

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

238

CRM-M-46812 of 2021 (O&M)

Date of Decision: 04.08.2023

Sukhwinder Singh**....Petitioner****Versus****State of Punjab and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Sanjeev Manrai, Sr. Advocate, with
Mr. Anter Singh Brar, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the FIR No.64 dated 24.05.2018, under Section 306 of the Indian Penal Code, registered at Police Station City Raikot, District Ludhiana alongwith all other consequential proceedings arising therefrom.

2. In the present case, notice of motion was issued by this Court on 09.11.2021 and thereafter an application was filed by the petitioner for placing on record some documents including the supplementary report qua the petitioner under Section 173 of the Code of Criminal Procedure. In the application as well notice was issued by this Court. The Registry of this Court has reported that respondent No.4, who is the complainant, has been served. Rather as per the report of the Registry, respondent No.4 has been

served both in the main case as well as in the application. The summons have been received by respondent No.4 after fixing signatures. Photocopy of both the aforesaid reports are Marked as 'X' and 'Y', respectively, and shall become a part of the present order. Respondent No.4 has not caused appearance despite being served twice. As such, this Court would proceed in the absence of any representation by respondent No.4. The State has already filed reply in the present case.

3. The brief facts of the present case are that an FIR was lodged on the basis of a statement made by Sukhpal Singh-respondent No.4 who is son of Baljinder Singh son of Ajaib Singh. The aforesaid Baljinder Singh, who is the father of the complainant, is the deceased in the present case who committed suicide and thereupon the present FIR was registered under Section 306 IPC. The FIR is based upon suicide note containing the allegations pertaining to the death of the aforesaid Baljinder Singh who was serving as a Head Constable in the police and who killed himself by shooting himself and had also executed a suicide note in this regard which has been appended with the present petition as Annexure P-6. The aforesaid suicide note is reproduced as under:-

“Suicide Note

The statement of H.C. Baljinder Singh No.613, Police Station City, Raikot, village Baroondi, District Ludhiana, Aged 50 years.

I stated that I am doing suicide due to harassment by the above persons against Ajaib Singh s/o late Kahta Singh, Shamsher Singh s/o Ajaib Singh, Sukhwinder Singh s/o Ajaib Singh, Bahadur Singh Fauji s/o late Jarnail Singh, all residents of Baroondi and Balraj Singh s/o late Sh. Mukhtiar Singh,

resident of Rajgarh, Harbant Kaur w/o Tejinder Singh, s/o Balhiar Singh, r/o Gobindgarh, they all are resident of village Chauki Jalaldiwal. Note: The Tehsildar Raikot has taken Rs.one lakh from me for not cancelling the registry, however Registry is cancelled. Kindly get Rs.one lac from Tehsildar and be paid to my children failing which case may be registered against Tehsildar.

Sd/- Baljinder Singh
In English”

4. As per the suicide note, the deceased has stated that he is dying due to harassment by Ajaib Singh s/o late Kahta Singh, Shamsheer Singh s/o Ajaib Singh, Sukhwinder Singh s/o Ajaib Singh, Bahadur Singh Fauji s/o late Jarnail Singh, Balraj Singh s/o late Mukhtiar Singh, Harbant Kaur w/o Tejinder Singh, s/o Balhiar Singh, r/o Gobindgarh. In this way, a number of persons have been named in the suicide note. The complainant while lodging the FIR also alleged that his father had said that he is doing suicide by shooting himself due to harassment by Shamsheer Singh and Ajaib Singh. The complainant has nowhere stated the name of the present petitioner, although his name figured in the suicide note.

5. At the time of investigation, the reason for committing of the suicide had come forth since the matter was initially inquired by the DSP and thereafter the matter was referred to a Special Investigation Team which also gave their report which was approved by the concerned SSP. In the suicide note, there were seven persons whose names were mentioned out of which one person is the Tehsildar against whom allegation of taking Rs.1 lac has been levelled. The details of the remaining six persons are as follows:-

- | | | |
|-----|---------------------|---|
| “1. | Ajaib Singh | Father of deceased |
| 2. | Shamsher Singh | Brother of deceased |
| 3. | Sukhwinder Singh | Brother of deceased
(present petitioner) |
| 4. | Bahadur Singh Fauji | Paternal-uncle of deceased |
| 5. | Balraj Singh | Brother-in-law of deceased |
| 6. | Harbant Kaur | Sister of deceased” |

