

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

252

CRM-M-39050-2021
Decided on : 07.04.2022

Lukesh Goel and others

. . . Petitioners

Versus

State of Punjab and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Manu K. Bhandari, Advocate
for the petitioners.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Saajan Singla, Advocate
for respondent No. 2-complainant.

Mr. Parveen Dahiya, Advocate
for Jiya Goel, daughter of Meenakshi Goyal, respondent No. 2.

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 323 dated 04.09.2021 under Sections 306 and 34 of the Indian Penal Code, 1860 registered at Police Station Kotwali, District Patiala (Annexure P-1) and all subsequent proceedings arising on the basis of the compromise.

Learned counsel for the petitioners as well as respondent No. 2 and also the counsel appearing for Jiya Goel, major daughter of the deceased Ritesh Goyal have submitted that the matter has been compromised and all the parties have jointly prayed that the present petition be allowed and the FIR in question be quashed.

On 21.09.2021, this Court was pleased to pass the following

order:-

“This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.323 dated 04.09.2021 registered under Sections 306 and 34 of the Indian Penal Code, 1860 at Police Station Kotwali, Patiala (Annexure P-3) and all the consequential proceedings arising therefrom on the basis of compromise/affidavit dated 08.09.2021 (Annexure P-4).

Learned counsel for the petitioners has relied upon the judgment dated 22.07.2019 passed by the Coordinate Bench of this Court in CRM-13164-2019 in/and CRA-S-3473-SB-2018 titled Swati Rohtagi and another Vs. State of Haryana, to contend that even the proceedings under Section 306 of IPC on the basis of compromise be culminated.

Notice of motion for 20.12.2021.

On asking of the Court, Mr. Saurav Khurana, Deputy Advocate General, Punjab appears and accepts notice on behalf of the respondent-State and Mr. Saajan Singla, Advocate appears on behalf of respondent No.2.

The parties are directed to appear before the Illaqa Magistrate/trial Court for recording their statements qua compromise within a period of one month.

The Illaqa Magistrate/trial Court is directed to submit a report on or before the next date of hearing containing the following information:-

- 1. Number of persons arrayed as accused.*
- 2. Whether any accused is proclaimed offender?*
- 3. Whether the compromise is genuine, voluntary and without any coercion or undue influence?*
- 4. Whether the accused persons are involved in any other FIR or not?*
- 5. The trial Court is also directed to record the*

statement of the Investigating Officer as to how many victims/complainants are there in the FIR.”

In pursuance of the said order, a report has been submitted by the Chief Judicial Magistrate, Patiala to the Registrar (General) of this Court. The relevant portion of the said report is reproduced hereinbelow:-

“5. Point wise report submitted as under:

- 1. As per statement of ASI Balwinder Singh No.1645 Posted at Police Station Kotwali Patiala, FIR was registered against four accused persons namely Lokesh Goyal, Navita Goyal, Neelam Gupta and Manish Mittal.*
- 2. As per statement of ASI Balwinder Singh No.1645 Posted at Police Station Kotwali Patiala, out of four accused persons, none of them is proclaimed person.*
- 3. In view of the statements of the parties i.e. complainant and four accused, it is found that compromise arrived at between the parties is genuine, voluntary and a result of their own free will without any pressure, coercion or undue influence from any quarter. The compromise has been arrived at with an aim to put an end to the ensuing rivalry between the parties.*
- 4. As per statement of ASI Balwinder Singh No.1645 Posted at Police Station Kotwali Patiala, none of accused persons is involved in any other FIR except the present FIR at Police Station Kotwali,*

Patiala.

5. Statement of investigating officer ASI Balwinder Singh No.1645 has recorded on 26.10.2021, who stated that there is only one complainant/victim namely Minakshi Goyal wife of deceased Ritesh Goyal in the present case.

Report is submitted for your honour's kind perusal.”

In the present case, the deceased have two daughters, one of whom i.e. Jiya Goel is major and even the said Jiya Goel has given an affidavit to the effect that she has no objection in case the FIR is quashed. The original affidavit is taken on record as Mark-A. The relevant portion of the said affidavit is reproduced hereinbelow:-

Affidavit of Jia Goyal, aged about 21 years daughter of Late Sh. Ritesh Goyal, H.No.100, Opp. Mahindra College, Dhillon Colony, Patiala, Punjab.

