

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

\*\*\*\*

CRM-M-43891-2021

Reserved on: 13.02.2024

Pronounced on: 20.02.2024

2024:PHHC: 023995

K. PONNAIAH

.... PETITIONER

Vs.

STATE OF HARYANA AND ANOTHER

.... RESPONDENT

\*\*\*\*

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

\*\*\*\*

Present: - Mr. Amit Chaudhary, Advocate, for the Petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. R.K. Doon, Advocate, for respondent No.2.

\*\*\*\*

**DEEPAK GUPTA, J.**

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of FIR No.200 dated 22.05.2017, under Section 306 IPC registered at Police Station Urban Estate Rohtak, District Rohtak.

2. Reply by way of affidavit of Shri Vivek Kundu, HPS, Deputy Superintendent of Police, Rohtak, filed on behalf of the respondent-State has been received.

3.1 As per prosecution allegations, Balwan Singh son of Ramphal R/o Urban Estate, Rohtak, committed suicide by consuming some poisonous substance on 28.02.2017. Just before his death, he had uttered words "suicide note" to his son and then fell unconscious. He was taken to the hospital, where he expired. On 22.05.2017, Vikas son of deceased approached the police along with the suicide note of the deceased, stating that while looking for the papers of the deceased by his mother for applying

for pension, suicide note was found. He also stated that his father was in tension for last 3-4 months, as his father was investing money with M/s DPW Housing Organization, a Company registered in Delhi. He had been told by his father many times that members of the company were harassing him a lot for the money. In the suicide note, the deceased blamed petitioner (Pania), his wife, Sarvan Mathur, Kumar Vale, Brigadier Sukhvinder, his son and Sanjeet, to be responsible for his death. FIR was registered.

3.2 During investigation, the FSL report confirmed the suicide note to be in the handwriting of deceased. It was further found that M/s DPW Housing Organization, used to purchase land and thereafter, construct the flats and sell the same. Deceased Balwan Singh had invested ₹6.5 crore in the company after taking money from his relatives and known persons. During 30.07.2015 to March 2016, an amount of ₹78 lakh had been transferred on different dates to co-accused Sanjeet. It was further found that partners of the company M/s DPW Housing Organization, namely, K. Ponnaiah (petitioner), P. Shanti (actual name Shanthi Ramamurthy), Shravan Muthu, Kumar Vale and Brig. Sukhvinder Singh had embezzled a sum of ₹6,22,49,041/- from the deceased and had neither returned the said amount nor given flat to him.

3.3 Petitioner was allowed anticipatory bail by this Court in CRM-M-1812-2023 with direction to join investigation. Petitioner joined the investigation and suffered his disclosure statement.

3.4 During investigation, registration record of the firm M/s DPW Housing Organization dated 27.12.2011 and the deed of partnership dated 24.11.2011, were collected, revealing that there are only two partners of the firm, namely, K. Ponnaiah (petitioner) and Shanti Ramamurthy. It was also

found during investigation that deceased Balwan Singh had entered into a memorandum of understanding dated 30.8.2016 with M/s DPW Housing Organization through its partner K. Ponnaiah (petitioner). Possession letter of a building namely, Navodaya Housing Complex, Uttam Nagar, New Delhi, was also handed over to the deceased.

4.1 It is contended by ld. counsel for the petitioner that bare perusal of the FIR would reveal that there is no *prima facie* case to invoke Section 306 IPC against the petitioner or the co-accused. FIR has been registered after a delay of more than 3 months of the death. Deceased had executed a memorandum of understanding with the petitioner. Petitioner had taken money from the deceased through Rajender Singh Deswal and Nirmala Devi and in this regard, petitioner had mortgaged a number of properties with them. Petitioner had also executed a Will in favour of father of the complainant i.e. the deceased with regard to a four storeyed buildup property bearing No.376, Measuring 120 sq. yards, situated in the revenue estate of village Navada, Delhi, besides Will, General Power of Attorney, Agreement etc. and had handed over vacant possession of that building in lieu of full and final settlement arrived between the petitioner and the deceased. Copy of the handing over the possession is Annexure P7.

4.2 Ld. counsel contends further that it is 10 months after the MOU executed between the petitioner and the deceased that deceased committed suicide. Ld. counsel contends that as per the settled legal position, in these circumstances, Section 306 IPC cannot be invoked.