6. Mr. Sanjeev Manrai, learned senior counsel with Mr. Anter Singh Brar, Advocate appearing on behalf of the petitioner submitted that it is a case where the present FIR is liable to be quashed qua the petitioner only, since it falls within the parameters laid down by the Hon'ble Supreme Court in **State of Haryana and others versus Ch. Bhajan Lal and others** 1992 SCC (Cri) 426 since no offence is made out qua the petitioner on the face of it and there are no allegations against the petitioner. He submitted that the petitioner is living abroad i.e. in UAE for a long period of time. The date of incident in the present case is 24.05.2018 and the petitioner had left India on 03.04.2017 and has returned back to India in the year 2021 when he filed application for grant of anticipatory bail which was granted to him. Learned senior counsel in this regard has referred to a certificate issued by the company where he is working in UAE vide Annexure P-5 which is dated 13.10.2020 in which certificate has been issued by the company that he last entered their country on 03.04.2017 and has been working in their company and never returned to India after he reached UAE. Photocopies of the passport of the petitioner showing different dates with regard to his departure from India as aforesaid has also been attached

as Annexure P4- (colly.).

7. Learned senior counsel submitted that in fact the reason for committing suicide was that the father of the deceased who is also the father of the present petitioner by way of a transfer deed transferred some of the land to the deceased Baljinder Singh and his second brother Shamsher Singh on 04.11.2014 but so far as the present petitioner is concerned, although he is related to the aforesaid two persons being brother but there was no transfer in his favour and he is already living abroad for a number of years and has nothing do with the property of the aforesaid transfer deed. However later on, the father of the petitioner, namely, aforesaid Ajaib Singh filed a petition before the Sub-Divisional Magistrate under the provisions of the Senior Citizen Act, 2000 for setting aside of the transfer deed which was made in favour of Baljinder Singh and another brother Shamsher Singh and that petition was allowed by the SDM, Raikot-cum-Tribunal Maintenance & Welfare of Parents and Senior Citizen Act, 2007 on 24.05.2018 whereby the transfer deed which was in the name of deceased Baljinder Singh and his brother Shamsher Singh was set aside and a copy of the same has been appended with the present petition as Annexure P-3. The date of the aforesaid order is 24.05.2018 and on the same date the deceased Baljinder Singh committed suicide and FIR was registered on the same date.

8. He submitted that in the suicide note, the deceased named seven persons but there is neither anything in the suicide note nor any other record apparent on the face of it to show any proximity of the petitioner with the abetment to commit suicide so as to fulfill the conditions of

Section 306 read with Section 107 IPC. He submitted that on the fact of it, the dispute was between the deceased Baljinder Singh and his father and the petitioner had nothing do with the property and also he was residing abroad and there is nothing on the record at all to show that how an abetment has been committed by the petitioner. He further submitted that when the matter was investigated by the DSP, one of the aforesaid accused who was named in the suicide note, namely, Bahadur Singh Fauji who was the paternal-uncle and neighbour of the deceased was declared as innocent on the ground that he had nothing do with the suicide and he has been named only by virtue of being relative and neighbour and thereafter the matter was referred to the SIT and the matter was again investigated which came to the conclusion that not only Bahadur Singh Fauji but two more other persons who are mentioned in the suicide note, namely, Harbant Kaur and her husband, namely, Balraj Singh were also named by virtue of being relatives only, since his sister was married somewhere else and the mere fact that they have been named in the suicide note would not mean that they had abetted the commission of suicide and therefore all the three aforesaid persons, namely Bahadur Singh Fauji, Harbant Kaur and Balraj Singh were declared as innocent by the SIT despite the fact that their names find mention in the suicide note. He submitted that the petitioner was abroad and he could not assist the SIT in this regard and could not get his statement recorded although he had pleaded before the SIT telephonically that he was also innocent because he is living abroad for a number of years but since his statement could not be recorded before the SIT as he did not come to India, the SIT did not observe that the petitioner

was also innocent.

