

2024:PHHC:126063



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

204 (03 cases)

1. CRM-M-13197-2022 (O&M)

Sanjiv Kumar	...	Petitioner
Versus		
State of Punjab and another	...	Respondents

2. CRM-M-12726-2022 (O&M)

Gautam Mohan	...	Petitioner
Versus		
State of Punjab and another	...	Respondents

3. CRM-M-40424-2022 (O&M)

Siri Ram Mohan	...	Petitioner
Versus		
State of Punjab	...	Respondent

Date of decision: 23.09.2024

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R. S. Athwal, Advocate
for the petitioners.

Mr. A. S. Samra, AAG, Punjab.

Mr. Navraj Singh Mahal, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of above noted three petitions that have arisen out of the same FIR and seek similar relief.
2. These petitions have been filed under Section 482 of the Code of Criminal Procedure (*for short* 'Cr.P.C.') seeking quashing of FIR No. 80 dated 31.08.2021, registered under Section 306 read with Section 34 of IPC at Police Station Lambra, District Jalandhar (Rural) along with all the subsequent proceedings having emanated therefrom.
3. Brief facts of the case relevant for the purpose of disposal of these petitions are that the aforementioned FIR was registered on the basis of the statement recorded by complainant Abhishek Bakshi alleging therein that his father Dharamvir Bakshi was running a Gaushala at village Lambra. Some part of the land of this Gaushala was owned by Punjab State Electricity Board (*for short* 'PSEB') and some by Punjab Waqf Board (*for short* 'Board'). He alleged that the petitioners, hailing from the same village, in conspiracy with each other, had been exerting pressure upon the officials of PSEB to get the land of Gaushala vacated. The father of the complainant, who had been taking care of the cows kept in the said Gaushala for the last about 20 years, was highly disturbed due to this fact. On 30.08.2021, his father reached Gaushala at 12 PM and consumed some poisonous substance. On receiving the news of the same, the complainant along with his uncles Mandeep Bakshi and Praveen Bakshi rushed towards the Gaushala and found his father to be lying in a field in an unconscious condition. He was rushed to the hospital for treatment. He further disclosed that before consuming poisonous substance, his father had recorded a video through his mobile phone and had uploaded the same on his Facebook

account while holding the petitioners responsible for his death. Accordingly, he prayed for taking action in the matter. On the basis of statement of the complainant, a case under Section 306 of IPC read with Section 34 of IPC was registered. Postmortem examination of the dead body of the victim and inquest proceedings were conducted. On 11.09.2021, the complainant recorded a supplementary statement alleging that SI Pushp Bali, posted at CIA Staff, Jalandhar was also harassing his father and he too had a hand in abetting his suicide. The above named Sub Inspector was also nominated as an accused. The petitioners secured benefit of pre-arrest bail and were joined into investigation. No substantive evidence could be collected against SI Pushap Bali during investigation. The video recording of the victim had been handed over by the complainant to the police, wherein there was reference of names of the petitioners as well as Surinder Singh Chaudhary, a local MLA. However, said MLA was also found to be innocent. After completion of investigation, challan has been presented against the present petitioners.

4. The present petitions have been filed by the petitioners on the ground that it has been argued by their counsel that they have been falsely implicated in this case. The allegations in the FIR, even if presumed to be correct on the face of the record, did not constitute any offence of abetment to commit suicide by the victim. The complainant himself has placed on record transcript of the video allegedly recorded by the victim prior to his consuming poisonous substance and a perusal of the same reveals that vague allegations had been levelled against the petitioners. In fact, petitioner Sanjeev Kumar was a very close friend of the victim as both were the supporters of Congress Party. Nothing has been collected on record to show that the petitioners ever harassed the victim or did any such act which

amounted to abetting the suicide by the victim. The victim was fully conscious and well oriented to time and place, when he was taken to hospital. In fact, petitioner Sanjeev Kumar was one amongst the persons, who accompanied the victim to hospital along with other villagers at that time. The complainant did not hand over the phone used by the victim to the police for a long time and withheld a vital piece of evidence. The victim did not make complaint against the petitioners, when he was taken to hospital in a conscious condition. The investigating agency had not placed any material on record to show that the petitioners had any *mens rea* to abet the suicide of the victim. The investigating agency had not been able to show any proximate and live link between the suicide of the victim and the act and conduct of the petitioners, which amounted to abetting the same.

