

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on : 27.03.2023

CRM-M-40199-2019

Bhageshwar Gupta

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CRM-M-43796-2019

Brij Vassi Gupta

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjiv Kumar Aggarwal, Advocate with
Mr. Tejas Bansal, Advocate
for the petitioners in CRM-M-40199-2019.

Mr. P.S. Ahluwalia, Advocate
for the petitioner in CRM-M-43796-2019.

Mr. Amit Rana, Sr. DAG, Punjab.

Mr. M.S. Viridi, Advocate
for the complainant.

Manjari Nehru Kaul, J. (Oral)

This order shall dispose of two criminal petitions i.e. CRM-M-40199 and 43796-2019 as both of them have arisen out of FIR bearing No.107 dated 08.08.2016 registered under Section 306 IPC at Police Station Sadar Patiala District Patiala. The brief facts of the case are being taken from CRM-M-40199-2019.

Both the petitions have been filed under Section 482 Cr.PC for quashing of FIR No.107 dated 08.08.2016 registered under Section 306 IPC at Police Station Sadar Patiala District Patiala along with all the subsequent proceedings arising therefrom qua the petitioners.

Learned Counsel for the petitioners submits that the undisputed facts are that :-

- i In the year 1986, an agreement to sell was entered into between Surinder Kumar Gupta, elder brother of the petitioners and father of the complainant qua the land in question (i.e. Khewat/ Khatuni No. 32/34, Khasra No.5/2, 2/5 (1-10) measuring 1 bigha 10 biswa) for which a sale deed was to be executed on 05.02.1987.
- ii On 31.01.2000, second agreement to sell was entered into between Surinder Kumar Gupta and the petitioners with the mother of the complainant qua the same property for which the sale deed was to be executed on 19.04.2000. Both the sale deeds however could not be executed. Admittedly, there was no communication between the parties till April 2013.
- iii In April, 2013, the mother of the complainant moved an application before the Sub Divisional Magistrate, Patiala qua the non-execution of the sale deed by the accused party. The matter was investigated, however, the complainant party was advised to file a civil suit as it was essentially a civil dispute between the parties.

- iv On 26.06.2014, the deceased went missing. On 29.06.2014 (Annexure P-3) DDR No.10 was recorded by the complainant wherein he stated that he apprehended that his brother i.e, deceased might have jumped into the Bhakra Canal. The complainant while getting the DDR recorded did not even raise any suspicion qua the involvement of any person much less any harassment meted out to the deceased by the accused party, which may have led the deceased to end his life. On 01.07.2014, the body of the deceased was recovered and inquest proceedings under Section 174 Cr.PC were conducted. Even during the inquest proceedings, no allegation was levelled by the complainant party against anyone much less the accused including the petitioners.
- v It was only on 07.07.2014, for the first time, a complaint was made to the police by the complainant, along with a photocopy of a suicide note, allegedly left behind by the deceased.
- vi Subsequently, the investigating agency, after conducting a detailed inquiry, recommended consigning the complaint on account of the failure of the complainant party to produce the original suicide note along with the handwriting sample of the deceased.
- vii Thereafter, in the year 2015, the alleged original suicide note (Annexure P-5) was produced for the first time by the

complainant, which was then sent to the Forensic Science Laboratory (herein referred to as the FSL). Though as per the FSL report, the handwriting on the suicide note matched with that of the deceased, the District Attorney (Legal) opined that the matter required investigation and the decision be left to the Court. In the meantime, on 18.07.2016, a civil suit was filed before the Civil Judge, Senior Division, Patiala by the mother of the complainant with respect to the agreement to sell dated 31.01.2000, which had been entered into, between her and the brother of the petitioners.

Learned Counsel for the petitioner while drawing the attention of this court to the contents of the FIR in question *inter alia* submits that on a bare perusal of the same it is evident that a totally concocted and false story has been brought forth by the complainant party while lodging the FIR, and that too after an inordinate and unexplained delay. Initially, the complainant had not suspected anyone much less even obliquely referred to the involvement of the petitioners behind the suicide of the deceased but later on had alleged that the deceased had committed suicide on account of the petitioners having cheated the complainant party. Learned counsel has thus, argued that it clearly hinted towards the false implication of the petitioners in the case in hand. Learned counsel has still further submitted that it was the admitted case of the complainant himself that an agreement to sell had been executed between Surinder Kumar Gupta and his father in 1986 and after his death with the mother of the complainant, hence,

even assuming for the sake of arguments though not admitting, that a fraud had indeed been committed by Surinder Kumar Gupta, it could not be said that the petitioners had abetted the suicide of the deceased more so when it was a matter of record that the deceased was not even a party to the agreement to sell in respect of the land in question.

While drawing the attention of this Court to the suicide note (Annexure P-4), learned counsel has further submitted that the suicide note was not only undated, but also had been produced much after the deceased had jumped to his death. He submitted that even otherwise, a perusal of the contents of the suicide note revealed that the essential ingredients to attract the mischief of an offence under Sections 306 and 107 IPC were clearly amiss therein. It was also submitted that it was not even the case of the complainant that soon before the suicide of the deceased, there had been any interaction or communication or even any altercation between the deceased and the petitioners, which compelled him to jump to his death. Learned counsel still further submitted that even assuming for the sake of arguments, but not conceded, that the petitioners' brother i.e. Surinder Kumar Gupta had failed to perform his part of the contract within the period stipulated in the agreement to sell, there was nothing, which stopped the mother of the deceased to take recourse to law by filing a suit for specific performance which admittedly was not done and it was only in the year 2016, the mother of the complainant instituted a suit for specific performance qua the land in question, which was also much beyond the stipulated period of limitation. In support of his submissions, learned counsel placed reliance upon the judgment of Hon'ble Supreme Court in *M. Mohan vs. State, 2011(3) SCC*

626 and Kanchan Sharma vs. State of Uttar Pradesh and anr, 2021 SCC Online SC 737. He, thus, prayed that the FIR, along with the chargesheet and all the subsequent proceedings arising therefrom ought be quashed, in the interest of justice.