I, the above noted deponent, do hereby solemnly affirm and declare on oath as under:

- 1. That the deponent is the daughter of late Sh. Ritesh Goyal.*
- 2. That unfortunately the father of the deponent committed suicide on 03/09/2021.*
- 3. That the mother of the deponent got registered an FIR No. 323 dated 03/09/2021 under section 306 IPC and 34 IPC at Police Station Kotwali Patiala, against Lukesh Goyal Navita Goyal Neelam Gupta and Manish Mittal*
- 4. That after the registration of the FIR settlement*

came to be arrived at between the mother of the deponent and the accused persons.

- 5. That the accused persons are close relatives of the deponent and settlement has been arrived at for the welfare of the deponent and the same is totally acceptable to the deponent.*
- 6. That the deponent is executing the present affidavit without any pressure or coercion from any side and the same is being executed with the free will of the deponent.*
- 7. That the deponent has no objection if the FIR No. 323 under sections 306 and 34 IPC, registered against Lukesh Goyal Navita Goyal Neelam Gupta Manish Mittal s is quashed by the Hon'ble court.*
- 8. The deponent has attached a copy of the Adhaar card as proof of residence, along with the affidavit.*

Sd/-

Place: Chandigarh

Deponent

Dated: 11 MAR 2022

VERIFICATION:

Verified that the contents of my above affidavit are true and correct to the best of my knowledge. No part of the affidavit is false and nothing has been kept concealed there from.

Place: Chandigarh

Sd/-

Dated: 11 MAR 2022

Deponent''

A perusal of the above report as well the affidavit and also the submissions made by the learned counsel appearing for the petitioners, respondent No. 2 as well as counsel appearing on behalf of

said Jiya Goel that the compromise effected between them is genuine and bonafide and would help in bringing out peace and amity between the parties.

This Court has heard the learned counsel for the parties and has perused the paperbook.

A co-ordinate Bench of this Court in judgment passed in CRM-M-13053-2017 titled as “**Varinder Kumar @ Bitra and others vs. State of Punjab and another**” decided on 22.08.2019 has held as under:-

“1. The petitioners have prayed for quashing of FIR No.83 dated 14.08.2016 for the offences punishable under Sections 306 of the Indian Penal Code ('IPC' for short), registered at Police Station Mahilpur, District Hoshiarpur and all the subsequent proceedings arising therefrom, on the basis of compromise effected between the parties.

2. Vide order dated 13.03.2018, the parties were directed to appear before the trial Court/Illaq Magistrate to get their statements recorded with regard to genuineness of the compromise.

3. A report dated 12.04.2018 has been submitted by the Judicial Magistrate 1st Class, Garhshankar, wherein it has been reported that statements of the petitioners and respondent No.2-complainant, who is son of deceased Dharam Pal, have been recorded and statements made by the parties in the Court reveal that they have voluntarily entered into a compromise and the Court is satisfied that the parties have amicably settled their dispute without any fear, pressure, threat or coercion

and out of their free will.

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9. Since the parties have arrived at a compromise and have decided to live in peace, no useful purpose would be served in allowing the criminal proceedings to continue.

10. In view of what has been discussed hereinabove, present petition is allowed and FIR No.83 dated 14.08.2016 under Sections 306 IPC, registered at Police Station Mahilpur, District Hoshiarpur and all the subsequent proceedings arising therefrom are ordered to be quashed qua the petitioners.”

A perusal of the above reproduced judgment would show that in a case where the FIR had been registered under Section 306 IPC and the matter had been compromised and the compromise was found to be genuine and bonafide, then the FIR and the subsequent proceedings arising therefrom were quashed qua the petitioners therein on the basis of compromise.

As per the Full Bench judgment of this Court in ***“Kulwinder Singh and others Vs State of Punjab”***, reported as **2007 (3) RCR (Criminal) 1052**, it is held that High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court is of the opinion that the same is required to prevent the abuse of the process of law or otherwise to secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

Hon'ble the Apex Court in the case of ***“Gian Singh Vs. State of Punjab and another”***, reported as ***2012 (4) RCR (Criminal) 543***, had also observed that in order to secure the ends of justice or to prevent the abuse of process of Court, inherent power can be used by this Court to quash criminal proceedings in which a compromise has been effected. The relevant portion of para 57 of the said judgment is reproduced hereinbelow:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. XXX---XXX”

In addition to the fact that the present FIR deserves to be quashed on the basis of compromise, a perusal of the FIR as well as the suicide note would show that in fact, in the present case, no offence, much less, offence under Section 306 IPC is made out. Mere vague and general allegations have been levelled in the FIR as well as in the suicide note. No incident has been detailed so as to show that any of the petitioners had instigated the deceased to commit suicide. No active role has been attributed to any of the petitioners so as to make out a case under Section 306 read with Section 34 IPC.

