

2023:PHHC:075649

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M 44245-2016
RESERVED ON 20.12.2022
PRONOUNCED ON:24.05.2023

DR. RAJENDER LAMBA AND ANOTHER

...PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

AND

2.

CRM-M-13780-2017

SURUCHI LAMBA

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL.

Present: Mr. R.S. Khosla, Sr. Advocate with
Mr. Aman Sharma & Mr. Sarvesh Malik, Advocates
for the petitioners

Mr. Chetan Sharma , AAG, Haryana

Mr. A.D.S. Sukhija, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. Vide this common order, this Court shall dispose of both the petitions together as both are arisen out of the same incident.

2. The jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been invoked for quashing of FIR No. 34 dated 15.11.2014, Under Sections 302, 201, 34 of IPC, registered at Police Station Gurgaon GRP Ambala Cantt, wherein, final report has been presented Under Section 306/ 34 IPC, along with all subsequent proceedings arising therefrom.

3. The factual matrix of the prosecution case unfolds as daughter of the petitioners was married with Dr. Basant (since deceased) in February 2011 and he was practising at J.T.B Hospital Shahadra, Delhi but just after marriage Dr. Basant started living at Gurgaon with his wife. Petitioners would often come to visit their daughter at Gurgaon as the couple had started their new life. On 24.11.2014 Dr. Basant alleged to have committed suicide on railway track after coming back from Mumbai and had not left any suicide note. Deceased had gone their to visit his parents as his father's health did not keep well. During the investigation, when final report under section 173 Cr.P.C was presented, the investigating officer deleted the offence under section 302/201 and added section 306 of the IPC . The police filed the report under section 173 Cr.P.C after having recorded the statements of two prime witnesses i.e Parveen kumar, Estate Manager of the society and Sayara Bano, Maid Servant of the couple.

4. Learned counsel for the petitioners submits that the present FIR in question has been falsely registered against the petitioners as respondents now fear that their daughter in law would deprive them in succession to the property. He submits that after visiting his parents at Mumbai, Dr Basant remained upset and irritated and did not disclose anything to anyone. It is further asserted that petitioners connived with their daughter and committed murder of Dr. Basant on

flimsy grounds that he was not allowed to meet his parents at Mumbai by them .

5. Counsel further states that initially FIR was registered under section 302/201/34 but when final report was submitted under section 173 Cr.P.C the earlier sections were deleted and section 306 of IPC was added. Section 306 was added after recording the supplementary statements of two prime witnesses i.e Parveen kumar, Estate Manager of the society and Sayara Bano, Maid Servant of the couple. There are improvements in the statements recorded which clearly shows that the investigation conducted in present case is biased and nothing cogent material is on record to convict the accused persons even the Challan presented by the investigating officer remarks that it is a weak case and there are no chances of success in this case.

6. He submits that even on bare perusal of the FIR the essential ingredients of Section 306 IPC are not fulfilled i.e abetment is missing as there is no allegation that the petitioners in any way activated the suggestion or gave support to the commission of the offence, or they instigated, goaded, urged forwarded provoked, incited or encouraged the deceased Dr. Basant to commit suicide.

7. Learned state counsel has vehemently opposed the prayer made in the petition on the ground that there are specific and direct allegations against the petitioners in the commissioning of the offence . He contends that in the final report submitted under section 173 Cr.P.C there are sufficient grounds against them to array them as an accused in the present case as in the FIR it is clearly mentioned that the petitioners were not allowing the deceased Dr. Basant to meet his parents and were harassing him and even on a day prior to the incident the deceased has called his parents on 13.11.2014 and told them that that the petitioners want to kill him (Dr Basant).

