

(2019) 05 CAL CK 0075

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3116 Of 2015

Arun Kumar Karmakar and Ors Vs State Of West Bengal & Anr ?

Date of Decision : 22-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 107, 306, 482
Indian Penal Code, 1860 — Section 34, 107, 306
Evidence Act, 1872 — Section 45

Citation : (2019) 05 CAL CK 0075

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Milon Mukherjee, Biswajit Manna, Kunal Ganguly, Anusuya Sinha

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioners/accused praying for quashing of the proceedings of G.R.Case No.680 of 2014 arising out of Chandrakona Police Station Case No.323 of 2014 dated 10.10.2014 pending before the Learned Additional Chief Judicial Magistrate, Ghatal, Paschim Medinipur.

The facts which are necessary to dispose of the present application are recapitulated as under:-

The present opposite party no.2 on 10.10.2014 at about 15:15 hours lodged an FIR with Chandrakona Police Station alleging that his father Suresh Bera left his residence on 09.10.2014 at about 8:00 p.m. for marketing, but he did not come back to his residence. Opposite party no.2 i.e the complainant and his elder brother viz Santanu Bera left their residence to find out their father. At about 00:30 hours (10.10.2014) they found that their father was lying in senseless condition in front of Aloka Cold storage. Getting no response from their father they understood that their father had committed suicide. Subsequently they found three suicide notes from the pocket of the deceased where from they came

to know that their father committed suicide as he was pressurized and instigated to commit suicide. In his FIR the complainant/opposite party no.2 specifically mentioned, that in his suicide notes his father had described how he was pressurized and instigated. He also mentioned the names of the persons in the First Information Report who caused such pressurization and instigation.

On the basis of the FIR lodged by present opposite party no.2, Chandrakona Police Station Case No.323/2014 dated 10.10.2014 was started against the FIR named persons whose names had been mentioned in the alleged suicide notes of the deceased which were subsequently discovered by the de facto complainant from the pocket of the deceased.

The investigation ended in submission of charge-sheet against the present petitioners along with others for commission of alleged offence under Section 306/34 of the Indian Penal Code.

Before proceeding further in the matter, it would be better to deal with the offence alleged in the First Information Report as well as in the charge-sheet. The offence alleged is that of 'abetment of suicide'. For convenience sake Section 306 of the Indian Penal Code reads as below:

"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".

In this connection it would not be out of place to mention Section 107 of the Indian Penal Code.

Section 107 of the Indian Penal Code reads as under:-

"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 or in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing".

On the other hand, it is the settled principle of law that in order to exercise the inherent power under Section 482 of the Code of Criminal Procedure the contents of the First Information Report shall have to be examined and the High Court at that stage has no jurisdiction to go into the merit or examine its correctness. Whatever appears on the face of the First Information Report shall be taken into consideration to see whether the allegations contained in the FIR or complaint or the statements of the witnesses in support of the same taken on their face value make out any offence as alleged against the petitioners/accused.

Learned Senior Counsel for the petitioners has vigorously submitted that the petitioners have been falsely implicated in the instant criminal proceedings and there was no ground whatsoever for implicating them in the alleged crime. Learned Senior Advocate has further contended that the question of abetment of

suicide of the deceased does not arise at all against the petitioners. In support of this contention it has been argued that the recovery as well as genuineness of the alleged suicide notes of the deceased is highly suspicious and doubtful as it appeared from the FIR, seizure list and from the report of the handwriting expert. It is the specific contention of the petitioners that the allegations of abetment of suicide as contained in the First Information Report as well as in the alleged three suicide notes are totally absurd and improbable in nature and having no foundation at all to disclose the alleged offence under Section 306 of the Indian Penal Code. Learned Advocate appearing for the State of West Bengal has submitted that the investigation of the case has already been completed and charge-sheet has been submitted against the petitioner under Section 306 of the Indian Penal Code. According to her contention the materials as collected during investigation along with the allegations as made in the First Information Report prima facie make out the ingredients of the alleged offence under Section 306 of the Indian Penal Code.