4.3 Ld. counsel has referred to decisions of Supreme Court rendered in *Geo Varghese Vs. State of Rajasthan and another* [Criminal Appeal No.1164 of 2021, decided on 05.10.2021], *Sanju @ Sanjay Singh*

*Sengar Vs. State of Madhya Pradesh, 2002(2) RCR Criminal) 687, S.S. Cheena Vs. Vijay Kumar Mahajan and another [Criminal Appeal No.4503 of 2010 decided on 12.08.2010] and Mohit Singhal and another Vs. The State of Uttarakhand and others [Criminal Appeal No.3578 of 2023 decided on 01.12.2023].*

5. Refuting the aforesaid contentions, ld. State counsel ably supported by Ld. counsel for the complainant, contends that petitioner has been specifically named along with others in the suicide note of the deceased, to be responsible for taking the extreme step by the deceased, to commit suicide. Ld. State counsel also contends that the investigation revealed embezzlement of more than ₹6.22 crore by the petitioner and other co-accused, on account of which deceased was under tension. Ld. State counsel also submits that it will be a matter of trial that as to whether the memorandum of understanding in respect of handing over the possession of the building to the deceased was in lieu of full and final settlement of the claim of the deceased, as is contended by the petitioner. It is further contended that it will be again a matter of trial, as to whether the circumstances created by the petitioner & co-accused were responsible for taking of the extreme step by the deceased to commit suicide and that looking into the entirety of circumstances, the FIR is not liable to be quashed.

6. I have considered submissions of both the sides and have appraised the record.

7. Sections 306 and 107 of the Indian Penal Code are relevant provisions to be noticed in order to determine the controversy. These are extracted as under:-

**“306. Abetment of suicide.** - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

**“107. Abetment of a thing.** - A person abets the doing of a thing, who -

*First.* - Instigates any person to do that thing; or

*Secondly.* - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

*Thirdly.* - Intentionally aids, by an act or illegal omission, the going of that thing.

*Explanation 1.* - A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Explanation 2.* - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

8. Hon'ble Supreme Court while dealing with Sections 306 and 107 of the Indian Penal Code in **Gangula Mohan Reddy Vs. State of Andhra Pradesh, 2010 (2) Cri. L.J. 2110** held as under:-

*“1. 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.*

*2. **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.*

*3. 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 - Each 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. 2009(4) RCR (Crl.) 196 (SC) relied.”*

Same view has been taken in **M. Mohan Vs. State Tr. Dy. Supdt. of Police, 2010 (2) Cri.L.J. 2110 (SC)**; and **The State of Punjab Vs. Jaibinder Devi's cases, 2011 (1) Criminal Court Cases 660 (P&H)**

9. In **S.S.Chheena Versus Vijay Kumar Mahajan, 2010 (4) RCR (Criminal) 66**, Hon'ble Supreme Court observed as under:-

*“16. In order to properly comprehend the scope and ambit of Section 306 Indian Penal Code, it is important to carefully examine the basic ingredients of Section 306 Indian Penal Code.*

*17. The word “suicide” in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. “Sui” means “self” and “cide” means “killing”, thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.*

10. In **State of West Bengal v. Orilal Jaiswal, 1994(3) R.C.R. (Criminal) 186: (1994) 1 SCC 73**, Hon'ble Supreme Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be

satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

11. Hon'ble Supreme Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) 2009(4) R.C.R. (Criminal) 196** dealt with the dictionary meaning of the words "instigation" and "goading" and 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 other. Each person has his own idea of self- esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

12. Similar view was expressed by Hon'ble Apex Court in **Amalendu Pal alias Jhantu Versus State of West Bengal, 2010 (1) RCR (Criminal) 643**. It was further observed in this case, as under:-

*"15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 Indian Penal Code is not sustainable.*

*16. In order to bring a case within the purview of Section 306 of Indian Penal Code there must be a case of suicide and in the commission of the said 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 certain*

*act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 Indian Penal Code.”*

13. What is important to notice is that in all the cases as referred above, the scope of Section 306 IPC to be read with Section 107 IPC has been explained by Hon’ble Supreme Court, after completion of the trial. Necessary pre-conditions to make out the offence have been laid down as to in what circumstances the conviction should be recorded if those pre-conditions are fulfilled.

