

Station Bhadson, District Patiala and all consequential proceedings arising therefrom.

3. Briefly, the facts are that the on 01.01.2024, son of respondent no.2-complainant namely Dishal was found hanging by a rope. The brother of respondent no. 2 namely Aslam Khan saw a video on the mobile phone of the deceased in which he had stated that one 'Ladi' used to call the deceased at his home and motor and sexually assault him, which can be corroborated with the chats available on his mobile phone. He has also stated that Ladi had used him and his father had slapped him, which pushed him to die by suicide.

4. Learned counsel for the petitioner *inter alia* contends that petitioner(s) do not know the family of the deceased personally and have no links of any sort with the deceased. The alleged act does not attribute any overt act to the petitioner(s) to attract the offence under Section 306 of the IPC. He further submits that petitioner-Sukhvir Singh does not go by the name 'Ladi' and has never used the same for himself. He further contends that Section 377 of the IPC has been decriminalised by the Hon'ble Supreme Court in ***Navtej Singh Johar v. Union of India 2018 AIR SC 4321***. Learned counsel submits that the FIR (*supra*) has been lodged with the intention to extort money from the petitioner(s) as they are from a well to do family. He further places reliance judgments rendered by the Hon'ble Supreme Court in ***Prabhu v. The State Rep by the Inspector of Police and another*** SLP(Crl.) Diary No. 39981 of 2022 decided on 30.01.2024, ***M/s Zandu Pharmaceutical Works Limited v. Md. Sharaful Haque 2004(4)R.C.R.(Criminal) 937***, ***V.P. Singh v. State of Punjab and others 2023(1) R.C.R.(Criminal) 348*** and ***Geo Varghese v. The State of Rajasthan and another 2021 AIR SC 4764***.

5. *Per contra* learned counsel for respondent no.2-complainant contends that the petitioner(s) have been attributed specific roles in the video recorded by the deceased-Dilshad. The deceased was sexually assaulted by the petitioner-Sukhvir Singh alias Ladi and his father petitioner-Harvinder Singh had slapped him, which instigated him to suicide.

6. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that petitioner(s) have been specifically mentioned in the video recorded by the deceased-Dilshad. In the said video, the deceased had attributed specific roles by stating that petitioner-Sukhvir Singh sexually assaulted him and claims to have chats on his mobile phone corroborating the incident, while petitioner-Harvinder Singh slapped him. Further, the plea raised by the learned counsel for the petitioner(s) regarding decriminalization of Section 377 of the IPC is egregiously unfounded as the Hon'ble Supreme Court in ***Navtej Singh Johar (supra)*** has decriminalized Section 377 only to the extent of sexual activities indulged in by two consenting, competent adults.

7. A two Judge bench of the Hon'ble Supreme Court in ***Gangula Mohan Reddy v. State of Andhra Pradesh 2010(1) SCC 750***, speaking through Justice Dalveer Bhandari, held as follows:

"19. This court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009(4) RCR (Criminal) 196 : 2009(5) RAJ 278 : 2009(11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula

in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. 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.

21. 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 Indian Penal Code 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"

8. As such, the extent of involvement of the petitioner(s) can only be ascertained post completion of investigation, during the trial before the competent jurisdictional Court. The probable defence put up by the petitioner(s) cannot be entertained by this Court at this stage, in view of ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** and ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another 2022 SCC Online SC 513***, wherein, speaking through Justice Hrishikesh Roy, the following observations were made:

"17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum, i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption."

9. Considering the peculiar facts and circumstances of the instant cases, this Court finds the present petitions to be bereft of any merit. Since no case for quashing of FIR(*supra*) is made out, the present petitions stand dismissed. However, nothing observed hereinabove shall be construed as an opinion of this Court on the merits of the case and the trial Court shall proceed without being prejudiced by the same.

(HARPREET SINGH BRAR)
JUDGE

20.03.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No