A perusal of the FIR would show that the business of the deceased had suffered losses on account of lock-down and the deceased was indebted because of the said loss in business. It is further apparent from the said FIR that on account of the business loss, the deceased had gone into depression. It has been alleged that on 03.09.2021, the deceased had gone to visit a shop and he was fine till 5 PM when the wife of the deceased spoke to him and around 7:30 PM, the phone of the deceased came to be switched off. There is no specific allegation pertaining to any incident/or commission of any overt act against the petitioners on the date of the incident or even immediately prior thereto, which could have instigated/abetted the deceased to commit suicide.

The Hon'ble Supreme Court of India in ***Special Leave to Appeal (Crl.) no.7284 of 2017*** titled as ***“Shabbir Hussain vs. The State of Madhya Pradesh & Ors.”*** decided on 26.07.2021 has held as under:-

“On 10.09.2014, due to certain matrimonial dispute, Roshan Bee, wife of deceased Firoz Khan moved to her parental home. On 22.09.2014, Firoz Khan committed suicide in his house by consuming poison and also left four suicide notes.

Shabbir Hussain, brother of the deceased – Firoz Khan, preferred complaint i.e. Crime No. 1403/2014, which was registered against respondent Nos.2 to 4 under Section 306/34 IPC. After investigation, chargesheet was filed against respondent Nos.2 to 4 and Trial commenced against respondent Nos.2 to 4. Respondent Nos.2 to 4 preferred Criminal Revision No.725/2016 under Section 397/401 Cr.P.C. before the

High Court of Madhya Pradesh at Indore. The High Court allowed the Criminal Revision filed by respondent Nos.2 to 4, aggrieved by which, the petitioner has preferred this special leave petition.

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.

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.

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].

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].

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.

Therefore, special leave petition is dismissed.

Pending applications, if any, also stand disposed of.”

A perusal of the above judgment would show that the Hon'ble Supreme Court of India had upheld the order passed by the High Court allowing revision petition of the accused persons and while doing so had observed that in order to bring a case within the ambit of Section 306 IPC, there must be a case of suicide and in the commission of the said act, the persons who are stated to have abetted the said commission of suicide, must have played an active role by an act of instigation or by doing a certain act which facilitates the commission of suicide and mere harassment would not constitute the offence under Section 306 IPC. To a similar effect, a coordinate Bench of this Court in ***State of Punjab vs. Kamaljit Kaur alias Bholi and another***, reported as ***2008(2) RCR (Criminal) 562*** had observed as under:-

“1. The present revision petition is directed by the State against the discharge of Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala, accused. They were facing trial in case FIR No. 108 dated 31-12-1994 registered at Police Station Nawanshahr under Section 306, IPC. It is stated that Paramjit Singh son of Darshan Singh Hira and his son Amritpal alias Lovely committed suicide and left a suicide note to the effect that his wife

Kamaljit Kaur alias Bholi is a woman of bad character. He is fed up with her. Therefore, he along with his son Lovely Amritpal Singh is committing suicide. It is further stated that his wife has illicit relations with three persons namely, Palli of Commando Force, Ludhiana, Kala residing opposite to their house and Ujjal Singh, her real uncle. In the suicide note, he has expressed that in these black days, such bad women are living in the Society. It is further stated that his wife Bholi is a lady of loose character. It is further stated that since Palli has come as a tenant in the house, Bholi has become lady of loose character. It is further stated that Kala had noticed Bholi in objectionable manner with Kala. He wanted in suicide note that if law contemplates action against wedded woman, the law should take its course.

2. On 27.8.1994 at 3.00 p.m. dead bodies of young unknown person aged about 30 years and a child aged about 5-6 years were found near the maize field. These dead bodies were of Paramjit Singh and his son Amritpal alias Lovely. Postmortem was conducted Visceras were sent to the Chemical Examiner. The Chemical Examiner found the cause of death to be Aluminum Phosphide. Suicide note was found from the pocket of Paramjit Singh. After completion of investigation, challan was submitted against Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala. The name of Ujjal Singh was placed in column No. 2. Learned Sessions Judge, Jalandhar, while discharging the respondents had observed as under:-

“It cannot be disputed that charge can be framed merely on strong suspicion and the evidence at the time of framing charge is not to be considered meticulously. But I am of the considered opinion that the

circumstances of the case are such as, possibly, it cannot be stated that a prima facie case is made out against the accused within the meaning of Section 306 of the Code. Abetment of suicide is punishable Under Section 306 of the Code. Section 107 of the Code defines abetment as under:

107. 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 person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly, intentionally incite, by any act or illegal omission, the doing of that thing.

