



Crl.O.P.(MD).No.13681 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.13681 of 2020

and

Crl.M.P(MD) Nos.5392 and 6310 of 2020

S.Subramanian

... Petitioner

Vs.

1. The Inspector of Police
Kallidaikurichi Police Station
Kallidaikurichi
Tirunelveli District

2. Sankara Narayanan

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the First Information Report in connection with Crime No.78 of 2018 on the file of the Inspector of Police, Kallidaikurichi Police Station, Kallidaikurichi, Tirunelveli District and subsequently quash the same.

For Petitioner : Mr.S.Palanivelayutham

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2 : Mr.A.Balakrishnan



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ORDER

WEB COPY This Criminal Original Petition has been filed to quash the First Information Report in Crime No.78 of 2018 on the file of the Inspector of Police, Kallidaikurichi Police Station, Kallidaikurichi, Tirunelveli District

2. According to the petitioner based on the complaint given by the second respondent, the first respondent registered a case in Crime No. 78 of 2018 for the offences under Section 174(3) of Cr.P.C @ 306 of IPC. The case of the prosecution is that the daughter of the defacto complainant was given in marriage to the petitioner and the marriage was solemnized on 05.09.2012 and had two children out of wedlock and the age of the first child is four years and the second child is six months old. When the deceased delivered second baby did not return to matrimonial home and stayed in her parents home. During that period she had some grievance as against her husband and consequently on 20.03.2018 at about 5.30 hrs, she committed suicide by pouring kerosene along with the small baby and died on same day itself. Hence the above said complaint was lodged. Based on the complaint First Information Report has been registered under Section 174(3) of Cr.P.C and thereafter altered to section 302 of IPC and again altered to Section 306 of IPC. Infact after the death of the deceased inquest was conducted by Revenue Divisional Officer and he confirmed the same. After filing final report and after enquiring witnesses that the deceased commit suicide due to



mental agony and not even allowing her to see her son and no demand of dowry. After lapse of two years i.e.,02.09.2019 now the case has been altered to section 306 of IPC and there is no reason for inordinate delay. Even according to the First Information Report there is no ingredients to attract the provision under Section 306 of IPC. Even according to the complaint the deceased on 17.02.2018 when attempted to see her son she was not permitted by the petitioner but the occurrence happened on 20.03.2018 after long gap. Therefore there is no material available to constitute the offence under Section 306 of IPC, therefore the pending First Information Report is abuse of process of law and thereby it is liable to be quashed.

3. No counter was filed by the respondents.

4. The learned counsel appearing for the petitioner would contend that the second respondent is the father-in-law of the petitioner and he lodged complaint against the petitioner alleging that the petitioner not allowed the daughter of the defacto complainant to see her child and due to matrimonial dispute she was staying with her parents. Whiles on 17.02.2018 when she attempted to see her son, the petitioner had not allowed her and threatened her, due to the said frustration she committed suicide on 20.03.2018 by pouring kerosene and in the said incident six month old baby also died. Based on the complaint given by



the second respondent the first respondent registered a case in Crime No. 78 of 2018 under Section 174(3) of Cr.P.C @ 306 of IPC after two years. Infact this petitioner has not committed any offence and even as per the contents of the First Information Report no offence is made out as per Section 306 of IPC. Mere non allowing the deceased to see her child would not amount to abetment to commit suicide , thereby the First Information Report is pure abuse of process of law. Further the petitioner is having tender age child and the second respondent is retired police officer, thereby using his power he filed this false complaint and the same is liable to be quashed. In order to support his contention he relied on the judgment of the Hon'ble Apex Court in the case of ***Ramesh Kumar .vs. State of Chhattisgarh*** reported in ***(2001) 9 SCC 618***.

5. The learned counsel appearing for the second respondent would contend that the petitioner caused cruelty to the deceased and thereby she stayed with her parents. In the meantime the deceased went to the house of the petitioner to see his elder son but she was not even allowed to enter into the house. Further the petitioner along with her parents scolded the deceased and thereby on 20.03.2018 the deceased committed suicide along with six months old baby by pouring kerosent. Thereafter the second respondent gave this complaint and based on that complaint First Information Report has been registered and now it needs



elaborate investigation and the police have altered the sections from 174(3) of Cr.P.C to 306 of IPC and the case is under investigation, hence the petition is liable to be dismissed. To support his contention he relied on the following judgments:

a) Ashabai Machindra Adhagale .vs. State of Maharashtra reported in (2009)2 SCC (Cri.)20

b)Chitresh Kumar Chopra vs.State(Government of NCT of Delhi reported in (2009)16 SCC 605

c)State of Uttar Pradesh.vs. Naresh and others reported in(2011)4 SCC 324

d)Ude singh .vs. State of Haryana reported in AIR 2019 Supreme Court 4570

6. The learned Government Advocate(Crl.Side) appearing for the first respondent would contend that based on the complaint given by the second respondent, the first respondent registered a case in Crime No. 78 of 2018 for the offences under Section 174(3) of Cr.P.C and after investigation it was altered to 306 of IPC and the investigation is still pending. As per the First Information Report offences are made out as against this petitioner and at this stage this petition is not maintainable. Further offences are grave in nature and thereby it requires elaborate investigation and hence this petition is liable to be dismissed.



