

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1548 of 2017
With
IA No.: CRAN 1 of 2017 (Old No.: CRAN 3270 of 2017)

Smt. Sunita Bera Majhi
Versus
Biplab Jana @ Rohit & Another

With

C.R.R. 4134 of 2015

Biplab Jana @ Rohit
Versus
State of West Bengal & Another

For the Petitioner

In CRR No. 4134/2015 : Mr. Kallol Mondal, Adv.
Mr. Krishan Ray, Adv.
Mr. Sauvik Das, Adv.

For the State : Ms. Faria Hossain, Ld. A.P.P.
Ms. Puspita Saha, Adv.

Heard on : 03.04.2024

Judgment on : 02.07.2024

Ajay Kumar Gupta, J:

1. The petitioner Biplab Jana @ Rohit has filed this instant revisional application under Section 482 of the Code of Criminal Procedure, 1973 being CRR 4134 of 2015 seeking quashing of the proceedings pertaining to Marishda Police Station Case No. 148 of 2015 dated 21.08.2015 registered for investigation for commission of offences punishable under Sections 306/34 of the Indian Penal Code, 1860.

2. At the same time, the de-facto complainant Sunita Bera Majhi has also filed another revisional application being CRR 1548 of 2017 under Article 227 of the Constitution of India read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 challenging the impugned order No. 6 dated 06.02.2017 passed by the learned Assistant Sessions Judge, 2nd Court, Contai thereby dismissing a petition dated 09.02.2017 under Section 173(8) of the Criminal

Procedure Code for reinvestigation, in ST Case No. 02 (December) of 2016 – ST Case No. 194 (September) of 2016. Charge framed under Sections 306/34 of the Indian Penal Code being No. 1357 dated 25.04.2017 arising out of Marishda P.S. FIR No. 148 dated 21.08.2015 arising out of G.D. Entry No. 804 dated 21.08.2015 corresponding G.R. Case No. 1371/2015 (State Vs. Biplab Jana @ Rohit & Another) for commission of offence on 19.08.2015 punishable under Section 306/34 of the I.P.C.

3. Both the revisional applications have been taken up together for passing a common judgment as both the cases are arising out of Marishda P.S. FIR No. 148 dated 21.08.2015 and issues and parties are same.

4. It is the case of the petitioner/accused that the present case was initiated by one Smt. Sunita Bera (de-facto complainant) with the Marishda Police Station. The allegations brought by her to the effect that the mother of the deceased, namely, Sunita Bera Majhi due to an ongoing dispute with her husband, used to reside at her parental house along with her daughter, namely, Nilanjana Bera since deceased. The deceased was studying at 10th standard and used to attend tuitions at a coaching centre at Sherpur. She used to keep her cycle near the Gayagiri Station and travel accordingly. The petitioner

herein runs a business of mobile recharge and fast food near the said station. The petitioner had been harassing the deceased for the last two months in different manner. Being aggrieved by such behaviour, the deceased used to come and convey the same to the de-facto complainant. Upon hearing such behaviour, the de-facto complainant along with some people went to the house of the petitioner and requested him and his parents to abstain from harassing the deceased. Petitioner continued to harass her continuously giving her missed calls on her mobile phone and also sent SMS. The other co-accused person, namely, Swapan Hota spread bad rumours about her in the locality. On 19.08.2015, the deceased went to attend her school and she was returning after conclusion of her classes, she was followed by the petitioner and the other co-accused person and they tried to outrage her modesty. The deceased managed to escape from the clutches of the miscreants and came back home. Then she narrated the entire incident to some people and subsequently she committed suicide by hanging herself.

5. Therefore, a case was registered against the accused persons including the present petitioner being Marishda Police Station Case No. 148 of 2015 dated 21.08.2015 for investigation into offences punishable under Sections 306/34 of the Indian Penal Code.

6. Whereas the petitioner/accused contended the different story that the deceased used to reside at her maternal uncle and aunt where she was subjected to various mental torture. The deceased was not given proper food and clothing by her maternal uncle and aunt and same had never been protested by her mother/de-facto complainant. Furthermore, the deceased had a love affair with the petitioner herein, namely, Biblab Jana @ Rohit and when such love affair matter came to the knowledge to the maternal uncle and aunt, they started torture upon the deceased. Due to such torture, the unfortunate incident of death of deceased occurred by way of committing suicide by her. The said incident had also been published in the wide circulated daily newspapers.