5. It is further argued that there is nothing on record to show that there was any instigation on the part of the petitioners in committing suicide by the victim. No harm was proved to have been caused by them. In the video recording, there was no reference of any act and conduct or specific incident amounting to commission of willful act or omission or intentionally aiding or instigating the victim in committing suicide by the victim. The petitioners are not proved to have played any part or role in any conspiracy leading to suicidal death of the victim. The allegations as levelled against the petitioners are far fetched, highly improbable and unnatural. The same do not make out any case qua commission of subject offence by the petitioners. Hence, it is argued that the impugned FIR and subsequent proceedings commenced on the basis of the same are liable to be quashed.

6. Learned counsel for respondent No. 2/complainant, on the other hand, has submitted that the allegations against the petitioners are quite serious in nature as they along with co-accused had harassed the victim by

exerting pressure upon him to vacate the land, over which Gaushala was nurtured by him for the last about 20 years, thereby instigating and compelling him to commit suicide. He has further argued that the allegations in the FIR if disputed, the veracity thereof can be tested in trial before the trial Court only. There is a *prima facie* case on record to prove the ingredients for commission of offence of abetment to suicide on the part of the petitioners. In the video recorded by the victim himself, they were named as the persons, who were responsible for his suicidal death. A *prima facie* case is made out against the petitioners disclosing the ingredients of subject offence. He has further argued that the allegations levelled in the FIR are sufficient to make out a *prima facie* case against the petitioners. Therefore, it is urged that no case for quashing of FIR is made out.

7. Status report has been filed by the respondent-State, as per which, on the representation of the complainant, a Special Investigation Team was constituted by the Senior Superintendent of Police, Jalandhar, that had conducted investigation in the matter. During the course of investigation, the complainant had produced mobile phone of the deceased on 14.01.2022. The same had been taken into custody and was made case property. The complainant had also submitted a Pen Drive consisting of video of the deceased, which along with the mobile phone had been sent to FSL. After conducting the investigation, two persons named as accused i.e. SI Pushap Bali and Surinder Singh Chaudhary were found to be innocent. The victim in his video recording had clearly stated that the petitioners were forcing him to give possession of the land of the Board, on which, a cow shed/Gaushala was existing and due to the pressure exerted upon him by the petitioners, he was committing suicide. It is, therefore, argued that since a *prima facie* case is made out showing involvement of the petitioners for

commission of subject offence, therefore, the impugned FIR does not deserve to be quashed.

8. At the outset, it will be profitable to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. as spelt out in several judicial pronouncements of Hon'ble Supreme Court as well as different High Courts. The well settled proposition of law is that in exercise of inherent powers under Section 482 Cr.P.C., the High Court is not expected to analyze all the facts, which are to be placed before the High Court. The power conferred under this section is very specific and to secure the ends of justice or to prevent the abuse of process of Court or to make any such orders as may be necessary to give effect to any order under the Code, such power can be exercised to prevent abuse of process of Court. Hon'ble Supreme Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 of Cr.P.C. to prevent abuse of process of any Court or to secure the ends of the justice or to give effect to an order of the Court. In case cited as ***State of Haryana Vs Bhajan Lal (1992) SUPP 1 SCC 335***, Hon'ble Supreme Court laid down the following guidelines requisite for exercising power under Section 482 of Cr.P.C.:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2)

of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose 265 the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. Reference can further be made to ***Gian Singh vs. State of Punjab, (2012) 10 SCC 303***, wherein Hon'ble Supreme Court observed that the power of the High Court in quashing a criminal complaint or an FIR, in exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such