9. Learned senior counsel further submitted that mere mentioning of the name of the petitioner in the absence of any other substance or material at all, he cannot be further prosecuted especially when the basic ingredients qua the petitioner under Section 306 read with Section 107 IPC are not fulfilled. He submitted that from the aforesaid facts and circumstances, it is clear that suicide was committed only because of the cancellation of transfer deed which was in the name of the deceased and his brother and therefore the grievance was against the father, namely, Ajaib Singh but the petitioner being a brother of Baljinder Singh, was named in the suicide note like others. He further submitted that in the absence of any abetment or any proximity with the suicide qua the petitioner on the face of it, his further prosecution would not be in the interest of justice and more particularly when he is residing and doing his work abroad.

10. In support of his contention, learned senior counsel also referred to the following judgments of the Hon'ble Supreme Court as well as of this Court:-

- i) **Vinay Tyagi v. Irshad Ali @ Deepak and others**
2013(4) SCC (Cri) 557;
- ii) **Mirza Iqbal @ Golu @ Anr. v. State of Uttar Pradesh & Anr.**
2022(1) RCR (Criminal) 340;
- iii) **Harbhajan Sandhu v. State of Punjab and another**
2022 (2) RCR (Criminal) 317;
- iv) **Mrs. Balwinder Kaur and Anr. v. U.T. Chandigarh and Anr.**
2011 (22) RCR (Criminal) 914;
- v) **Mukesh Kher v. State of Haryana and another**

2020(4) RCR (Criminal) 162;

- vi) A.R. Madhav Rao and others v. State of Haryana and another 2018(2) Law Herald 1577; and
- vii) Wing Commander Priya Jeyaraj (22507), Dental v. Union Territory, Chandigarh 2008(6) RCR (Cri) 801.

11. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab submitted that since the name of the petitioner finds mention in the suicide note of the deceased Baljinder Singh, the FIR may not be quashed qua the petitioner. He further submitted that now supplementary *challan* has been submitted against the petitioner and therefore the present petition is liable to be dismissed. He also submitted that the petitioner is working abroad for large number of years and his career will be jeopardized in case further prosecution is carried on.

12. I have heard the learned counsel for the parties.

13. Respondent No.4-complainant has not appeared despite being served twice as aforesaid. It is a case where the name of the petitioner finds mention in the suicide note and therefore this Court has to see as to whether on the face of it any allegation has been levelled against the petitioner or not and also as to whether qua the petitioner the ingredients of Section 306 read with Section 107 IPC are satisfied or not. The name of the father is Ajaib Singh who is having three sons and the names thereof are Baljinder Singh, Shamsheer Singh and the present petitioner, namely, Sukhwinder Singh. They have one sister and brother-in-law as well. All these five persons were named in the suicide note. One paternal-uncle, namely, Bahadur Singh Fauji was also named in the suicide note and one

Tehsildar was also named therein for taking bribe of Rs. one lac. The Special Investigation Team which investigated the case came to the conclusion that three persons, namely, Bahadur Singh Fauji paternal-uncle, Harbant Kaur sister and Balraj Singh brother-in-law were innocent despite the fact that they were named in the suicide note and they have been roped in by virtue of being relatives of deceased Baljinder Singh but there are no allegation pertaining to abetment of suicide qua them. The aforesaid SIT also came to the conclusion that the basic dispute was between the deceased Baljinder Singh and his own father, namely, Ajaib Singh because the aforesaid Ajaib Singh had transferred some property in the name of deceased and his another brother, namely, Shamsher Singh on 04.11.2014 but thereafter the aforesaid Ajaib Singh filed a petition under the Senior Citizen Act, 2007 for setting aside of the aforesaid transfer deed and the same was set aside and cancelled vide order dated 24.05.2018 (Annexure P-3). It was on the same date when it was cancelled and set aside that the aforesaid Baljinder Singh committed suicide.

14. A perusal of the FIR would show that even the complainant has also stated that his father has committed suicide due to harassment by Shamsher Singh and Ajaib Singh. The name of the present petitioner does not find mention in the FIR. Learned senior counsel while arguing the matter has submitted that the petitioner was residing abroad and is doing a job for a number of years regarding which not only the passport documents but also the certificate of the employer has also been attached to show that he had left India in the year 2017 and the certificate has been issued in the year 2020 and till that time he was in UAE only. The incident had occurred