7. Heard both sides and perused the materials available on record.

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8. It is admitted that the defacto complainant is none other than the father -in-law of the petitioner and based on the complaint given by the second respondent the first respondent registered First Information Report under Section 174 of Cr.P.C and thereafter altered to Section 306 of IPC. The contention of the petitioner is that as per the First Information Report when the deceased attempted to see her child she was not allowed and the same will not come under the purview of Section 306 of IPC. As per the prosecution the case is under initial stage and the offences are grave in nature and it needs elaborate investigation. The learned counsel appearing for the petitioner has drawn the attention of this Court that as per the statements recorded during investigation and in the alteration report there are no materials as against this petitioner and the pending First Information Report is abuse of process of law. It is well settled law that the statements recorded during the course of investigation and other documents cannot be looked into at this stage while exercising power under Section 482 of Cr.P.C for quashing the First Information Report. This case is also under the stage of First Information Report and the offences are grave in nature. As rightly contended by the learned Government Advocate(Crl.side) appearing for the first respondent the investigation is in preliminary stage and this Court cannot scuttle the investigation by the respondent police.



9. The learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Ramesh Kumar .vs. State of Chhattisgarh** reported in **(2001) 9 SCC 618**, wherein it is held as follows:

"9. So far as the offence under Section 306 of IPC is concerned, in our opinion, the Trial Court and the High Court have committed gross error of law in holding the accused-appellant guilty and therefore conviction under Section 306 IPC deserves to be quashed and set aside.

10. Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 of IPC which 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 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."

11. There is no direct evidence adduced of the accused-appellant having abetted Seema into committing suicide. The prosecution has relied on Section 113-A of Evidence Act which reads as under :-

113A. Presumption as to abetment of suicide by a married woman.-When the question is whether the commission of suicide by a woman had been abetted by her or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had



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been abetted by her husband or by such relative of her husband.

Explanation.- For the purpose of this section, "cruetly" shall have the same meaning as in [section 498-A](#) of the Indian Penal Code.

12. This provision was introduced by [Criminal Law \(Second\) Amendment Act, 1983](#) with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. How-ever still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of [Section 113-A](#) shows that to attract applicabilty of Section 113- A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - 'The other circumstances of the case' used in [Section 113-A](#) suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise



available on record may destroy the presumption. The phrase 'May presume' used in [Section 113-A](#) is defined in [Section 4](#) of the Evidence Act, which says-'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'

13. The present case is not one which may fall under clauses, secondly and thirdly of [Section 107](#) of Indian Penal Code. The case has to be decided by reference to the first clause, i.e., whether the accused-appellant abetted the suicide by instigating her to do so.

....

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.

21. In [State of West Bengal v. Orilal Jaiswal and Anr.](#), [1994] 1 SCC 73, this Court has cautioned that 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 the life by committing suicide. If it transpires to the Court that a victim committing suicide was 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 found guilty.



10. On a careful reading of the above judgment it is clear that 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, but in the case on hand the case is under investigation and the police have not completed the investigation .

11. The learned counsel appearing for the respondents relied on the following judgments:

a) Ashabai Machindra Adhagale .vs. State of Maharashtra reported in (2009)2 SCC (Cri.)20, wherein it is held as follows:

10. It needs no reiteration that the FIR is not expected to be an encyclopedia. As rightly contended by learned counsel for the appellant whether the accused belongs to scheduled caste or scheduled tribe can be gone into when the matter is being investigated. It is to be noted that under [Section 23\(1\)](#) of the Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short the 'Rules') have been framed.

b) Chitresh Kumar Chopra vs. State (Government of NCT of Delhi) reported in (2009)16 SCC 605, wherein it is held as follows:

19. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the



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deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

c)State of Uttar Pradesh.vs. Naresh and others reported in(2011)4 SCC 324,wherein it is held as follows:

10. It is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated. *The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. [Vide: Rohtash v. State of Rajasthan, (2006) 12 SCC 64; and Ranjit Singh & Ors. v. State of Madhya Pradesh*

d)Ude singh .vs. State of Haryana reported in AIR 2019 Supreme Court 4570,wherein it is held as follows:

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is



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otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

12. On a careful reading of the above judgments it is clear that First Information Report is not expected to be an encyclopedia. If the accused by his acts and by if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC and in the case on hand the case is under investigation and thereby in view of the above discussions and the judgment stated supra and as per the guidelines



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issued by the Hon'ble Apex Court in the case of **Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others** reported in **2021 SCC Online SC 315**, this Court cannot scuttle the investigation by the police and it needs elaborate investigation, and at this stage this Court is not inclined to allow the petition and hence the petition is liable to be dismissed.

13. Accordingly this Criminal Original Petition stands dismissed. Consequently connected miscellaneous petitions are closed.

29.09.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police
Kallidaikurichi Police Station
Kallidaikurichi
Tirunelveli District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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