

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4743 of 2022

Mithu Mondal

Versus

The State of West Bengal and Anr.

For the petitioner : Mr. Uday Sankar Chattopadhyay
Ms. Trisha Rakhit
Ms. Bidisha Chakraborty
Ms. Aishwayrya Datta

For the *de facto* complainant : Mr. Sagnik Mukherjee

For the State : Ms. Anasuya Sinha
Ms. Subhasree Patel

Heard on : 02.12.02024

Judgment on : 13.12.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. Mother of the deceased/victim Krishna Sarkar lodged a written complain to the local police station stating interalia that the matrimonial life of victim and her husband was peaceful but for last four - five months

Tarun Kumar Mondal who is the friend of the husband of the victim (the other accused) started coming to the house of the victim and forced her to do filthy chit chat and also tried to commit rape upon her on several occasion. The complainant further alleged that said Tarun Kumar Mondal and the petitioner herein Mithu Mondal (who is the wife of said Tarun Mondal) threatened the victim using filthy languages. It is further alleged that due to such unbearable mental torture the daughter of the defacto complainant (opposite party no. 2 herein) namely the victim committed suicide by hanging.

2. On the basis of said complain, Goghat Police Station, case no. 245 of 2019 dated 2nd September, 2019 under section 306/34 of the Indian Penal Code was started and thereafter police submitted charge sheet under the above mentioned sections against both Tarun Mondal (who is not the petitioner herein) and the present petitioner.

3. After service of the copy to the petitioner/accused under section 207 of the Cr.P.C., the petitioner made a prayer before the Trial Court under section 227 of the Code of Criminal Procedure for discharge. However by the impugned order learned court below rejected the petitioners prayer for discharge.

4. Being aggrieved by the said order Mr. Uday Shankar Chatterjee learned Counsel appearing on behalf of the petitioner submits that on bare perusal of the statements recorded in FIR and the statement of the witnesses recorded under section 161 and 164 of the Code of Criminal Procedure and also the charge sheet, it appears that no prima facie case has been made out against the petitioner. Infact the materials placed before

the learned trial court do not disclose grave suspicion against the accused/petitioner. In fact there is no specific allegation of instigation or goading by the petitioner to commit suicide and the court below acted in perfunctory manner while considering petitioner's prayer for discharge.

5. Mr. Chatterjee further argued that the trial court is not supposed to act merely as a post office or mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidentiary value of the documents produced before the court, though he is not supposed to make a roving enquiry to the pros and cons into the matter.

6. He further submits that the instant criminal proceeding is manifestly attended with *malafides* with an ulterior motive for wrecking vengeance with a view to spite the petitioner, due to private and personal grudge. Mr. Chatterjee further argued that in the instant case, it has not specified on which date the petitioner threatened the deceased and as such it does not attract section 107 of the IPC. Moreover, the call record details submitted by the prosecution signifies a considerable amount of conversation between the deceased and husband of the petitioner but not with the present petitioner. He further submits that the deceased have not left any suicide note implicating the petitioner. Moreover, it is an absurd proposition that the petitioner prompted her husband to make extra marital affairs with the deceased victim. Accordingly Mr. Chatterjee prayed for quashing the impugned proceeding quo the petitioner. In this context Mr. Chatterjee relied upon the following judgments in support of his contention:-

(a) (2002) 5 SCC 371 (Sanju Alias Sanjay Sengar Versus state of M.P.)

(b) (2005) 2 SCC 659 Netai Dutta versus state of West Bengal

(c) (1972) 3 SCC 282 Century Spining and manufacturing company ltd. And ors versus state of Maharashtra

(d) (1979) 3 SCC 4 Union of Inida, Vs. Prafulla Kumar samal and Anr.

7. Mr. Mukherjee learned counsel appearing on behalf of the defacto complainant/opposite party no.2 herein argued that the petitioner before this court has not prayed for quashing the entire proceeding. He further submits that it transpired from the documents filed by the prosecution that a number of incriminating materials exists against the petitioner. The complain lodged by mother of the deased/victim clearly spelled out the name of the petitioner and attributes an overt role of the petitioner, because of whom the deceased victim succumbed to the mental pressure, so inflicted and was finally compelled to take her own life.

8. He further submits that beside the complaint, the daughter in law of the complainant, two sons of the defacto complaiant and the brother in law of the deceased victim clearly alleged the active involvement of the petitioner which contributes to the petitioner being instigated over a period of time thereby resulted in her being compelled to commit suicide. The investigating authority after conducting investigation has submitted charge sheet against the present petitioner. He further submits that reading sections 306 and section 107 together would indicate that there must be either an instigation or an engagement or intentional aid "for doing of a

thing". From the materials collected during investigation, it clearly transpires that the petitioner has encouraged the person to commit suicide or engaged in conspiracy with others to encourage the person to commit suicide or acted intentionally to aid the person to commit suicide.

9. Mr. Mukherjee further argued that the deceased was exploited of her emotional vulnerability by the petitioner making her feel worthless and/or undeserving of life leading her to commits suicide. Moreover the deceased was threatened with dire consequences including threats of inflicting harm to her family and her husband to the extent that she believed that choosing to commit suicide was her only way out. The allegations made against the deceased by the petitioner damaging to her reputation, which further compelled her to commit suicide, due to public humiliation and loss of dignity.

10. Mr. Mukherjee also discarded petitioners contention saying, even if there is omission of the name of the present petitioner as perpetrator in the statement recorded under section 164 Cr.P.C., that must not be held to be fatal to the prosecution case, since the First Information Report stating the name of the petitioner was lodged immediate after occurrence and court cannot reject the First Information Report unless there are indications of fabrications.