Per contra, learned State counsel assisted by learned counsel for the complainant opposed the prayer made by the counsel opposite and submitted that a suicide note was left behind by the deceased wherein he had specifically named not only Surinder Kumar Gupta and his sons but also the petitioners and their sons of cheating him and being responsible for his death. Learned State counsel submitted that no doubt, an agreement to sell was initially entered into in the year 1986, however, being the brothers of Surinder Kumar Gupta, the petitioners were vicariously liable as they had in the year 2013 as well as in the year 2015 sold the land in question to somebody else, as a result of which, the deceased had been pushed against the wall and left with no other option but to end his life. Learned counsel argued that the petitioners had been rightly charge-sheeted, in the light of the allegations levelled in the FIR and thus, the present petition for quashing deserved to be dismissed.

Heard learned counsel for the parties and perused the relevant material available on record.

Before proceeding further, it would be apposite to reproduce Section 306 IPC along with Section 107 IPC, which is 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.”

The expression “abetment” within the meaning of the Penal Code is defined 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 willful misrepresentation, or by willful 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.

Explanation 2.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

A bare reading of the above reproduced provisions makes it clear that in order to attract the mischief of an offence u/s 306 IPC;

- a. firstly the accused must aid or instigate the deceased to commit suicide
- b. Secondly, the accused must have the mens rea to commit the offence.

The offence u/s 306 IPC requires a positive act on part of the accused with the intention to push the deceased to such a situation that left with no other option, he commits suicide. Not only this , for conviction u/s 306 IPC, there must be some cogent evidence with respect to the alleged acts of abetment. Mere allegation that a person(s) has caused harassment to the deceased would not be sufficient enough to attract the mischief of Section 306 IPC unless the offending action of the accused is proximate in time to the occurrence in question i.e. suicide. An active act including *mens rea* must also be clearly discernable on the part of the accused.

In Gurcharan Singh v. State of Punjab 2017(1) RCR (Criminal)

118 , while discussing the basic ingredients of the Section 306 of the IPC, the Hon'ble Supreme Court has held as under :-

“21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the

intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

*28. Significantly, this Court underlined by referring to its earlier pronouncement in Orilal Jaiswal that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in **Amalendu Pal v. State of W.B (2010) 1 SCC 707.***

*29. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in **S.S. Chheena v. Vijay Kumar Mahajan (2010) 12 SCC 190.**”*

Thus, what flows from the various judicial pronouncements is that there must be a proximate and live link between the occurrence and the

subsequent suicide, inasmuch as, the instigation alleged at the hands of the accused to the deceased must be the only factor, which subsequently led him to commit suicide.

It would also be apposite to refer to the observations made by the Hon'ble Supreme Court in ***Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, 2002(2) RCR (Criminal) 687*** . While discussing as to what could be termed to be the “proximate time” with respect to the alleged abetment to suicide, the Supreme Court held as under:

“13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as Annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is

common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 derived the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.”

The Hon'ble Supreme Court, thus, held that there was no proximate link between the occurrence and subsequent suicide as there had been a gap of 2-3 days between the words used i.e. the alleged instigation and the date of suicide.

Adverting to the case in hand, this court concurs with the submissions made by learned counsel for the petitioners that the basic ingredients to attract the mischief of Section 306 IPC are clearly amiss in the instant case for the reasons to follow :

- i the suicide note (Annexure P-4) which forms the fulcrum of the allegations levelled in the present case, admittedly does not bear any date, time or place. The suicide note levels vague and blanket allegations and is only on a piece of paper, which was produced before the investigating agency in 2015, i.e. an year after the suicide of the deceased.
- ii Merely being named in the suicide note would not by itself be sufficient to convict the accused u/s 306. Moreover, in the present case, even if the contents of the suicide note are presumed to be correct and written by the deceased at the time of his death , the allegations levelled therein do not attract the mischief of an offence u/s 306. Only vague allegations of fraud and cheating have been levelled against the petitioner without there being any reference to any act or incidence whereby any direct or active instigation on part of the accused to push the deceased to commit suicide being mentioned.
- iii Admittedly, there was no communication between the parties till April, 2013. Even the fraud alleged to have been committed qua the agreement to sell with respect to the land in question pertains to the year 1986, when the first agreement to sell was executed and thereafter in the year 2000, when a second agreement to sell qua the same land was executed. Hence, there appears no proximate link

between the allegations levelled against the petitioners and the suicide of the deceased, more so and pertinently when the deceased was not even a party to the agreement to sell in question.

- iv In the facts and circumstances, there was no immediate provocation from which it could even remotely be inferred that the deceased had ended his life on account of some act of the petitioners.

In the circumstances, keeping in view the ingredients of Section 306 IPC, this Court does not find any cogent link to connect the suicide of the deceased with allegations levelled against the accused. Accordingly, in view of the above discussion the instant petition is allowed and the FIR in question, and all consequential proceedings, arising therefrom are quashed qua the petitioners.

(MANJARI NEHRU KAUL)
JUDGE

27.03.2023
sonia

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No