

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 809 of 2020

Amit Polley

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Angshuman Chakraborty.

For the State : Mr. S. G. Mukerji, Ld. P.P.
Mr. Bitasok Banerjee.

Hearing concluded on : 21.08.2023

Judgment on : 18.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being ST case no. 8(9) of 2019 arising out of S.C. No. 349 of 2019 corresponding to Madhyamgram Police Station case No. 389/2017 dated 15.07.2017 under Sections 306/34 of the Indian Penal Code, now pending before the Learned Additional Session Judge, Fast Track Court No. 2, Barasat, North 24 Parganas, and order dated 26.09.2019 passed by the Learned Additional Session Judge, Fast Track Court no. 2 Barasat, North 24 Parganas, whereby the Learned Judge was pleased to frame charge for the offence punishable under Section 306 of the Indian Penal Code against the petitioner and fixed the matter for evidence.
2. The petitioner's case is that Madhyamgram Police Station Case no. 389/2017 dated 15.07.2017 under Sections 306/34 of the Indian Penal Code was started on the basis of written complaint made by one Tapan Mondal before the Inspector-in-Charge, Madhyamgram Police Station, alleging inter alia as follows:-

"That on 13.07.2017 when the complainant and his wife was not present in their house the minor daughter of the complainant committed suicide. There had been a love relation between the complainant and one Amit Palley. The minor daughter of the complainant was subjected to mental and physical torture by Amit Polley and his mother and they demanded money from the complainant."

3. After completion of investigation police submitted Charge Sheet being Charge Sheet No. 471/2017 dated 31.08.2017 under Section 306 of the Indian Penal Code against the petitioner.
4. The case was committed before the Learned Session Judge and renumbered as S.C. No. 349 of 2019 and was transferred to the Learned Additional Sessions Judge, Fast Track Court No. 2, Barasat, North 24 Parganas for trial.
5. That by an order dated 26.09.2019 the Learned Additional Sessions Judge, Fast Track Court No. 2, Barasat, North 24 Parganas, was pleased to frame charge for the offence punishable under Section 306 of the Indian Penal Code against the petitioner and ST No. 8(9) 2019 was numbered and dates 17.03.2020, 18.03.2020 and 19.03.2020 were fixed for evidence of prosecution witnesses.
6. **Mr. Angshuman Chakraborty, learned counsel for the petitioner** has submitted that the Learned Judge failed to appreciate that the charge could not be framed on the basis of the material on records as the same does not indicate of the offences punishable under Section 306 of the Indian Penal Code in the instant case.
7. It is further submitted that the allegation made in the written complaint even if taken to be true, no case is made out against the petitioner of the alleged offences or at all and hence the impugned proceedings is liable to be quashed.

8. It is also submitted that the Learned Judge failed to appreciate that to construe an offence under Section 306 of the Indian Penal Code an act of abetment is required to be proved by the prosecution, but in this case materials collected during investigation which led to submission of Charge Sheet do not disclose presence of any abetment by the petitioner on the victim for which she committed suicide and hence the impugned order of framing charge is liable to be set aside.
9. **Mr. Saswata Gopal Mukerji, learned Public Prosecutor** has placed the case diary and submitted that there are sufficient materials on record and the offence being serious in nature, the case should be permitted to proceed towards trial.
10. **In spite of the best efforts by the petitioner and also the State, the opposite party no. 2/complainant could not be served.**
11. **From the materials on record** including the case diary it is prima facie seen that:-
- i. ***The date of birth as per birth Certificate of the minor victim is 02.07.2002.***
 - ii. ***The present case was registered on 05.07.2017 for offence punishable under Section 306/34 of the Indian Penal Code.***
 - iii. ***Allegedly the petitioner and the victim (minor) were in a relationship and there are specific allegations in the case diary.***
 - iv. ***There is prima facie material to that effect in the case diary.***

12. The Supreme Court in **Daxaben Vs The State of Gujarat & Ors.,**

Criminal Appeal No.....of 2022, on July 29, 2022, held that:-

“14. The proposition of law enunciated and/or re-enunciated in the judgments cited above are well settled. Whether the acts alleged would constitute an offence, would depend upon the facts and circumstances of the case. Each case has to be judged on its own merits.

16. It is not necessary for this Court to go into the question of whether there was any direct or indirect act of incitement to the offence of abetment of suicide, since the High Court has not gone into that question. Suffice it to mention that even an indirect act of incitement to the commission of suicide would constitute the offence of abetment of suicide under Section 306 of the IPC.

20. In the aforesaid judgment, the High Court referred to an order dated 6 th December 2019 passed by a three Judge Bench of this Court in Crl. Appeal No.1852 of 2019 (**New India Assurance Co. Ltd. v. Krishna Kumar Pandey**) where this Court held that in a revision arising out of conviction, the High Court could not have sealed the right of the employer to take disciplinary action against the accused for misconduct in accordance with the Service Rules.

21. In **Krishna Kumar Pandey** (supra) this Court referred with approval, to the judgment of this Court in **State of Punjab v. Davinder Pal Singh Bhullar and Ors.** where this Court held that the High Court was not denuded of inherent power to recall a judgment and/or order which was without jurisdiction, or in violation of principles of natural justice, or passed without giving an opportunity of hearing to a party affected by the order or where an order was obtained by abusing the process of Court which would really amount to its being without jurisdiction. Inherent powers can be exercised to recall such orders.