14. However, in the present case, petitioner is seeking the quashing of the FIR itself under Section 482 Cr.P.C. As the status report filed by the respondent-State would reveal that even the investigation is not complete till date.

15. In ***“Mahendra K C v. The State of Karnataka & Anr”***, (2022) 2 SCC 129, the Karnataka High Court had quashed a complaint and proceedings connected therewith under Section 306 read with Section 34 IPC, by exercising its power under Section 482 Cr.P.C. The brother of the deceased, who was the complainant of the case as well as the State of Karnataka approached Hon’ble Supreme Court against the order of the High Court. The Hon’ble Supreme Court while drawing the distinction between the petition for quashing under Section 482 Cr.P.C. and the criminal trial or an appeal against conviction on a charge under Section 306 of IPC, observed as under:-

*“16. On reading the judgment of the Single Judge, it would appear that the Single Judge has failed to notice the distinction between a petition for quashing Under Section 482 (which was being considered) and a criminal trial or an appeal against a conviction on a charge Under Section 306.*

*The Single Judge has transgressed the limits of the jurisdiction Under Section 482 of the Code of Criminal Procedure. The judgment is replete with hypothesis and surmises on the basis of which the Single Judge has reached an inference on facts. The Single Judge has tested the veracity of the allegations in the criminal complaint and in the suicide note left behind by the deceased without having the benefit of an evidentiary record which would be collected during the trial. At the stage when the High Court considers a petition for quashing Under Section 482 of the Code of Criminal Procedure, the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial. The High Court in the present case has virtually proceeded to hold a trial, substituting its own perception for what it believed should or should not have been the normal course of human behavior. This is clearly impermissible.”*

16. It is by keeping in view the aforesaid distinction as explained by Hon’ble Supreme Court in a petition for quashing under Section 482 Cr.P.C. and a criminal trial/appeal against conviction on a charge under Section 306 IPC that it is required to be seen, as to whether in the facts and circumstances of the present case, the FIR in question and the consequent proceedings deserve to be quashed.

17. Perusal of the suicide note (*Copy Annexure R2*) as placed on record by Id. State counsel, would reveal that as many as 7 persons have been blamed by the deceased for commission of suicide by him including the petitioner. It will be apt to reproduce the suicide note, which reads as under: -

“Respected President of India, Prime Minister of India, Chief Minister Govt. of Haryana, Chief Minister Govt. of Delhi, Ch. Abhay Singh Chautala Ji

Sir,

Seven persons will be responsible for my death:-

DPWHO Pania 9540004850

Wife of Pania 9540000485

Sarvan Mathur 9599780161

Kumar Val 9599780160

Brig. Sukhvinder 9717766051

Son of Brig. 9969863767

Sanjeet 9811061777

Sir,

I am attaching the photocopy of writing dated 21 May 2016. Sir I am weeping since January 2016 and now I am fed up. But these persons did not return my money. The said amount belongs to many persons. I have earned a good reputation in 53 years and these persons have spoiled my reputations. They have spoiled my family and have not left me to live. These persons have taken away whole of amount. These persons have reached in Rohtak and village and Pania, Brig. have taken away the amount from me. These persons by telling lie to me have taken away the papers of Chhawla site from me and assured to give the amount within 4 to 10 days, but 3-4 months have passed.

Sir, I have done everything to save DPWHO. You can verify the facts from Lala Ji, Col. Man, Capt. Balhara, Kusum Madam and salesman of DPWHO. Sanjeet has told me that he by doing work with Pania will return the amount and he has taken Rs.78 lacs from me. Out of which 50 lacs have been taken by him through bank but he has not helped me nor return my money.

I am not writing more, these persons would not go to jail and if they will return the amount, then same be paid to the persons from I have taken the amount, so that after leaving the world my family could be saved and reputation of my family will be paid. What will be happen with my children. My daughter is studying in 12 class and son has been recently married. My family has been destroyed. I am going.

I being army person has done a lot of hard work in 55 years, but Pania family, Brig. and his son and Sanjeet have destroyed my whole work. I am very sad

Yours

Fauji Balwan Singh

Mobile No.893001982

7206221437

8053150151

8053715397

I have given in writing to these persons and the amount should be paid to my children, so that persons will not harass my children and my children will return the money of persons.