11. In this context opposite party no.2 relied upon following judgments:-

(a) Gep. Varghese vs. State of Rajashtan and another, (2021) 19 SCC 144.

(b) Ude Singh and others Vs. state of Haryana, (2019) 17 SCC 301

(c) Nipun Aneja and others Vs. State of U.P. (Criminal Appeal no. 654 of 2017)

12. Learned counsel appearing on behalf of the State, Ms. Sinha placed the case diary and submits that there are sufficient incriminating materials in the case diary against the present petitioner and the court below on perusal of the materials satisfied that there are grounds for proceeding against the present petitioner and thereby rejected petitioners prayer for discharge, which does not call for interference by this Court invoking inherent jurisdiction of the court, under section 482 of the Code.

13. I have considered submissions made by both the parties. It is not in dispute that the victim had committed suicide. It also transpires from the materials available in record that the victim was married to one Hariprasad Mondal. The complainant who is the mother of the victim alleged in her FIR that their matrimonial life was peaceful but a friend of husband of victim had developed an illegitimate relationship with the victim without her consent. The statement recorded under section 161 of the Code reveals that the wife of the other co-accused person, who is the petitioner herein, had come to know of such illegitimate relationship and had threatened the victim over phone call on various occasions with dire consequences. It is alleged that due to inflicting such pressure on the mind of the deceased victim, the victim was compelled to take her life by hanging herself. It transpires from the FIR that the FIR-maker clearly named the petitioner and attributes overact upon the petitioner alleging that the deceased victim succumbed to the mental pressure so inflicted upon her. The witnesses who were examined under Section 161 of the Code clearly alleges the

involvement of the petitioner who allegedly instigated over a period of time, thereby resulting in her being compelled to take her own life.

14. The scope of and ambit of section 107 has been discussed repeatedly by the Apex Court in various judgements. In the case of **S.S Chheena Vs Vijay Kumar Mahajan and another, (2010) 12 SCC 190** it was observed in paragraph 25 as follows.

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in 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. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

15. In the present context there is specific allegation in the FIR as well as in the statements recorded under 161 Cr.P.C that there is direct or indirect act of incitement to the commission of offence of abatement of suicide. In **Nipun Ahuja and others Vs the State of Uttar Pradesh** some guidelines are formed to determine if the accused against whom the allegations are leveled are not unnecessarily harassed or they are not put to trial just for the sake of prosecuting them. In paragraph 23 of the judgment it was held that High Court should have examined the matter keeping in mind the following:-

- (a) *On the date of the meeting, i.e., 03.11.2006, did the appellants create a situation of unbearable harassment or torture, leading the deceased to see suicide as the only escape? To ascertain this, the two statements of the colleagues of the deceased referred to by us were sufficient.*
- (b) *Are the appellants accused of exploiting the emotional vulnerability of the deceased by making him feel worthless or undeserving of life leading him to commit suicide?*

- (c) *Is it a case of threatening the deceased with dire consequences, such as harm to his family or severe financial ruin to the extent that he believed suicide was the only way out?*
- (d) *Is it a case of making false allegations that may have damaged the reputation of the deceased & push him to commit suicide due to public humiliation & loss of dignity.”*

16. It is true that the petitioner has raised certain grounds for her discharge from the present proceeding which includes that no witness including the *de facto* complainant specifically narrated on which date present petitioner threatened the deceased and as such bald and omnibus statement does not attract Section 107 IPC. She further taken specific plea that it is a natural phenomena particularly in rural area that the wife must not encourage her husband's extra marital affairs.

17. Learned court below while dealt with the issue has made clear observation which reads as follows-

“It is also true that the active abetment or the conspiracy to abet the suicide of the victim may not be made out clearly in the materials in the record and the CD but instigation is such a thing that cannot be described in specific act which can tantamount to it. Instigation is to be construed by the facts and circumstance surrounding the case and how the same facts and circumstances influence the victim. Here, the matter to be considered is not merely the overt acts of the respondent perpetrator but the effect of the act upon the victim. Depending upon the mental status of the victim, from case to case the same fact in certain circumstances may amount to instigation and in other circumstances may not the Fragility or the temperament of the victim is an important aspect in construing instigation and whether the alleged threats by the accused upon the victim acted as abetment/instigation or not can only be understood upon evidence being recorded.

The fact that the victim committed suicide is not disputed. From the statement of the witnesses in 161 Cr.P.C and the FIR there is allegation that the victim used to be threatened regularly over the phone by the accused persons and that she committed suicide as she is unable to withstand the threats of the accused. Therefore, I am of the opinion that for the purpose of framing Charge U/S 306 IPC such material is sufficient even against the accused Mithu Mondal.”

18. The law on this point is well settled in view of judgment pronounced in **Sajjan Kumar Vs. C.B.I** reported in **(2010) 9 SCC 368**, wherein it has

been held that if at the initial stage there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused and the presumption of the guilt of the accused, which is to be drawn at the initial stage is only for the purpose of deciding *prima facie* whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

19. As stated above, the Trial Court in the present proceeding had taken into account the materials collected during investigation and came to a finding that it is required to be adjudicated as to whether the victim was unable to withstand due to the threats of the accused/petitioner. What amounts to instigation since varies from case to case, it is required to be adjudicated during trial. I do not find any perversity in reaching to such observation by the court below, in view of materials available in the case record and as such the order impugned dated 16.11.2022, does not call for interference by this court.

20. In such view of the matter CRR 4743 of 2022 stands dismissed
Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)