24. Be that as it may, since the initial order dated 20th October 2020 is also under challenge in these appeals, it is really not necessary for this Court to delve deeper into the question of whether a final order passed under Section 482 of the Cr.P.C. quashing an FIR could have, at all, been recalled by the High Court, in the absence of any specific provision in the Cr.P.C. for recall and/or

review of such order. The High Court has, in effect, held that in exceptional circumstances, such orders can be recalled, in exercise of the inherent power of the High Court, to prevent injustice.

25. The only question in this appeal is whether the Criminal Miscellaneous Applications filed by the accused under Section 482 of the Cr.P.C. could have been allowed and an FIR under Section 306 of the IPC for abetment to commit suicide, entailing punishment of imprisonment of ten years, could have been quashed on the basis of a settlement between the complainant and the accused named in the FIR. The answer to the aforesaid question cannot, but be in the negative.

28. In *Monica Kumar (Dr.) v. State of U.P.*, this Court held that inherent jurisdiction under Section 482 of the Cr.P.C has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.

29. In exceptional cases, to prevent abuse of the process of the Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when the complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in ***Mrs. Dhanalakshmi v. R. Prasanna Kumar***.

31. As held by this Court in ***State of Andhra Pradesh v. Gourieshetty Mahesh***, the High Court, while exercising jurisdiction under Section 482 of the Cr.P.C, would not ordinarily embark upon an enquiry into whether the evidence is reliable or not or whether there is reasonable possibility that the accusation would not be sustained.

37. Offence under Section 306 of the IPC of abetment to commit suicide is a grave, non-compoundable offence. Of course, the inherent power of the High Court under Section 482 of the Cr.P.C. is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse of the process of Court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 of the CrPC to quash the criminal proceedings. In what cases power to quash an

FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case.

38. *However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.*

39. *Orders quashing FIRs and/or complaints relating to grave and serious offences only on basis of an agreement with the complainant, would set a dangerous precedent, where complaints would be lodged for oblique reasons, with a view to extract money from the accused. Furthermore, financially strong offenders would go scot free, even in cases of grave and serious offences such as murder, rape, brideburning, etc. by buying off informants/complainants and settling with them. This would render otiose provisions such as Sections 306, 498A, 304-B etc. incorporated in the IPC as a deterrent, with a specific social purpose.*

40. *In Criminal Jurisprudence, the position of the complainant is only that of the informant. Once an FIR and/or criminal complaint is lodged and a criminal case is started by the State, it becomes a matter between the State and the accused. The State has a duty to ensure that law and order is maintained in society. It is for the state to prosecute offenders. In case of grave and serious noncompoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a noncompoundable offence of a grave, serious and/or heinous nature, which impacts society.*

42. *In **Narinder Singh v. State of Punjab**, this Court held that in case of heinous and serious offences, which*

are generally to be treated as crime against society, it is the duty of the State to punish the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime.

45. In *State of Tamil Nadu v. R. Vasanthi Stanley*, this Court held:-

“14. ... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon the gender of an accused. True it is, there are certain provisions in CrPC relating to exercise of jurisdiction under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score.

15. ... A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. ...”

50. In our considered opinion, the Criminal Proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr. P.C. only because there is a settlement, in this case a monetary settlement, between the accused and the complainant and other relatives of the deceased to the exclusion of the hapless widow of the deceased. As held by the three-Judge Bench of this Court in *Laxmi Narayan & Ors.* (supra), Section 307 of the IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. On a parity of reasoning, offence under section 306 of the IPC would fall in the same category. An FIR under Section 306 of the IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. It is clarified that it was not necessary for this Court to

examine the question whether the FIR in this case discloses any offence under Section 306 of the IPC, since the High Court, in exercise of its power under Section 482 CrPC, quashed the proceedings on the sole ground that the disputes between the accused and the informant had been compromised.”

- 13. In the said case the Court set aside the order of the High Court quashing a proceedings under Section 306 IPC in view of settlement between the parties.**
- 14. In the present case, it is prima facie on record that the victim was a minor on the date of incident (alleged suicide). Thus the offence alleged prima facie has the ingredients required under Section 305 IPC, on record.**

Section 305 of the Indian Penal Code, lays down:-

305. Abetment of suicide of child or insane person.—

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Ingredients of offence.- *The essential ingredients of the offence under Section 305 are as follows:-*

- (1) There was suicide by a person,*
- (2) Such person must be below 18 years of age or a delirious idiot or an intoxicated person,*
- (3) Accused abetted the commission of suicide.*

- 15. Accordingly, the learned Trial Judge shall consider the said materials on record at the time of consideration and framing of charge or at the relevant stage, in accordance with law.**

- 16. The present case has to thus proceed towards trial to be decided in accordance with law as there is prima facie materials in this case against the petitioners to go to trial and** quashing a case of such a nature will cause miscarriage of justice ***(Daxaben Vs The State of Gujarat & Ors. (Supra))***.
- 17. CRR 809 of 2020 is thus dismissed.**
- 18.** All connected applications, if any, stands disposed of.
- 19.** Interim order, if any, stands vacated.
- 20.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 21.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)