Explanation I. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntary causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the commission of suicide. The learned P.P. for the State has not been able to satisfy as to in which manner the commission of suicide has been instigated or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and the mental disturbance do not constitute the offence of abetment. It looks that the deceased husband was unable to control his wife and he out of frustration has not only committed suicide but has also

*snuffed the life of his son. The authority Charabhushan Bhimraj Bhushanwar and Ors. (supra) is hardly of any help to the prosecution, I am of the firm view that from the facts of the case no prima facie case is made out against the accused. Though no direct authority is available pertaining to such like facts yet with advantage reference can be made to **Shri Ram v. the State of U.P. , Balbir Singh v. The State of Punjab 1987 (1) Crimes 76; Wazir Chand v. The State of Haryana 1989 (1) Crimes 173 : 1989 CriLJ 809; State of Haryana v. Babu Ram 1992 (1) Criminal Courts judgments 68 and Deepak v. State of M.P. 1984 Cri LJ 767".***

*3. I have perused the order passed by learned Sessions Judge Jalandhar. In Sanju alias **Sanjay Singh Sengar v. State of Madhya Pradesh 2002 (Supp) 1 JT 248**, it was held that the word 'instigate' denotes incitement 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.*

4. The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide.

*It was held by a Division Bench of this Court in **Raj Kumar v. State of Punjab 1983 (1) CLR 660** as under:*

“12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in common parlance would mean to go, to urge forward or to provoke incite or encourage to do an act.”

5. Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into commission of suicide by another abetment of suicide cannot be imputed to the other spouse.”

A perusal of the above reproduced judgment would show that the said case was also a case under Section 306 of IPC in which two persons i.e., husband of the accused therein and their son had committed suicide and there was a suicide note to the effect that Kamaljit Kaur, wife of the deceased Darshan Singh was a lady of bad character and had illicit relations with three persons and she was caught in an objectionable manner with one of the said three persons and in the suicide note, it was specifically stated that action should be taken against such a woman. Challan was filed against the said lady as well as her paramour. After considering the provisions of Sections 306 and 107 of Cr.P.C., it was observed by the Sessions Court as well as by this Court that even in a case where the wife is alleged of being a woman of easy virtue, then also, it cannot be said that she has instigated or aided the commission of suicide and had observed that in case the husband was feeling harassed or mentally disturbed due to the alleged illicit relationship of his wife, then the harassment and mental disturbance would not constitute the offence of abetment. It was further observed that the word ‘instigate’ denotes incitement or urging to do some drastic or unadvisable action and the presence of mens rea is a necessary concomitant of instigation. A person may be a bad wife but her conduct

was not for the purpose to incite the deceased to commit suicide and, thus, abetment of suicide in such a case cannot be inferred and, thus, the wife in the abovesaid case was discharged. To a similar effect is the judgment dated 06.12.2012 passed by another coordinate Bench of this Court in the case of ***Maya Vs. State of Punjab***, wherein the wife and her paramour, both after being tried and convicted thereupon, were ultimately acquitted.

The Hon'ble Supreme Court of India in a case titled as **“Gangula Mohan Reddy vs. State of Andhra Pradesh”** reported as **(2010) 1 Supreme Court Cases 750** has held as under:-

“3. The brief facts which are relevant to dispose of this appeal are recapitulated as under: according to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs.7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides.

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17. 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.”

A perusal of the above judgment would also show that it had been observed by the Hon'ble Supreme Court that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without there being a positive act on the part of the accused to instigate or aid in committing of suicide, conviction cannot be sustained and it was further observed that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence and also requires an active act or direct act which led the deceased to commit suicide.

The above said ratio of law when applied to the facts of the present case would clearly show that in the present case offence under Section 306 IPC is not made out and even on merits, the FIR and subsequent proceedings arising therefrom, deserve to be quashed.

In view of what has been discussed hereinabove, the petition is allowed and FIR No. 323 dated 04.09.2021 under Sections 306 and 34 of the Indian Penal Code, 1860 registered at Police Station Kotwali,

District Patiala (Annexure P-1) and all subsequent proceedings arising on the basis of the compromise, are ordered to be quashed, qua the petitioners.

April 7th, 2022

Mehak

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No