7. It is further contended that due to political rivalry between the petitioner and the maternal uncle and aunt of the deceased, he has been falsely implicated into this case though the petitioner had no role to play for such incident of suicide.

8. It is further contended that the charge sheet has been submitted in a complete mechanical manner without proper investigation. If investigation would have been done properly, the petitioner would have been discharged from this case. Accordingly, the entire proceeding is illegal, frivolous and false implication only to

harass the petitioner due to political rivalry. Accordingly, the entire proceeding is liable to be quashed otherwise a great injustice and abuse of process of law would be continued.

9. On the other hand, the contention of the de-facto complaint is that her daughter committed suicide due to continuous harassment by the accused persons particularly the petitioner, namely, Biplab Jana @ Rohit. She committed suicide by hanging herself on 19.08.2015 at about 5 pm at her house due to continuous harassment. The accused persons had tried to outrage her modesty in an open street in presence of several persons and inflicted constant mental torture over mobile phone calls and through SMS from the mobiles mainly mobile nos. 7797315746/ 9932046318 and 8145964024 to her daughter's telephones mainly on 9564631483/8945990426.

10. In addition to that, the accused persons rumoured against her daughter with filthy and obnoxious stories clamouring her character. For that, a case being Marishda Police Station Case No. 148 of 2015 dated 21.08.2015 has been registered and finally charge sheet has been submitted against the accused persons under Sections 306/34 of the IPC. The accused persons were enlarged on bail by this Hon'ble High Court.

11. At the trial stage before adducing evidence of the witnesses, the de-facto complainant moved an application under Section 173(8) of the Cr.PC praying for re-investigation as the investigation did not decode call histories or translated conversation between the victim and accused person in verbatim to unearth the truth, which is vital evidence for proper and effective disposal of the case. The investigating officer left out such vital evidence as such she apprehended for the negative result of the case. But the said petition was rejected outrightly by the learned Assistant Sessions and District Judge (Sr. Division), 2nd Court on 06.02.2017 contending therein that such prayer cannot be allowed at the belated stage as the trial has already been commenced.

12. Feeling such rejection order for re-investigation, the de-facto complainant came before this Court with a prayer to allow such prayer for further investigation for proper and effective disposal of the aforesaid case.

13. Under the above facts and circumstances, both the cases have come up before this Court for disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

14. Learned counsels appearing on behalf of the Petitioner vehemently argued and submitted that the petitioner herein, namely,

Biplab Jana @ Rohit is no way connected for abetment of suicide of deceased, namely, Nilanjana Bera. Rather she had loved with the present petitioner. Due to matrimonial dispute between the mother and father of the deceased, she was residing with her maternal uncle and aunt where she was studying. They used to torture upon her in relation with the study but her mother never protested such torture. It is a clear case of suicide due to continuous torture by her maternal uncle and aunt. As such, the entire case has been lodged against the present petitioner due to political rivalry between the petitioner and her maternal uncle and aunt.

15. It is further submitted that in a daily Bengali newspaper, the staff reporter has reported that the said Nilanjana Bera, aged about 15 years committed suicide by hanging because her maternal uncle and aunt rebuked her due to lack of concentration over her study. Due to such rebuke, she had committed suicide by hanging. But the de-facto complainant has made out a different story only to implicate the petitioner. Petitioner never harassed her rather he loved her to much. With the aforesaid facts, the investigating officer, without investigated the case properly, mechanically submitted charge sheet implicating the petitioner for commission of offence under Sections 306/34 of the IPC. There is no direct iota of evidence brought on record by the investigating officer that during her going to tuition

class, the petitioner and other accused harassed and tried to molest her. Such situation did not arrive at as she had also love affairs with the present petitioner. Accordingly, he is innocent and such type of case may be quashed otherwise it would be an abuse of process of law. Learned counsels placed reliance of judgments as under:

