal Procedure Code and quashed the complaint.”

In Gurcharan Singh vs State of Punjab, 2017(1) RCR (Criminal) 118, it was observed as under:-

“22. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of

Section 306 I.P.C. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 I.P.C., thus criminalises the sustained incitement for suicide.

30. That the intention of the legislature is that in order to convict a person under Section 306 I.P.C., there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in S.S. Cheema v. Vijay Kumar Mahajan 2010(4) RCR (Criminal) 66 : 2010(4) Recent Apex Judgments (R.A.J.) 629 : (2010) 12 SCC 190.”

In Shabbir Hussain vs. State of Madhya Pradesh and others, 2021 SCC OnLine SC 743 the Hon'ble Supreme Court held that a mere act of alleged harassment would not bring the case within Section 306 IPC.

“3. Learned counsel for the petitioner submitted that the High Court committed an error in allowing the Criminal Revision, especially after 10 witnesses had already been examined. He referred to the suicide notes that were written by the deceased Firoz Khan, to support his submissions that Firoz was harassed by respondent Nos. 2 to 4, due to which he took his own life. He argued that abetment of the offence of suicide by respondent Nos. 2 to 4 is prima facie made out as the harassment by respondent Nos. 2 to 4 facilitated the act of suicide by the deceased.

4. In order to bring a case within the provision of Section 306 IPC, 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 instigating or by doing a certain act to facilitate the commission of suicide.

5. Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal, (2010) 1 SCC 707].

6. Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605].

7. In the instant case, the allegations against Respondent Nos. 2 and 4 is that they harassed the deceased. There is no other material on record which indicates abetment. The High court did not commit any error in allowing the Criminal Revision.”

The allegations in the suicide note primarily are:

- (i) That the petitioner and Priyanka (wife of the deceased) were having extra-marital affair. They had made his (deceased's) life hell.
- (ii) That he could not face more public humiliation and character assassination.
- (iii) That every second day he came to know that petitioner and Priyanka were plotting something against him.
- (iv) That they were also tarnishing image of his innocent mother.
- (v) That in May, 2021 Priyanka agreed to file divorce on mutual consent, but later she filed a petition that she does not want divorce.
- (vi) That the deceased had decided to get married to a girl

whom he met and was to his liking, after finalization of the divorce. Priyanka and petitioner took her pictures from his facebook account and filed a false complaint in Sector-88 Police station which after investigation was found false. Because of this his relationship with the girl ended.

(vii) That to maintain their affair, the petitioner and Priyanka would keep on targeting him. Petitioner and Priyanka were responsible for his death.

From none of these allegations can it be discerned that the petitioner and Priyanka intended to provoke, incite or encourage the deceased to commit suicide or that they intended to push the deceased into such a state where he was compelled to commit suicide. No mens rea in that regard is discernible. Nor can it be said that by these acts they had left the deceased with no option but to commit suicide.

Other than what is stated in the suicide note there is no material in the challan indicating that Priyanka and petitioner had stolen pictures of the girl, with whom the deceased intended to get married, from facebook account of the deceased and that they had filed a complaint which after investigation was found false.

Further apart from the alleged extra marital relations of Priyanka and petitioner no other act whereby they had made the life of the deceased hell or by which they had tarnished the image of his mother has been specifically referred to.

In somewhat similar circumstances, the Delhi High Court in **Reena v. State of NCT Delhi 2020 CrI. Rev.P.328 of 2015**, after

examining the contents of the suicide note and looking at the material on record, held that there was no instigation, incitement, goading or provocation from the petitioner, who was living separately from the deceased at a far off place for last 3 months. Hence, the charges against the petitioners were quashed. The relevant observations are:

“21. A plain reading of the suicide note would clearly show that the deceased was in great stress due to his matrimonial discord with the petitioner and was depressed. Petitioner left the company of the deceased on 28.06.2010, much prior to his committing suicide. It seems his efforts to bring her back failed which led to frustration. It also appears that the deceased owed money to certain people. Reading of the suicide note suggests that such a note is not the handiwork of a man with a sound mind and sense. He appears to be 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 guilty. The instigation is to goad, urge forward, provoke, incite or encourage to do an “act.”

22. The present case is not the one where the petitioner had by her acts or omissions or by a continuous course of conduct created such circumstances that the deceased was left with no option except to commit suicide in which case an instigation may have been inferred.

One has to analyse and examine the contents of the suicide note to find out whether it contains any incriminating information in the nature of instigation, provocation, forcing the victim to

commit suicide.

23. It is very pertinent to mention that the petitioner had left the company of the deceased on 28.06.2010 and he committed suicide on 27.09.2010 i.e. after three months of the separation between them, so one more aspect of the case is that there was no live and proximate link between the acts complained of and the suicide.”

What appears is that the relations between Priyanka and the deceased were strained. They were living separately. They had filed a petition for divorce by mutual consent which Priyanka later withdrew. This frustrated the plans of the deceased to marry a girl of his choice after finalization of the divorce. Also the extra-marital relationship between the petitioner and Priyanka disturbed him.

It is unfortunate that the deceased committed suicide. But his suicide and the registration of the case had another tragic fallout - the suicide on 15.11.2019 by co-accused Priyanka - the wife of the deceased.

Accordingly this petition is allowed. The impugned order dated 23.03.3022 framing charges against the petitioner is quashed. The petitioner is discharged.

August 31, 2022

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No