in the year 2018. By way of a criminal miscellaneous application the supplementary *challan* qua the petitioner has also been attached as Annexure P-15. A perusal of the aforesaid supplementary *challan* would also show that reference has been made to the suicide note and also to the investigation done by the SIT by which the aforesaid three persons were exonerated by the police but there is no reference at all made qua the present petitioner. There is nothing in the *challan* to show as to how an offence has been committed by the petitioner or any abetment or any proximity towards the suicide was attributable to the present petitioner. Rather a perusal of the *challan* would show that qua the petitioner it is totally blank. The arguments raised by learned State counsel that since the petitioner has been named in the suicide note, that itself is a good ground for prosecuting and proceeding against the petitioner it cannot sustain in view of the fact that in the absence of any other material, the further prosecution of the petitioner would be unwarranted. A perusal of the entire record would show that there is not even a single iota of any evidence or any averment or any allegation against the petitioner barring his name in the suicide note. Neither any overtact nor any kind of beneficial interest of the petitioner has been shown since the entire controversy was pertaining to a land which was pertaining to the other two brothers of the petitioner, namely, Shamsher Singh and Baljinder Singh regarding which the transfer deed was cancelled at the instance of their father Ajaib Singh. The argument raised by learned senior counsel appearing on behalf of the petitioner that the petitioner is residing abroad and doing his work and his entire career will be effected and he will even lose job due to the pendency

of the present petition against him does carry weight.

15. The Hon'ble Supreme Court in Arnab Manoranjan

Goswami versus The State of Maharashtra and others 2021 (2) SCC

427 observed as under:-

“56. Similarly, in another recent judgment of this Court in Ude Singh and Ors. v. State of Haryana, (2019) 17 SCC 301, a two judge Bench of this Court, speaking through Dinesh Maheshwari.J, expounded on the ingredients of Section 306 of the IPC, and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision, in the following terms:

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

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 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."

57. Similarly, in *Rajesh v. State of Haryana* (2020) 15 SCC 359, a two-judge Bench of this Court, speaking through L. Nageswara Rao, J., held as follows:

"9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there 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. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

58. In a recent decision of this Court in *Gurcharan Singh v. State of Punjab* (2020) 10 SCC 200, a three-judge Bench of this Court, speaking through Hrishikesh Roy, J., held thus:

"15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased."

16. A co-ordinate Bench of this Court in **Harbhajan Sandhu versus State of Punjab and another** 2022 (2) RCR (Cri) 317 observed as

under:-

“12. A perusal of the aforementioned judgments would show that to constitute abetment, there must be a proximate and live link between the occurrence and the subsequent suicide, inasmuch as, the instigation or illegal complained off omission or commission at the hands of the accused to the deceased must be the only factor, which subsequently led to him committing suicide. In the present case, there is not even a remote mention of any date or time when the petitioner committed any overt act except the Civil Hospital occurrence which could only pertain to February, 2019.

13. Further, to constitute abetment, the intention and involvement of the petitioner-accused to aid or instigate the commission of suicide is imperative. In the present case, taking the contents of the FIR and the suicide note to be the Gospel Truth, the petitioner is said to have approached the deceased at Civil Hospital, Jalandhar to threaten him and his family members in February, 2019, where, the deceased committed suicide on 16.05.2019. During the intervening period of three months, there is nothing on record to establish that the petitioner threatened the deceased or his family members in any way. In fact, there is no evidence of any contact between the deceased and his family with the petitioner. Thus, it is clearly established that there is no proximate and live link between the alleged threats given in February, 2019 and the subsequent suicide in May, 2019.”

17. In the present case there is no allegation of harassment by the

petitioner in the FIR. However reference was made in the suicide note but there is no proximate link of instigation by the petitioner with the suicide. Considering the facts and circumstances of the present case no offence is made out qua the petitioner on the face of it. Therefore, the parameters laid down by Hon'ble Supreme Court in the case of *State of Haryana and others versus Ch. Bhajan Lal and other (supra)* remain satisfied for the purpose of quashing of the FIR.

18. After considering giving my thoughtful consideration on the matter and after hearing learned counsel for the parties at length, this Court is of the view that the present FIR deserves to be quashed qua the petitioner. Consequently, the present petition is allowed and FIR No.64 dated 24.05.2018, under Section 306 of the Indian Penal Code, registered at Police Station City Raikot, District Ludhiana alongwith all other consequential proceedings stands quashed qua the petitioner.

August 04, 2023
dinesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking : Yes

Whether reportable : Yes