

CrL.R.C.(MD)No.53 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CrL.R.C.(MD)No.53 of 2023
and
CrL.M.P.(MD)Nos.744 of 2023

Lakshmi

... Petitioner

-VS-

State Rep. By Inspector of Police,
Taluk Police Station,
Tirunelveli District.
Crime No.301 of 2019.

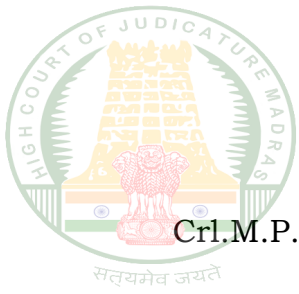
... Respondent

PRAYER : Criminal Review Case filed under 397 r/w. 401 of Cr.P.C., to call for the records and to set aside the impugned order passed in Cr.M.P.No.2588 of 2022 dated 03.06.2022, filed Sessions Case No.517 of 2021, on the file of the learned Sessions Judge, Mahila Court, Tirunelveli.

For Petitioner : Mr.P.M.Vishnuvarthanan
For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl.)

ORDER

This Criminal Revision Case assails the order dated 03.06.2022, whereby the learned Sessions Judge, Mahila Court, Tirunelveli, dismissed the petitioner's application for discharge filed under Section 227 Cr.P.C., in



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CrL.M.P.No.2588 of 2022 in S.C.No.517 of 2021.

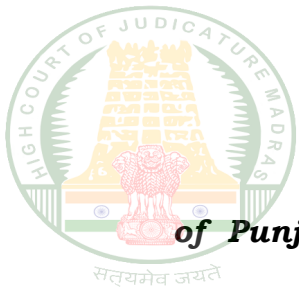
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The case of the prosecution:-

2.The petitioner is the 68 year old mother-in-law of the victim. On 12.09.2019, the petitioner is alleged to have verbally abused the victim and thereby, abetted her to commit suicide so that the petitioner's son could remarry. The victim attempted suicide by consuming phenol mixed with kerosene, but was saved. FIR No.301 of 2019 was registered on 14.09.2019, for the offences under Section 306 read with 511 IPC, on the complaint lodged by the victim. Final report was filed on 22.12.2020. Pending framing of charges, the petitioner sought for discharge, which was refused. Aggrieved by the said order, the petitioner has preferred this Revision Case.

Submissions:-

3.The learned counsel for the petitioner submitted that, two-day unexplained delay vitiates the FIR. Section 306 applies only when suicide is completed. However, in the instant case, as the victim survived, Section 306 is inapplicable and consequently, Section 511 (a residuary provision) cannot be invoked. He further submitted that no allegation exists as against the husband and selective prosecution of an elderly mother-in-law is an abuse of process of law. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Satvir Singh and others v. State**



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of Punjab and another¹ and the order of this Court in the case of **Bathirammal v. K.Kalyanasundaram and Others²** and pressed for allowing the Criminal Revision.

4.The learned Government Advocate (Crl. Side) Mr.M.Sakthi Kumar responded that the stage is premature and only a full trial can decide whether abetment occurred. He pressed for dismissal of the Revision Case.

5.Heard both sides and carefully perused the materials available on record.

Points for determination:-

(i)Whether, on the materials collected, the essential ingredients of Section 306 IPC are *prima facie* made out;

(ii)If not, whether recourse to Section 511 of IPC is legally sustainable;

(iii)Whether continuation of proceedings amounts to abuse of the process justifying discharge under Section 227 Cr.P.C.

Law on the subject:-

6.1.Abetment of suicide:- To attract Section 306 of IPC two conditions must coexist: (a) suicide of a person, and (b) abetment thereof.

¹ (2001) 8 Supreme Court Cases 633

² 2007 (3) CTC 737



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6.2.Scope of Section 511 of IPC: -

It is residuary, penalising attempts to commit offences punishable with life or any other imprisonment. Crucially, Section 511 is attracted only when the “principal offence” is itself legally possible. An “attempt at abetment” of a crime the law does not envisage the abetment of an incomplete suicide and the same is outside its sweep.

6.3.Power to discharge:-

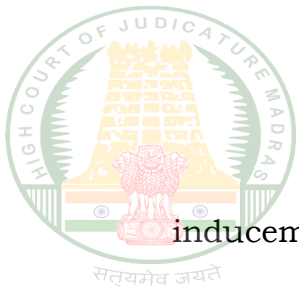
Under Section 227 Cr.P.C., the Court must discharge an accused if, upon consideration of the police report and documents, “no sufficient ground” exists to proceed.

