



Crl.O.P.No.21018 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.21018 of 2016

and

Crl.M.P.No.9742 of 2016

1. S.Sathishkumar
2. S.Kokila

...Petitioners

-Vs-

1. The State
The Inspector of Police,
Mamallapuram Police Station,
Mamallapuram,
Kancheepuram District-603 104.
(Crime No.43/2015)

2. M.Balamuthu

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in P.R.C.No.13 of 2016, on the file of Judicial Magistrate, Thirukazhukudram quash the proceedings in the same, against the petitioners herein under Section 306 IPC.

For Petitioners	: Mr.J.I.Rajkumar Roberts
For R1	: Mr.L.Baskaran Government Advocate (Crl.Side)
For R2	: Mr.P.G.Kumaraguru Legal Aid Counsel



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ORDER

This Criminal Original Petition has been filed calling for the records in P.R.C.No.13 of 2016, on the file of the learned Judicial Magistrate, Thirukazhukudram and to quash the same.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The case of the prosecution is that the second respondent lodged a complaint on 30.01.2015 alleging that he is living with his wife and two sons. When he returned from work to home at about 07.45 p.m, on 29.01.2015, he found that his son had committed suicide by hanging. Later, he enquired and came to understand that the petitioners came to their house at about 07.00 p.m and enquired about the deceased son to the younger son and thereafter, on verification of the cellphone of the deceased, it was found that he had received a call from the second accused. Immediately, thereafter, he had committed suicide. Hence, the complaint.



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4. On receipt of the complaint, the first respondent registered an FIR in Crime No.43 of 2015 under Section 174 Cr.P.C. After completion of investigation, the first respondent altered the offence under Section 306 IPC and filed a final report and the same is pending for committal in P.R.C.No.13 of 2016, on the file of the learned Judicial Magistrate, Thirukazhukudram.

5. The learned counsel for the petitioners would submit that no offence is made out as against the petitioners as alleged by the prosecution. The first respondent had recorded statements from 15 witnesses under Section 161 Cr.P.C and it revealed that the deceased received frequent phone calls even during night hours. Since he fell in love with one Thabithal who is none other than the adopted daughter of the third accused. Therefore, the parents viz., the second respondent and the mother of the deceased want him not to have any affair with the said girl. In fact, one Pastor P.John is a close friend of second respondent's family. Therefore, the petitioners are no way connected with the offence under Section 306 IPC, since they never abetted or instigated the deceased to commit suicide. Except the phone call, there is no other evidence to prosecute the petitioners for the offence under Section 306 IPC. The cell phone, as alleged by the prosecution, does not belong to the second petitioner.



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6. A perusal of records revealed that the petitioners have been implicated as accused, only on the strength of the phone call received by the deceased. However, there is no evidence to show that the call was received only from the second petitioner herein. Further, the younger son stated that the petitioners came to their house and enquired about the deceased. Even assuming that they visited the house of the deceased, they never met him and there is no allegation that they scolded him with filthy language and no allegations of threatening him with dire consequences. Even assuming that some words were uttered by the petitioners, the words uttered in fit of anger or emotion without any intention do not amount to instigation. Even according to the case of the prosecution, the petitioners want him not to have any love affair with the daughter of the third accused. It seems that as elders, the petitioners gave some advise to the deceased. Except that, no other allegations are against the petitioners in order to attract the offence under Section 306 IPC.

7. Further, in order to attract the offence under Section 306 IPC, there has to be clear Mens Rea to commit the offence. Further the abetment involves a mental process of instigating a person or intentionally aiding a person in



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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. It also required an active act or direct act which led the deceased to commit suicide, seeing no option and that must have been intended to push the deceased into such a position that he committed suicide.

8. Therefore, no iota of evidence is available to attract the offence under Section 306 IPC as against the petitioner. Hence, the entire proceedings cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the proceedings in P.R.C.No.13 of 2016, on the file of the learned Judicial Magistrate, Thirukazhukudram is hereby quashed.

9. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous petition is closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn



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G.K.ILANTHIRAIYAN. J.

mn

To

1. The Judicial Magistrate, Thirukazhukudram.
2. The Inspector of Police,
Mamallapuram Police Station,
Mamallapuram,
Kancheepuram District-603 104.
3. The Public Prosecutor,
High Court, Madras.

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