- i.** *Annakali Dutta & Ors. Vs. State*¹;
- ii.** *Bishnu Chakraborty & Anr. Vs. State of West Bengal*²;
- iii.** *M. Arjunan Vs. State Represented by its Inspector of Police*³;
- iv.** *Amalendu Pal Alias Jhantu Vs. State of West Bengal*⁴;
- v.** *Sanju Alias Sanjay Singh Sengar Vs. State of M.P.*⁵;
- vi.** *Subha Narayan Vs. State of West Bengal & Ors.*⁶;
- vii.** *Madan Mohan Singh Vs. State of Gujarat and Another*⁷;
- viii.** *Sri Swapan Roy & Anr. Vs. State of West Bengal & Anr.*⁸ and
- ix.** *State of West Bengal Vs. Indrajit Kundu and Others*⁹.

¹ 1990 SCC OnLine Cal 80 : (1990) 2 CHN 38;

² 2006 SCC OnLine Cal 549 : (2007) 3 CHN 754;

³ (2019) 3 Supreme Court Cases 315;

⁴ (2010) 1 Supreme Court Cases 707;

⁵ (2002) 5 Supreme Court Cases 371;

⁶ 2006 SCC OnLine Cal 53 : (2006) 3 CHN 651 : (2006) 2 Cal LJ 216;

⁷ (2010) 8 Supreme Court Cases 628;

⁸ 2016 SCC OnLine Cal 1790;

⁹ (2019) 10 Supreme Court Cases 188 : (2020) 1 SCC (Cri) 136 : 2019 SCC OnLine SC 1364.

16. On the other hand, despite of service, no one appeared on behalf of the opposite party, Sunita Bera Majhi.

SUBMISSION ON BEHALF OF THE STATE:

17. Learned Advocates appearing on behalf of the State produced the case diary and submitted that there are sufficient materials against the present petitioner and during investigation, statements of the witnesses were recorded under Sections 161 of the Cr.PC same are corroborative in nature.

18. The learned counsels further submitted during investigation, one diary of the year 2014 of the deceased has been seized and some mobiles were also seized. From perusal of the diary, it could be revealed that there was a love affair between the deceased and the petitioner, namely, Biplab Jana @ Rohit prior to the incident. No suicide note was seized during investigation. But the petitioner was harassing her on the way of her tuition continuously and for that reason she has committed suicide. As such, the revisional application is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION BY THIS COURT:

19. Having heard the arguments and submissions of the parties and on perusal of the CD as well as case records, it appears it is

admitted fact that the deceased Nilanjana Bera committed suicide by hanging in her maternal house. Now, the question arises before this court whether deceased has committed suicide by hanging due to continuous teasing or harassing by the petitioner and other accused person.

20. It appears from the perusal of the CD, the de-facto complainant i.e. mother of the deceased had made an accusation against the present petitioner and one another accused, namely, Swapan Hota. Her daughter had been harassed by the accused persons prior to 2 months of incident and she had disclosed the said facts to her. Not only that, the accused persons were disturbing her giving missed calls and SMS. Apart from that, the accused Swapan Hota spread bad rumour about her in the locality. As such, she has committed suicide by hanging. But from the perusal of the evidence collected during the investigation, this Court does not find any specific allegation against the present petitioner with regard to such averment of spreading bad rumour about her in the locality. It also appears from the evidence that some of the witnesses stated that though the allegation against the petitioner but from the diary one name of Abhi has been transpired from her diary.

21. The newspaper cutting annexed with the application being CRR 4134 of 2015 shows some different story for her commission of suicide by her. It is clearly stated therein that she had committed suicide by hanging due to rebuked by her maternal uncle and aunt for not giving concentration over the studies.

22. Apart from the above facts, it reveals from the exclusive diary written by the victim was seized by police shows there was a love affair between the deceased Nilanjana Bera and the present petitioner, namely, Biplab Jana @ Rohit. There was no any averment with regard to the torture, harassment or bad behaviour or otherwise against the present petitioner. No specific evidence transpires from the entire diary with regards of allegation as made by her mother against the Petitioner/accused towards spreading bad rumour against the deceased anywhere. What types of bad rumour spread is also not disclosed anywhere by the witnesses.