Sir,

Seven persons will be responsible for my death:-

DPWHO Pania 9540004850

Wife of Pania 9540000485

Sarvan Mathur 9599780161

Kumar Val 9599780160

Brig. Sukhvinder 9717766051

Son of Brig. 9969863767

Sanjeet 9811061777

I have given Rs.78 lacs to Sanjeet and he has not returned the same. These seven persons have forced me to commit suicide. I was eating bread with respect. But Pania and Singh have played a big fraud with me and have not left me to alive. Many persons have given amount to me. M.D. Pania, Reddy and Vicky have come to Rohtak and taken away the amount. I am dying by weeping. The country will not forgive these persons, what will happen to my children. If Pania and Brig. will return my money, then my children will return the amount of persons, so that reputation of family can be saved. Sanjeev return the amount of persons.

I have got convicted Bala D/o Krishan R/o Nangli Delhi for amount of Rs.16 lacs and now they are telling that I have taken back the money after conviction. If you will see here then we will kill you. I am helpless. These persons can kill me. Hence I am going to die.

Balwan Singh

The threats to kill were given by Krishan and Bala and their son.

Sd/- Balwan Singh”

18. No doubt, suicide was committed on 28.02.2017 and the FIR was lodged with delay of almost after 03 months on 22.05.2017, but it is duly explained in the FIR itself that police was approached when the suicide note was found later. It will be a matter of trial as to whether the

delay in lodging the FIR is duly explained or not. The said delay in itself cannot be a reason at this stage, so as to consider quashing of the FIR.

19. Perusal of the aforesaid suicide note would reveal that petitioner has been duly named therein to be one of the persons responsible for taking the extreme step of committing suicide by the deceased, as to how he alongwith others had duped the deceased of his hard earned money, which he had invested in DPHW Organization, by borrowing from relatives/friends. The status report filed by the police would reveal that taking an amount of ₹78 lakhs by co-accused Sanjeet during July 2015 to March, 2016 has been confirmed. It has also been found that an amount of ₹6.5 crores was invested by the deceased in M/s DPW Housing Corporation by taking the money from his relatives and known persons and that the petitioner along with others has embezzled an amount more than ₹6.2 crores taken from deceased and did not return the amount to him. It has also been found that it is only the petitioner and his wife, who were partners in M/s DPW Housing Corporation.

20. Although the contention of the petitioner to the effect that an MOU dated 30.08.2016 (Annexure P-2) executed between the petitioner and the deceased regarding handing over possession of a building, namely Nawada Housing Complex, Uttam Nagar, Delhi to the deceased was found to be correct during investigation, but petitioner contends that that MOU was in lieu of full and final settlement of the claim of the deceased. No such document has been placed on record by the petitioner that MOU was in lieu of full and final settlement of the claim of the deceased.

21. The deceased has further referred in the suicide note that the persons named in the suicide note including the petitioner, by playing big

fraud with him, had not left him to live and had spoiled his well earned reputation of 53 years.

22. All the reasons given in the suicide note are subject matter of trial. FIR should not be quashed without holding the trial on the ground that it is a case of money transactions between the petitioner and the deceased; and that the petitioner did not return the money to the deceased owed to him.

23. Hon'ble Supreme Court in ***Mahendra K C's case (supra)*** has referred to ***"State of Odissa v, Saroj Kumar Sahoo" (2005) 13 SCC 540***, wherein it was held:-

*"8. [...] While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."*

24. Hon'ble Supreme Court in ***Mahendra K C's case (supra)*** further referred to the principles laid down in ***"State of Haryana and others Vs. Ch. Bhajan Lal and others" 1992 AIR 604***, wherein general guidelines have been laid down as to the cases in which High Court can exercise its extraordinary power to quash the FIR under Section 482 Cr.PC. It was held as under: -

*“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide of myriad kinds of cases wherein such power should be exercised:*

*“(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 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.”*

25. In the present case, looking into the allegations made in the FIR to be read with suicide note and the ingredients of Section 306 to be read with Section 107 IPC and the legal position explaining the scope thereof, this Court finds that at this stage, it cannot be so stated that the allegations are so improbable that a prudent man would arrive at a conclusion that there is no sufficient grounds to proceed with the case.

26. Consequent thereto, it is held that this is not a fit case, so as to quash the FIR.

Dismissed.

20.02.2024  
*Vivek/Sarita*

(DEEPAK GUPTA)  
JUDGE

- |                               |     |
|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable?        | Yes |