power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. Reference can further be made to ***Narinder Singh and Ors. Vs. State of Punjab : (2014) 6 SCC 466***, wherein it was by Hon'ble Supreme Court that while exercising power under Section 482 of Cr.P.C., the High Court has to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal case would put him into great oppression and prejudice and injustice would be caused to him by not quashing criminal case. In ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra : 2019 (18) SCC 191***, Hon'ble Supreme Court, while reiterating the parameters as laid down in ***Bhajan Lal's*** case (supra), had observed that for quashing of the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate was not called for. Appreciation of evidence was also not permissible in exercise of inherent powers. If the allegations set out in the complaint did not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers. In ***Neeharika Infrastructure vs. State of Maharashtra : 2021 SCC OnLine SC 315***, the Apex Court observed that while the Courts ought to be cautious in exercising powers under Section 482 of Cr.P.C., they do have power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence? The merits of the allegations are not to be entered into nor the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence is to be trenched upon.

10. In view of the above discussed position of law qua exercise of inherent powers by this Court for quashing of criminal proceedings, this Court is required to consider the question as to whether the quashing of the

FIR in this case can be allowed. The petitioners have been challaned in this case for commission of offence punishable under Section 306 of IPC on the allegations that they had harassed the victim by pressurizing him to vacate the land, over which, he was running a Gaushala and due to said harassment, the victim had consumed *Organo Phosporus* (a poisonous substance) on 30.08.2021 and had died due to consumption thereof. As per investigation conducted in the matter, the deceased before consuming such poisonous substance had prepared a video and uploaded the same on his Facebook account, thereby making declaration as to the cause of his death. The transcript of the said video has been placed on record as Annexure P-3. A perusal of the same reveals that the victim had uttered the following words as against the petitioners:

“OK, responsible for my death, responsible for my death, MLA Chaudhary Surinder Singh, Pursov Bali, Sanjeev Kala, Gautam, Mohan, Shri Ram Mohan, these are the people.

I am very much disturbed by them. Yes, without any talk, without any complaint whenever he pleases. Chaudhary Surinder Singh gets people abducted, gets people abducted. Now he is calling me on the phone, no problem, Now I have instructed Bali, did this, did that.”

11. Since it is the case of the prosecution itself that apart from the utterances as made above, there was no other material on record to connect the petitioners with the offence as stated to have been committed by them, therefore, it has to be considered as to whether the utterances so made by the victim amount to any abetment on the part of the petitioners to commit suicide by the victim. Before coming to that point, it would be relevant to consider the provisions of Sections 107 and 306 of IPC. ‘Abetment’ is

defined under Section 107 of IPC. To constitute abetment, it is to be proved that the accused instigates a person either by act of omission or commission. To prove the offence of abetment, as specified under Section 107 of IPC, the state of mind to commit a particular crime must be visible to determine the culpability. In order to prove *mens rea*, there has to be something on record to establish or show that the accused person had a guilty mind and in furtherance of that state of mind, he abetted the said crime.

12. Then so far as Section 306 of IPC is concerned, in order to bring a case within the provisions of this section, any person who abets commission of suicide by any other person is liable for punishment. It is well settled proposition of law that in order to bring a case within the provisions of Section 306 of IPC, there must be a case of suicide and in the commission of such offence, the person who is said to have abetted the commission of suicide, must have played an active role by an act of instigation or by doing a certain act to facilitate the commission of suicide. Instigation can be inferred where the accused had by his acts or omission created such circumstance that the deceased was left with no other option but to commit suicide. The well settled proposition of law is that the 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. As observed by Hon'ble Supreme Court in ***Gangula Mohan Reddy vs. State of Andhra Pradesh : (2010) 1 SCC 750***, 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 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.

In *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) : 2009 (4) RCR (Criminal) 196*, Hon'ble Supreme Court, while dealing with the dictionary meaning of the word "instigation" and "goading", opined that there should be intention to provoke, incite or encourage the doing of an act by the victim. There must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the basis of the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled a person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable.