23. From the perusal of the judgments referred by the learned counsels appearing on behalf of the petitioner, it appears evidence of torture or ill-treatment would not by itself be sufficient to sustain charge under Section 306 of the Indian Penal Code, 1860 unless there is evidence of incitement to any of his life. There must be some evidence from which it can be said that the commission of suicide

was the immediate effect of incitement. Owing to occasional torture and ill-treatment, someone may decide to take one's own life. In such a case, the persons who meted out such torture and ill-treatment may not be said to have abetted the commission of suicide. Furthermore, to constitute an offence under Section 306 of the IPC, it is not enough that the victim was subjected to some harassment or used to criticise. Something more than it is necessary to establish that the instigation was such a nature which may prompt the person to commit suicide. The materials available in the record, in the instant case, indicates that save and except an allegation of harassment from the side of petitioner towards her, no such allegations found that she has committed suicide upon instigation or upon such behaviour of the petitioner. There are no such materials, available in the record, which justify the case for implicating the petitioner for an offence punishable under Section 306 of the IPC. Merely, vague allegations without any supporting evidence cannot constitute an offence under Section 306 of IPC.

24. From the materials available in the record as well as diary written by the deceased, the allegation as made by her mother was not corroborated by any sufficient evidence. In her diary, she had not made any single word written about any type of harassment from the side of petitioner. Despite of the said facts, the learned Court below

has taken cognizance over the offence under Sections 306/34 of the IPC as such proceeding in like nature should not be continued otherwise it would be definitely an abuse of process of law. There is no such material available in the case diary, which may say that the present petitioner is involved any of the allegation made by her mother and/or there is every chance of conviction for such offence punishable under Section 306/34 of the Indian penal code. It is found that materials as disclosed in the evidence do not constitute an offence under Section 306 of the IPC rather it appears from the evidence that the she had committed suicide due to other reasons.

25. In view of the facts, this Court is of the view that in absence of prima facie materials for implicating the petitioner with the offence under Section 306 of the IPC would amount to abuse of process of Court as the materials available in the case diary would not sufficient to convict the petitioner. Accordingly, continuation of proceeding is an abuse of process of Court. In the best interest of justice in exercising of power under Section 482 of the Code of Criminal Procedure, further proceedings should be quashed.

26. In a judgment referred by the petitioner reported in State of West Bengal Vs. Indrajit Kundu and Others, the Hon'ble Supreme Court has held a view in paragraph nos. 12 and 13 as under:

“12. In the judgment in *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088, this Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word “instigation”, it is held in para 20 as under: (SCC p. 629)

“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.”

13. Similarly in the judgment in *Sanju V. State of M.P.*, (2002) 5 SCC 371 : 2002 SCC (Cri) 1141, when any quarrel which has taken place between husband and wife in which husband has stated to have told the deceased “to go and die”, this Court has held that the

suicide committed two days thereafter was not proximate to the quarrel though the appellant was named in the suicide note and that the suicide was not the direct result of quarrel when the appellant used abusive language and told the deceased to go and die.”

27. In view of the above discussions and considering the judgments referred by the petitioner, this Court does not find any sufficient prima facie materials against the present accused person/petitioner.

28. Accordingly, the proceeding pertaining to Marishda Police Station Case No. 148 of 2015 dated 21.08.2015 under Sections 306/34 of the Indian Penal Code, 1860 against the petitioner and order passed therein are hereby quashed only in respect of the petitioner herein.

29. In view of quashing of the proceeding, the prayer for re-investigation or further investigation as made by the de-facto complainant is considered and rejected because infructuous.

30. Consequently, the revisional applications being **CRR 1548 of 2017** is dismissed and **CRR 4134 of 2015** is, thus, allowed. **CRAN 1 of 2017 (Old No.: CRAN 3270 of 2017)** is also, thus, disposed of.

31. CD along with exclusive diary is to be returned to the Ld. Counsels appearing on behalf of the State.

32. Interim order, if any, stands vacated.

33. Let a copy of this judgment and order be sent to the learned Court below for information.

34. Parties shall act on the server copies of this order uploaded on the website of this Court.

35. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)