

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 597 of 2020

With

CRAN 2 of 2022

Nabanita Dey & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners

: Mr. Milon Mukherjee Ld. Sr. Adv.
Mr. Biswajit Manna.

For the State

: Mr. Saibal Bapuli, Ld. APP,
Mr. Bibaswan Bhattacharya.

Hearing concluded on

: 30.08.2023

Judgment on

: 26.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an Order dated 17.01.2020 passed by the Learned Additional Sessions Judge, 7th Court, Barasat in connection with S.C. Case No. 339 of 2019 which arose out of G.R. Case No. 3827 of 2017 corresponding to Duttapukur Police Station Case No. 658/2017 dated 05.08.2017 under Sections 306/34 of the Indian Penal Code, thereby rejecting the petitioners' prayer for discharge from the instant case.
2. The petitioners' case is that the petitioners are sisters-in-law by relation residing in different mess, while the opposite party no. 2 is their mother-in-law.
3. That Duttapukur Police Station Case No. 658/2017 dated 05.08.2017 was registered for investigation on the basis of a complaint lodged by the opposite party no. 2 with the Inspector-in-Charge of Duttapukur Police Station inter alia alleging commission of an offence punishable under Sections 306/34 of the Indian Penal Code by the petitioners.
4. The allegations made in the said complaint are inter alia to the effect that the petitioner no. 1 used to mentally and physically torture her husband namely the elder son of the opposite party no. 2.
5. It is further alleged that the petitioners used to abet the son of the opposite party no.2 to commit suicide. It has also been stated by the

opposite party no. 2 that she used to stay at her daughter's house at Madhyamgram due to the torture inflicted upon her by the petitioners.

6. Lastly **on 02.08.2017 to 04.08.2017** the husband of the petitioner no.1 did not come out of his room and as such, the petitioner no. 1 informed the police. Thereafter police came to the spot and recovered the dead body of the deceased from the room.
7. After completion of investigation, Charge Sheet No. 12/2018 dated 17.01.2018 under Sections 306/34 of the Indian Penal Code against the present petitioners was submitted.
8. **Mr. Milon Mukherjee, learned senior counsel for the petitioners** has submitted that the deceased was a habitual drunkard and used to inflict torture upon the house inmates. For such reason, the deceased used to stay in the kitchen. On 02.08.2017, the deceased returned home in a drunken condition and after entering into his room, bolted the room from inside. Since the room was not opened till 04.08.2017, the petitioner no.1 informed the police, who opened the room and the husband of the deceased was found lying dead, and body was in decomposed condition.
9. The petitioners submit that they have been implicated falsely by the opposite party no. 2 at the behest of her daughter and with intention to oust the petitioners from their house.
10. That since there was nothing on record to suggest act of abetment by the petitioners as the deceased died a natural death, the petitioners preferred

an application under Section 227 of the Code of Criminal Procedure therein praying for discharge from the case.

- 11.** The application under Section 227 of the Code of Criminal Procedure came up for hearing before the Learned Judge, when the Learned Judge was pleased by his order dated 17.01.2020 to turn down the prayer of the petitioners.
- 12.** It is further stated that due to the regular torture inflicted upon the petitioner no.1 by the deceased, the petitioner no. 1 was compelled to lodge a complaint with Duttapukur Police Station which was registered as Duttapukur Police Station Case No. 821/2016 dated 19.10.2016 under Section 498A of the Indian Penal Code, Since thereafter, the petitioner no. 1 used to reside separately from the deceased with her children.
- 13.** The petitioner no. 2 resides in a different mess from that of the petitioner no.1. She was also subjected to mental and physical torture on demand of further dowry by her husband and her in-laws, as a result of which she also lodged a criminal complaint against her husband, the opposite party no. 2, sister-in-law and the husband of the sister-in-law. The said case was registered as Duttapukur Police Station, case no. 608/2016 dated 09.08.2016 under Section 498A of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibitions Act.
- 14.** It is further submitted that there is nothing on record to suggest any act of instigation and as such, the charge under Section 306 of the Indian

Penal Code is clearly not maintainable and thus the Learned Judge by turning down the prayer of the petitioners for discharge has committed serious error.

15. That the impugned proceeding is a gross abuse of the process of court which if allowed to continue, will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed for the ends of justice.
16. **Service upon the opposite party no. 2's address as given in the FIR could not be made as seen from the endorsement on the envelope stating that the opposite party was 'absent', 'insufficient address'.**
17. **Mr. Saibal Bapuli, learned counsel for the State** has placed the case diary, wherein it appears:-
 - i) That the deceased was an alcoholic and on 02.08.2017 he came home drunk and went to his room and did not come out for two days.
 - ii) After two days, the petitioner no.1, informed the police, who came and broke open the door of the deceased's room and found his decomposed body.
 - iii) **The enquiry report of the police dated 05.08.2017** is as follows:-

".....During enquiry it could be revealed that the deceased used to consume heavy quantity of alcohol in regular course and also used to disturb/tortured house inmates. Therefore, kitchen was fixed to accommodate him. On 02.08.2017 he returned home in drunken

*condition and entered into the room and bolted the room from inside. On 04.08.2017 evening as the **door was not opened during last 2 days** the wife of the deceased informed the matter to police and accordingly the police had been to spot, opened the door and his dead body was recovered from the room.”*

- iv) From the **inquest report** it appears that the witnesses have stated to the police, that the deceased was a drunkard and had locked his room for two days. The inquest report also shows that on being informed by the accused/wife, that the deceased was not opening the door, the police came, and recovered the decomposed body of the deceased after opening the door. (The door being opened by the police is also stated in the written complaint).

