

(2003) 07 MP CK 0046

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 1433 of 2003

Ajay Patodia

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 107, 108, 306, 406

Citation : (2004) CriLJ 197 : (2003) 3 MPHT 443 : (2004) 1 MPJR 201 : (2003) 4 MPLJ 195

Hon'ble Judges : S.M. Samvatsar, J

Bench : Single Bench

Advocate : Nandini Dubey and R.K. Sharma, for the Appellant; Bhakti Sharma, Panel Lawyer, for the Respondent

Judgement

Subhash Samvatsar, J.

This order shall also govern the disposal of M.Cr.C. No. 1754/2003. This petition is filed u/s 482, Cr.PC for quashing the criminal proceedings lodged against the applicant for committing offence under Sections 306 and 406, IPC.

The facts of the case are that one Chanda Lakhotia had lodged a complaint against the present applicant alleging that she is wife of Ramesh Lakhotia. The said Ramesh had committed suicide by hanging himself in the night of 14-3-1999. According to her, Ramesh was a scrap supplier and used to supply scrap to various factories/industries situated at Malanpur, District Bhind.

It is alleged that before 1995 the deceased had supplied scrap to M/s Varsha Alloys situated at Malanpur and the present applicant was the Managing Director of the said industry. It is also alleged that an amount of Rs. 16,75,000/- was due to the deceased from the said firm and the said amount was not paid by the firm. Ramesh demanded the said amount repeatedly from the applicant and the firm, but the said amount was not returned. Due to this non-payment, the deceased

Ramesh was put to economic crisis, as he could not repay the liabilities of his creditors who were pressing him hard. On 14-3-1999, the deceased had some talk on telephone with the present applicant. Deceased again requested the applicant to pay his amount. At about 3 to 4 A.M. in the night he committed suicide.

The allegation of the complainant is that the present applicant has committed an offence u/s 306, IPC. The police also registered the case against the present applicant for committing offence under Sections 306 and 406, IPC as Crime No. 231/2001. On the said complaint, investigation was started and police after recording the statement of the complainant and other witnesses reached to the conclusion that the deceased committed suicide due to non-payment of the money by the applicant and other persons. After investigation, a challan was filed against the present applicant and two other persons in the Court of Judicial Magistrate Class-I, Gwalior.

It is contended by the learned Counsel for the applicant that from the allegation made in the complaint itself offence punishable under Sections 306 and 406 of IPC are not made out and hence the entire proceedings deserve to be quashed.

Section 306 of the IPC defines as under:--

"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."

Section 406 of the IPC defines as under:--

"Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

As regards an offence u/s 306, IPC is concerned, as per allegation of the complainant, the applicant has abetted in commission of the suicide and has thus committed an offence punishable u/s 406, IPC.

As regards abetment in committing suicide is concerned, the word abetted is defined u/s 107, IPC The said section reads as under:--

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

- (1) Instigates any person to do that thing; or
- (2) 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
- (3) Intentionally aids, by any act or illegal omission, the doing of that thing."

Section 108 of IPC defines the word abettor. As per the said section, a person abets an offence by commission of an act, which would be an offence, if

committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. From perusal of Section 108, IPC, it is clear that the abettor must have same intention or knowledge as that of the abettor in committing an offence. Thus, this Court is required to examine whether the present applicant has same knowledge or intention of committing suicide as that of the deceased. In the present case, from perusal of the allegations made against the present applicant, at the most it can be said that the intention of the present applicant was neither to pay the amount due to the deceased nor that he should commit suicide. This Court in the case of *Vedprakash Bhaiji v. State of M.P.*, 1995 Criminal Law Journal 893 has held that the accused persons were intimidated by the deceased that if they do not repay the loan advanced to them, then they will have to face with dire consequences and immediately thereafter he committed suicide. This Court has held that it could not be said that the accused persons provoked, incited, urged or encouraged the deceased to commit suicide. A person is said to "instigate" another to an act when he actively suggests or stimulates him to the act by any means of language, direct or indirect for commission of the offence. In the present case, there is no averment to that effect. This court in the case of *Sultan Singh and Ors. v. State of Madhya Pradesh*, Criminal Revision No. 441/2002, has also taken a similar view and held that the ingredients of abetment as defined in Section 107 of IPC requires that knowledge and intention of the accused persons is necessary to hold the accused persons guilty of committing offence u/s 306, IPC.

Considering the aforesaid judgment of this Court, I find that there are no allegations against the present applicant in the entire complaint to suggest that the applicant had a knowledge or intention to the effect that deceased Ramesh will commit suicide. In such circumstances, criminal proceedings against the present applicant u/s 306, IPC can not continue. This application is, therefore, partly allowed. As regards the offence u/s 406, IPC is concerned, the learned Counsel could not make out any ground for quashing the proceedings. Hence the proceedings u/s 306, IPC are quashed while it is directed that the prosecution for committing offence u/s 406, IPC may continue against the present applicant.