8. Further reply filed by Mohinder singh. HPS, Dy. Superintendent of Police, GRP, Faridabad specifically states that after returning from Mumbai deceased had intimated his parents that petitioners had given him beatings and remained under mental stress as in laws did not allow him to meet his parents. It was during investigation supplementary statements were recorded under section 161 Cr.P.C of the two prime witnesses i.e Parveen kumar, Estate Manager of the society and Sayara Bano, Maid Servant of the couple wherein in the third supplementary statement recorded on 15.11.2015, the Estate Manager stated that daughter of the petitioners was a quarrelsome lady and there were regular fights between them and third supplementary statement recorded of maid Syara Bano reveals that before the death of Dr.Basant the petitioner no.2 i.e mother in law was staying with them in the house of Dr.Basant and one day prior to death of Dr. Basant the petitioner no. 1 father in law visited the house of Dr. Basant along with one unknown person and was scolding Dr. Basant and was saying that it is all your fault and not the fault of his daughter.

9. It is further stated in the reply that the petitioners were asked to get their Polygraph test conducted but they refused saying that petitioner no. 1 is a heart patient and is under depression and petitioner no. 2 and their daughter is taking medicine for Essential tremor. Therefore sufficient material is on record to proceed with the case.

10. Reply filed by respondent no.2 further strengthens the allegation against the petitioners and states that when his son had come to Mumbai on 24.10.2014 he narrated the matrimonial discord between his wife and him, to the parents and instead of knowing that the health of her father in law is not keeping well did not accompanied him to Mumbai. He further states that their daughter in law i.e

Suruchi has never talked to them. The family of the petitioner was building pressure upon my son to keep him away from the respondents. Petitioners called respondent on 06.11.2014 and asked him to settle the matrimonial discord or to face the consequences. Then, on 10.11.2014 deceased called his mother and informed that his mother in law has forcibly taken over his house and are demanding ransom of Rs 2 Crore stating that they have spent 40 lakhs in marriage + 40 lakhs towards their daughter education + 20 lakh miscellaneous and 1 crore compensation to settle the marriage.

Section 306 of the Indian Penal Code reads as under :

"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."

11. From a bare reading of the provision, it is clear that to constitute an offence under Section 306 Indian Penal Code, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the Indian Penal Code, which defines abetment of a thing as follows:

"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."

12. As per the Section, a person can be said to have abetted in doing a thing, if he, firstly, 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 to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the Indian Penal Code.

13. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 Indian Penal Code ?

14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the Indian Penal Code. The meaning of the said word was considered by this Court in ***Ramesh Kumar v. State of Chhattisgarh, 2001(4) RCR (Criminal) 537 : (2001)9 SCC 618***. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. *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 to be inferred.* A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts". Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. 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 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.

16. Further reliance can be placed upon judgement rendered by Apex Court in *Marino Anto Bruno and Anr. Versus The Inspector of Police criminal appeal no. 1628 of 2022* wherein this Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life.

17. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

18. In the judgment in the case of *Rajiv Thapar & Ors. v. Madan Lal Kapur, (2013) 3 SCC 330* this Court has considered the scope of the provision under Section 482, Cr.PC and has laid down the steps which should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings in exercise of power under Section 482, Cr.PC. Paragraph 30 containing the four steps read as under :

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by

invoking the power vested in the High Court under section 482 CrPC, 1973:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under section 482 CrPC, 1973. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

19. Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. Further there is direct evidence against the petitioners for the commissioning of the offence and one

of the essentials of Section 306 IPC i.e *mens rea* is present qua the petitioners and even the final report stands presented under Section 173 Cr.P.C., specifically mentions that Dr. Basant on returning from Mumbai has told his parents that the petitioners gave him beatings and even threatened to kill him. A day prior to the incident i.e on 13.11.2014 the petitioners along with one unknown person were present in the house of the deceased who were harassing the deceased.

20. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a given case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide.

21. Therefore, in such a case, an inference has to be drawn from the totality of circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 of the Code.

22. Considering the facts and circumstances of the case in hand, I do not think it is a case which requires any interference by this court as regards. The quashing petition is, therefore, dismissed accordingly.

23. A copy of this order be placed on the file of the another connected petition.

(SANDEEP MOUDGIL)
JUDGE

24.05.2023
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>