IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 2nd OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 4968 of 2024

BETWEEN:-

SATISH SINDAL S/O PREMNARAYAN SINDAL, AGED ABOUT 35 YEARS, OCCUPATION: BUSINESS R/O: H.NO. 3 NAGESHWAR NAGAR NANA KHEDA DISTRICT UJJAIN (MADHYA PRADESH)

.....APPLICANT

(BY SHRI VIVEK SINGH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION NANAKHEDA, DIST. UJJAIN (MADHYA PRADESH)**

2. **CHHAGANLAL YADAV S/O RAMCHANDRA YADAV, AGED ABOUT 57 YEARS, R/O; 80, SHANTI NAGAR, P.S. NEELGANGA, UJJAIN DISTRICT UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SACHIN JAISWAL - PANEL LAWYER)

This application coming on for admission this day, the court passed the following:

ORDER

1. Heard.

2 . This petition under Section 482 of the Cr.P.C has been filed for quashment of FIR No.645/2022, registered at police station Nanakheda, District Ujjain for the offence punishable under Section 306/34 of the IPC and all subsequent proceedings.

3. As per the prosecution, on 5.9.2022, the deceased Amar Yadav

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committed suicide by consuming a poisonous substance. On his death merg was registered and investigation was commenced during the course of which statements of various witnesses were recorded from which it transpired that the deceased had taken certain sums on loan from different persons including the present petitioner, who had been exercising pressure upon him for return of the same. He used to call him and also used to visit his house demanding repayment of his amount. The deceased did not narrate about the incident to anyone but used to remain harassed on account of the acts of the accused. Eventually due to the harassment having been meted out to him by the accused including the present petitioner, the deceased committed suicide. On recording of the statements, FIR has been registered against the accused including the petitioner for the aforesaid offences and upon completion of the investigation, charge-sheet has been filed before the Court concerned.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the case. The entire allegations as leveled against the petitioner even if taken to be true at his face value do not amount to an offence punishable under Section 306/34 of the IPC. There are no allegations against the petitioner of instigating or abetting the deceased in any manner to commit suicide and it cannot be said that due to act of the petitioner, the deceased had no other option but to commit suicide. He had various other legal remedies available to him. The act alleged against the petitioner is only to the effect that he was demanding repayment from the deceased of the amount which had been lent by him to him. The same cannot in any manner be said to be abetment or instigation or even a remote cause for the deceased to commit suicide. It is hence submitted that the FIR registered against the petitioner be

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quashed.

5. Per contra, learned counsel for the respondent/State has submitted that there is sufficient material available on record to proceed against the petitioner and it cannot be said that no offence whatsoever is made out in view of which the petition deserves to be dismissed.

6. I have heard learned counsel for the parties at length and have perused the record.

7. Section 107 of the IPC makes it obligatory for the prosecution to show and establish the elements of instigation. The Apex Court in the case of ***Sanju @ Sanjay Singh Senger V/s. State of M.P.***, ***AIR 2002 SC 1998*** has opined as under :-

> **"13. ... 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 inadvisable 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 on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion."**

8. In the case of ***Sanju @ Sanjay*** **(supra)** the accused allegedly told the deceased "to go and die". Yet Apex Court opined that it does not constitute the ingredient of "instigation". In the instant case if story of the prosecution is read and believed as such it would be clear that the petitioner did not in any manner instigate the deceased to commit suicide. There is no element of "incitement" or "instigation" on his behalf. Thus Section 306 of the IPC is not attracted against the petitioner.

9. The ancillary question is whether his acts fall within the ambit of Section 306 of the IPC. In ***Gangula Mohan Reddi V/s. State of Andhra Pradesh 2010 (1) SCC 750*** the Apex Court opined as under :-

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> **"17. 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 this act must have been intended to push the deceased into such a position that he committed suicide."**

10. The principle flowing from this judgment is that the overt act of accused person must be of a nature where the victim had no option but to commit suicide. Even assuming that the petitioner was demanding repayment from the deceased of the amount which had been lent by him to him, this does not fall within the ambit of "incitement" or "instigation".

11. This Court in ***Hukum Singh Yadav V/s. State of M.P.*** reported in ***ILR (2011) MP 1089*** considered the judgment of Supreme Court in Sanju @ Sanjay Singh Senger and held as under :-

> **"10. Considering these legal aspect this is to be observed that whether applicants have had same knowledge that deceased would commit suicide. As per the prosecution case when deceased was going with his father. Applicants restrained deceased and his father Jagdish and abused and threatened both of them, hence it cannot be assumed that applicants had knowledge that one of them particularly deceased will commit suicide. When act of abusing and threatening was alleged to be done with deceased as well as his father, so it cannot be said that applicants had knowledge or intention that deceased should commit surcide. There is no evidence that they provoked, incited or encouraged deceased to commit suicide. It is also not alleged that when applicants threatened to kili deceased and his father Jagdish they were armed with some weapons. So it cannot be presumed that deceased was so frightened that he had no option left except committing suicide and was compelled to do so."**

12. The act of the petitioner, in the opinion of this Court does not attract Section 306/34 of IPC. In absence of establishing necessary ingredients for attracting Section 306/34 of the IPC, the petitioner cannot be compelled to face

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the trial unnecessarily.

13. In view of the foregoing analysis, no offence under Section 306/34 of the IPC is made out against the petitioner even if the allegations levelled against him are assumed to be true. As a consequence, the petition is allowed and FIR dated 6.11.2022 registered vide Crime No.645/2022 at Police Station Nanakheda, District Ujjain, charge-sheet and all the subsequent proceedings are hereby quashed against the petitioner.

C.c. as per rules.

(PRANAY VERMA)
JUDGE

Shilpa

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