Discussion:-

7.1.No completed suicide:- The victim is alive. Section 306 IPC, by its very text, presupposes that “any person commits suicide.” Where suicide has not occurred, abetment thereof is non-existent. The respondent Police seeks to overcome this lacuna by invoking Section 511 of IPC. The attempt fails for two reasons:-

(a) “Abetment” and “attempt” are distinct concepts; the Code does not recognise “abetment of an attempt to commit suicide.”

(b) Section 309 IPC provides for “attempt to commit suicide” by the victim herself; there is no corresponding provision criminalising



inducement of such attempt by a third party. Parliament, despite several amendments to Chapter XVI, has left this gap untouched. Courts cannot fill it by creative use of Section 511 of IPC.

7.2.Ingredients of instigation missing:- Even assuming that Section 306/511 of IPC could apply, the materials show only general marital discord. The alleged abusive language lacks the element of “wilful, deliberate and proximate incitement” of instigation. The Hon'ble Supreme Court in the case of **Sanju @ Sanjay Singh Senga v. State of M.P.**³, has dealt with a case under Section 306 r/w. 107 of IPC and the relevant portion of the same is extracted as follows:-

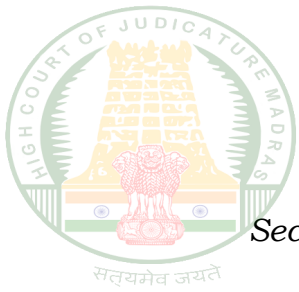
“12.....The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion.”

7.2(a).In yet another case in **Ramesh Kumar v. State of Chattisgarh**⁴, the Hon'ble Apex Court in a case pertaining to Sections 306 and 498-A has held as follows:-

“10.Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in

³ (2002) 5 Supreme Court Cases 371

⁴ (2001) 9 Supreme Court Cases 618



Section 107 of IPC which reads as under:

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

First.- Instigate 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 any act or illegal omission, the doing of that thing."

....

20.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 be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

7.2(b).This proposition is further confirmed by the Hon'ble Supreme Court in the case of **Gurcharan Singh v. the State of Punjab**⁵ and the relevant portion is as follows:-

⁵ Criminal Appeal No.40 of 2011



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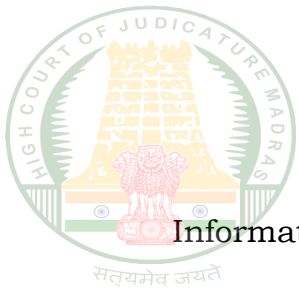
“14.....whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the 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 appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

16. The necessary ingredients for the offence under section 306 IPC was considered in the case S.S.Chheena Vs. Vijay Kumar Mahajan where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-

“25. 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

7.2(c).However, in the instant case, even according to the First



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Information Report which was registered, on the complaint of the defacto complainant after two days from the alleged date of occurrence, of attempt to commit suicide would make it clear that the accused had verbally abused the victim in a fit of anger and had left the house for some other reason. Thereafter, it is alleged that the victim consumed phenol mixed with kerosene, but saved by the timely intervention of the victim's sister-in-law one Laxmi. Had there been a *mens rea*, the accused would not have shouted at the victim and left the place, but would have pestered the victim continuously abetting her to commit suicide. The nature of the incident as narrated in the FIR and final report itself are self evident that the alleged verbal abuse is unintentional.

7.2(d).The statements of neighbours Aarogya Mary and Justin are omnibus; they do not depict any immediate goading that pushed the victim to the act. “*Mens rea*” the *sine qua non* for instigation, is therefore absent.

7.3.**Delay in FIR:-** Though not by itself fatal, the unexplained two days delay casts doubt on spontaneity and lends support to the defence that the complaint is an after-thought.

7.4.**Abuse of process:-** The petitioner is a senior citizen dragged into protracted criminal litigation on an alleged offence that the statute does not contemplate. Continuing the proceedings would amount to harassment



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and defeat the object of Section 227 of Cr.P.C.

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Conclusion:-

8.The impugned order has mis-directed itself on the statutory ingredients of Sections 306 and 511 of IPC and has failed to appreciate the legal impossibility of the offences with which the revision petitioner is charged. Interference in revisional jurisdiction is thus warranted.

In the result:-

9.This Criminal Revision Case is allowed. The order dated 03.06.2022, in CrI.M.P.No.2588 of 2022 in S.C.No.517 of 2021 on the file of the learned Sessions Judge, Mahila Court, Tirunelveli, is set aside. The petitioner/Accused No.1 is discharged from S.C.No. 517 of 2021. No Costs. Consequently, connected miscellaneous petition is closed and bail bonds, if any, stand cancelled. The Registry is directed to communicate this order forthwith to the Court below for necessary compliance.

16.06.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes
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To

- 1.The Sessions Judge, Mahila Court, Tirunelveli.
- 2.The Inspector of Police,
Taluk Police Station,
Tirunelveli District.



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L.VICTORIA GOWRI, J.

Mrn

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