

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.934 OF 2021

1. Anil Mohanlal Jain,
2. Prem Mohanlal Jain,
3. Shrenik Mohanlal Jain,
4. Sunil Mohanlal Jain,
5. Mohanlal Jethmal Jain,
All R/o.Lalbaug, Mumbai-400012.

Applicants

versus

1. The State of Maharashtra
2. The Inspector of Police,
L.T.Marg Police Station.

Respondents

Mr.Rishi Bhuta with Mr.Rakesh Jain, K.R.Shah, Pratesh Dutta,
Mr.Omer Farooq Khwaja, Risha Rathod, Vaishnavi Jhaveri i/by
Mr.Manish Bohra for Applicants.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK AND
N.R.BORKAR, JJ.

DATE : 4th April 2024

PC :

1. The Applicants have invoked inherent powers of this Court u/s.482 of Code of Criminal Procedure taking inception to the proceedings in Sessions Case No.241 of 2021 arising out of FIR dated 20th November 2019 registered with L.T.Marg Police Station vide C.R No.352 of 2019 for offences under Sections 306, 341, 201, 323, 504, r/w 34 of Indian Penal Code.

2. The brief facts of the prosecution case are as under :-

(a) On 21st October 2019 the accused no.4 Sunil Mohanlal Jain came to Police Station and informed that his employee Bidhan

Jatan Aadhak committed suicide by hanging himself in the bath room at the place given to all the employees to stay at 26/28, Mulchand Mansion, Vitthalwadi, Mumbai;

(b) The complainant is Police Sub Inspector attached to L.T.Marg Police Station. The complainant and accused no.4 came to the spot. The deceased was found to have committed suicide. Inquest panchanama was recorded. Post mortem was conducted;

(c) During the course of investigation it was revealed that deceased was employee of the accused. It was suspected by the employer that he has committed misappropriation of gold ornaments. He was assaulted. Writing was executed by the deceased with undertaking that gold and cash would be returned. Suicide note was written by accused.

3. Accused were arrested. They were granted bail. On completing investigation charge sheet was filed.

4. Learned advocate for applicants submitted as under :

(i) Offence u/s.306 of IPC is not made out;

(ii) There is no evidence to establish offence u/s.306, 341, 201. 323, 504 of IPC;

(iii) Accused has no mens rea nor they had abetted the deceased to commit suicide;

(iv) The accused no.4 himself had informed about the incident to the police;

(v) There has to be positive element of instigation on the part of accused for commission of offence u/s.306 of IPC;

(vi) Wife of the deceased has not made grievance against accused;

(vii) There is no prima facie case against accused that they have committed alleged offence;

(viii) The suicide note indicate that deceased was assaulted between 4th October 2019 to 10th October 2019. The allegations were false. There were no hurt marks on the body of deceased.

(ix) The statements of witnesses show that there was no complaint against accused. The accused had asked the deceased and other employee Mr.Suresh Puri to repay the amount of stolen gold which any person would do in the course of business. The accused had shown humanity towards deceased and Suresh Puri;

(x) The ingredients of abetment and mens rea to commit offence u/s.306 of IPC are absent. There is no active act or direct act on the part of accused, which can be said that it compelled the deceased to take drastic steps;

(xi) The alleged incident had occurred on 4th October 2019 whereas the deceased committed suicide on 21st October 2019.

5. Learned advocate for Applicants has relied upon following decisions :

(i) Mohit Singhal and another Vs. State of Uttarakhand and others - (2024)1-SCC-417;

(ii) Meenabai Deepak Mahale and others Vs. The State of Maharashtra and another – Writ Petition No.104 of 2021 decided on 27-3-2024;

(iii) Anirudh Arun Bhandarkar and another Vs. The State of Maharashtra and another – Criminal Application No.1416 of 2019 decided on 16-1-2024.

6. Learned APP submitted that there is evidence against Petitioners. The deceased was compelled to commit suicide. There was instigation to commit suicide. There is evidence to show that the deceased was harassed by accused. The suicide note was written by accused. The statements of witnesses support prosecution case. At this stage this is not the stage to appreciate evidence. Prima facie case is made out against Applicants. There was abetment to commit suicide.

7. The deceased was employed with the accused. The accused are conducting business of jewellery. It was suspected that deceased and other employee Suresh Puri had misappropriated gold from the shop of accused. They were confronted. Intimation was given to the wife of deceased. Intimation was also given to the relatives of other employee of Suresh Puri. Agreement was executed with Suresh Puri. He agreed to return gold ornaments. The deceased was allowed to stay in the room. He was occupying the room with other employees. He was not allowed to work in the shop due to his involvement in theft of gold. The statement of wife of the deceased was recorded in which she stated that she received a phone call on 6th October 2019 from Applicant no.1 and he had informed that her husband with the help of Suresh Puri committed theft of gold ornaments in the shop. She was told to come to Mumbai for discussing the issue. She informed the Applicant no.1 that she has a small child and it would not be possible for her to come to Mumbai. She told the accused to discuss the issue with her husband and resolve the same. In the event her husband is liable for the theft of gold, the amount can be deducted from his salary. Subsequently she learnt that her husband has committed suicide. Statement of Tapan Manna was recorded

during investigation. He stated that he is one of the employee with accused. The accused had noticed misappropriation of gold. Inquiry was made with employees. They were informed that police complaint would be made. Suresh Puri and Bidhan Aadhak (deceased) admitted that they have committed the theft. They were confronted. They were assaulted. Thereafter deceased was not assaulted by the accused.