13. The ratio of law as laid down in aforementioned judicial precedents when applied to the peculiar facts of the present case would clearly show that no case for commission of offence under Section 306 of IPC is made out as against the petitioners. As per the allegations, the petitioners had been harassing the victim to vacate the land over which a Gaushala was run by him for the last about 20 years. On considering the words as uttered by the victim on his mobile phone before consuming *Organo Phosporus*, which have been discussed above, it is apparent that the victim proclaimed that the petitioners along with Surinder Singh Chaudhary, MLA were the people, who were responsible for his death and he was harassed by them. Beyond that, nothing is shown to have been stated by the victim as against the petitioners. There is nothing on record to show that the victim disclosed that the petitioners had caused any harm to him or they were the persons, who were exerting pressure upon him to commit suicide. By merely saying that the petitioners were responsible for his death, it cannot be assumed that they had either abetted his death either by instigating him, urging him or by exerting pressure upon him to end his life by consuming any poisonous substance. The medical record of the victim as

prepared by the Innocent Hearts Multi Speciality Hospital, wherein he was got admitted on 30.08.2021, reveals that he was mentioned to be an opium addict. He had consumed *Organo Phosporus* poison. No doubt, his death occurred due to consumption of the same, however, there is nothing on record to suggest that the petitioners, in any manner, instigated or pressurized him to commit suicide. The prosecution has not been able to show that there was any *mens rea* on the part of the petitioners to abet the suicide by the victim. The words uttered by the victim show that he was hypersensitive. No positive action has been attributed to the petitioners to instigate or aid in committing suicide by the victim. There is also nothing on record to show that just before he chose to consume *Organo Phosporus*, anything had been uttered or any such act had been done by the petitioners, which amounted facilitation of consumption of poisonous substance by the victim and there was any proximate link between any such act and the suicide by the victim. As such, this Court is inclined to hold that the suicide by the victim is not proved to be proximate result of anything done by the petitioners, which amounted to abetment to suicide within the meaning of Section 107 of IPC. Further, mere reference in the video recording of the victim that the petitioners were responsible for his death, does not amount to prove that the petitioners played any part or role in committing the act of suicide by the victim or instigated him to do so. There is also nothing on record to show that by making the victim vacate the land where the Gaushala was existing, the petitioners were going to gain anything.

14. It is also relevant to mention here that on the similar set of allegations, aforesaid Surinder Singh Chaudhary and SI Pushap Bali had not been arrested and challaned in this case. No particular date, month and year when the petitioners had allegedly harassed the victim had been mentioned

in the complaint nor in the words uttered by the victim. Mere fact that they are named in the video recording prepared by the victim himself and uploaded on the social media, offence under Section 306 of IPC is not constituted. The material placed on record does not establish that either of the petitioners intended to push the victim into such a position that he was left with no alternative but to commit suicide or they had made any attempt to do so. In such circumstances when there is absence of either of constituents amounting to abetment, their indictment cannot be stated to be correctly made. For want of any positive material on record to show the culpability and complicity of the petitioners, in the opinion of this Court, the allegations as levelled against the petitioners fall short of proof of offence of abetment, which is essential to attract the mandate of Section 306 of IPC.

15. Further, even on taking the contents of the video recording made by the victim, the transcript of which is placed on record as Annexure P-3, to be absolutely correct, the allegations therein do not constitute an offence for which the petitioners should be prosecuted. Viewed from any angle, in the absence of any mens rea to instigate or compel the victim to commit suicide and further in the absence of any live link or specific overt act attributed to the petitioners, which could amount to abetment on their part to commit suicide by the victim, in this opinion of this Court, the prosecution qua the petitioners cannot be sustained. On considering the facts and circumstances of the case, as noted and discussed above, while keeping in view the well established position of law coupled with the reasons aforementioned to the effect that the ingredients of offence punishable under Section 306 of IPC are not *prima facie* established even on accepting the allegations to be correct on the face of the record and the fact that the possibility of conviction is remote and bleak, even if the proceedings are

ordered to be continued, in the considered opinion of this Court, the continuation of prosecution would result in sheer abuse of process of law. It is, thus, a fit case for exercising inherent powers of this Court under Section 482 of Cr.P.C., so as to secure the ends of justice.

16. Accordingly, the present petitions are allowed and the FIR bearing No. 80 dated 31.08.2021, registered under Section 306 read with Section 34 of IPC at Police Station Lambra, District Jalandhar (Rural) is hereby quashed along with all the subsequent proceedings having emanated therefrom.

23.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>