18. The case against the petitioners is under Sections 306/34 of the Indian Penal Code.

19. Section 306 of the Indian Penal Code, lays down:-

***“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.*

***Ingredients of offence.-** The essential ingredients of the offence under Section 306 are as follows:*

- (1) There was suicide of a person.*
- (2) It was committed in consequence of abetment by the accused.”*

20. Section 107 of the Indian Penal Code, lays down:-

“Section 107 of IPC-

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 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 aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

Ingredients of offence.— Abetment under Sec. 107 is a separate and distinct offence. When the act abetted, is committed the charge will be under sec. 109. But in order to prove the charge of abetment, the prosecution would be required to prove the following essential ingredients of sec. 107:

Accused (abettor) in exercise of his mental process caused another person (principal accused) to commit an offence (the offence for which the principal accused is charged) and the abettor has done it in the following way-

- (i) By way of instigating the principal accused, or
- (ii) By way of conspiracy with one or more other persons for doing that offence by the principal accused, or
- (iii) By way of intentionally aiding by act or illegal omission, for doing that offence by the principal accused.”

21. In **Kashibai & Ors. vs The State of Karnataka, Criminal Appeal No. Of 2023 (arising out of SLP (Crl.) No. 8584/2022)**, on

28.02.2023, the Supreme Court held:-

“8. From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established.

9. In M. Mohan Vs. State Represented by the Deputy Superintendent of Police, (2011) 3 SCC 626 , this Court has elaborately dealt with the provisions contained in Section 306 read with Section 107 IPC, and after discussing various earlier decisions has observed as under: -

“41. This Court in SCC para 20 of Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of “instigation”. Para 20 reads as under : (SCC p. 629)

“20. 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. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.” In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn.

42. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) 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 her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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.

43. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] 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 selfrespect. 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.

44. 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.

45. 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.”

10. *In view of the above, it is quite clear that in order to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also there has to be an*

evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.”

22. The judgment of the Supreme Court in ***Yaddanapudi Madhusudhana Rao vs The State of Andhra Pradesh & Ors., Criminal Appeal No. 901 of 2017, on 9 August, 2023***, also lays down the ingredients required to prove offences under Sections 306/34 IPC.
23. **In the present case**, it is on record that the deceased being a habitual drunkard had come home in drunken condition on 02.08.2017 and entered his room and when till 04.08.2017, he did not come out, his wife/accused informed the police, who opened the door and recovered the body.
24. Thus it is seen that there is also no prima facie case/evidence of any abetment nor any materials to substantiate the charge under Section 306 IPC, as the death as per post mortem report is due to ‘Sub Dural Cerebral Hemorrhage’ which is normally caused due to an injury. In this case the deceased being a drunkard was found in a room which was locked from inside. On 02.08.2017 he had come drunk and entered his room and locked it. The injury could be due to a fall as no other injury was found on the deceased. Thus there being no prima facie materials to prove that the ingredients required to constitute the offences alleged are present, the proceedings/trial in this case will be a futile exercise.
25. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out***

of SLP (Crl.) No(s). 39 of 2022), on 28 November, 2022 the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the

prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to

have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

26. Thus considering the materials on record, guideline 1 of para 102 in **State of Haryana vs Bhajan Lal and Ors. (Supra)** becomes applicable in this case. Thus permitting this case to proceed against the petitioners in such facts and circumstances will be an abuse of the process of law/court and thus against the interest of justice.

27. CRR 597 of 2020 is allowed.

- 28.** The Order dated 17.01.2020 passed by the Learned Additional Sessions Judge, 7th Court, Barasat in connection with S.C. Case No. 339 of 2019 which arose out of G.R. Case No. 3827 of 2017 corresponding to Duttapukur Police Station Case No. 658/2017 dated 05.08.2017 under Sections 306/34 of the Indian Penal Code, thereby rejecting the petitioners' prayer for discharge from the instant case, **is hereby set aside** and the proceeding in Duttapukur Police Station Case No. 658/2017 dated 05.08.2017 under Sections 306/34 IPC (S.C. Case No. 339 of 2019 which arose out of G.R. Case No. 3827 of 2017) **is hereby quashed.**
- 29.** All connected applications, if any, stands disposed of.
- 30.** Interim order, if any, stands vacated.
- 31.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 32.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)