8. There is no evidence to establish charge of abetment to commit suicide.

9. In the case of Mohit Singhal and another (supra) it was observed by Hon'ble Supreme Court that to attract clause 107 of IPC, there must be instigation in some form on part of accused to cause deceased to commit suicide. Accused must have mens rea to instigate deceased to commit suicide. Act of instigation must be of such intensity that it is intended to push deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to act of committing suicide.

10. The prosecution has to prima facie establish that accused had intention to aid or instigate or abet the deceased to commit suicide and in the absence of availability of such material the accused cannot be compelled to face trial for the offence u/s.306 of IPC.

11. In the case of **Sanju @ Sanjay Sengar Vs. State of Madhya Pradesh¹**, the Appellant before the Apex Court was the brother of wife of deceased. It was the prosecution case that after the marriage of deceased with appellant's sister, there was continuous ill treatment by the deceased and his family members to his appellant's sister. She had gone to her parents house and started living with the Appellant.

1 2002 Cri.L.J. 2796

About two months prior to the incident, the Appellant advised the deceased to take his sister back to her matrimonial house and treat her properly. On 25th July 1998, the Appellant visited the place of the parents of deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or harassed. The appellant threatened the parents of the deceased that if they do not mend their behaviour towards his sister, he would be compelled to resort to filing a complaint under Section 498-A of IPC. The Parents of the deceased expressed helplessness. They informed the deceased about the same. He went to the house of the parents of the Appellant, where quarrel took place between them. The deceased returned alone and told his brothers and others that Appellant had threatened and abused him by using filthy words. On 27th July 1998, he committed suicide. Suicide note was left by him. On the basis of suicide note, charge-sheet was filed against the accused/Appellant. The Apex Court considered the decisions and in the light of definition of abetment under Section 107 of IPC held that, even if the Court accepts the prosecution story that the appellant told 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* is necessary concomitant of instigation.

12. In the case of **Ramesh Kumar Vs. State of Chattisgarh**² it is observed that 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

² (2001) 9 SCC 618

be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spell out. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. Making the deceased free-to go wherever she like and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free “to commit suicide”.

13. In the case of **Madan Mohan Singh Vs. State of Gujrat and Another**³, the appellant therein was working as DET in Bharat Sanchan Nigam Ltd. The deceased was working as driver in BSNL. The complaint was filed by the wife of the deceased. The deceased has written suicide note stating that the accused was responsible for his death. The Apex Court observed that there is absolutely nothing in suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 of IPC. There must be an allegation that the accused had instigated the deceased to commit suicide or had engaged with some other other person in a conspiracy and lastly that the accused accused had in any way aided any act or illegal omission to bring about the suicide. In order to bring an offence under Section 306 of IPC, specific abetment as contemplated by Section 107 of IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of the abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 of IPC. Unless there is specific allegation and material of definite nature, (not imaginary or inferential one), it would be hazardous to ask the accused to face the trial. A criminal trial is not exactly a pleasant experience.

3 (2010) 8 SCC 628

14. In the case of **S.S. Cheena Vs. Vijay Kumar Mahajan**⁴, the factual matrix indicate that there was dispute between two students. This came to the notice of the the head of the department, who asked both the students to submit their versions of the incident in writing. Both gave their versions. Inquiry was conducted by the Security Officer/Appellant. During the inquiry, one of the student/deceased committed suicide. Suicide note was found. FIR was registered under Section 306 of IPC. The Apex Court observed that abetment involves the 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 the Court it is clear that in order to convict a person under Section 306 of 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. The deceased in that case was hypersensitive to ordinary petulance, discord and differences which happen day to day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. It would not travesty of justice to compel the Appellant to face a criminal trial without any credible material whatsoever.

15. In the case of **Chitresh Kumar Chopra Vs. State Govt. of NCT of Delhi**)⁵ the Apex Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an

⁴ 2010 All MR (Cri) 3298 (S.C.)

⁵ (2009) 16 SCC 605

act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. It is impossible to lay down any straightjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

16. In the **State of Kerala and others Vs. S Unnikrishnan Nair and others**⁶, it was observed that the plain reading of the suicide note which forms the fulcrum of the allegations on plain reading of the same, it is difficult to hold that there has been any abetment by the accused. The note, except saying that the accused compelled to do everything and cheated him and to put him in deep trouble contents nothing else. The accused were inferior in rank and it is surprising that such a thing could happen.

17. In the present case the confrontation of accused over alleged assault which is not borne out by evidence and not in proximity of incident of Suicide, the charge under Section 306 IPC would not stand. The impugned FIR and the proceedings arising thereon are required to be quashed.

ORDER

- i) Criminal Application No.934 of 2021 is allowed and disposed off;
- ii) Proceedings in Sessions Case No.241 of 2021 arising out of C.R. No.352 of 2019 registered with L.T.Marg Police Station is quashed and set aside.

(N.R.BORKAR, J.)

(PRAKASH D. NAIK, J.)