From the materials of the case diary, it appears that the present petitioner no.1 is the owner of the M/s. Aloka Cold Storage Pvt. Ltd. The de facto complainant, the son the deceased viz Debi Prasad Bera, purchased 33 nos. of bonds from the said cold storage by providing the bond amount as per norms of the said cold storage and loaded the potatoes in the cold storage of petitioner no.1. It also appears that the son of the deceased took loan from market for storing potatoes against the said bonds. Complainant made a request to the Manager of the said cold stores to sell the potatoes as per bonds purchased by him within a short period to meet up the expenses of medical treatment of the deceased and the complainant. Materials in the case diary further reveals that the petitioners in conspiracy with each other illegally purchased the said potatoes. In his suicide notes the deceased also alleged that their entire potatoes which had been kept in the said cold storage were sold to another cold storage owner i.e petitioner no.2 illegally in conspiracy with each other. In the alleged suicide notes the names of the present petitioners have been specifically mentioned that they were responsible for the death of the deceased.

In this connection, Learned Senior Advocate for the petitioners has contended that the ingredients of the offence of abetment to suicide as mentioned in Section 306 of the Indian Penal Code have not been made out either in the First Information Report or in the alleged suicide notes of the deceased. In support of his contention, he has drawn the attention of the Court to the inquest report of the deceased and submitted that the recovery of the suicide notes from the pocket of the deceased has no basis at all as the deceased was wearing a white checked lungi and white underwear. Generally, lungi and underwear have no pockets. It is true that in the First Information Report, it was mentioned that the alleged suicidal notes were recovered from the pocket of the deceased. If one goes through the First Information Report as a whole, then it would appear that the alleged suicide notes were recovered from the pocket of the deceased subsequently. Nowhere, it was mentioned that the alleged suicide notes were

recovered from the wearing apparel of the dead body of the deceased. Moreover, in the seizure list 11.10.2014, it was mentioned that the alleged suicide notes were recovered from the bed room of the deceased by his son i.e. the de facto complainant after the death of the deceased. Averments of the First Information Report as well as contents of the seizure list have clearly mentioned that the alleged suicide notes were recovered subsequently from the bed room of the deceased.

It has been contended by the petitioners that the handwritings of alleged suicide notes are not the handwritings and the signatures of the deceased. Petitioners have contended that the alleged suicide notes were sent to Questioned Document Examination Bureau for verification and it has been observed by the expert that the standard signatures were speedy, free and modified in execution while the questioned writings were slow, conscious, less free and detached in execution. Learned Counsel for the petitioners has placed his reliance on the report of the handwriting expert as well as on the alleged seizure list of the alleged suicide notes of the deceased.

In view of Section 45 of the Evidence Act, the report of the expert is only a piece of corroborative evidence. It is not a substantive piece of evidence. At the time of final hearing of the case, the Judge will have to consider the evidence of the expert with other pieces of evidence which are produced before the Judge during the course of trial.

Moreover, the petitioners have cited a portion of the report of the handwriting expert. There is a general rule that the opinion of an expert should be read as a whole. The handwriting expert in his report dated 11.12.2014, has specifically stated that from the agreements as well as non-verification of certain writing characteristics as stated in his report, he is of the opinion that the questioned signatures marked as Q1, Q2 and Q3 are probably executed by the writer of the standard signatures marked as SBI, SBI/2, SBI/3, SBI/4, SBI/5, SBI/6, SBI/7, SBI/8, SBI/9, SB 2 and SB 2/1.

In his report the expert has stated that no opinion regarding authorship of the questioned writings marked Q1/1, Q2/2, Q3/3 is possible from the standard materials in hand at the present stage. In this connection, it requires to be mentioned here that the questioned signatures marked as Q1, Q2 and Q3 are the question writings and signatures on alleged suicide notes as mentioned in paragraphs 1 and 2 of the report.

In support of his contention for quashing of the criminal proceedings pending against the petitioners, Learned Senior Counsel has placed his reliance on various decisions.

I have gone through all the decisions so cited at Bar. In Sandip Bhattacharjee Vs. The State of West Bengal & Anr. a co-ordinate Bench of this Court quashed the criminal proceedings under Section 306 read with Sec.107 of the Code of Criminal Procedure against petitioner. In that case, the petitioner was the

headmaster of a school where the deceased used to work as an Assistant Teacher. In paragraph 16 of the said judgment it was observed that during investigation, Investigating Officer had seized one document, which revealed that an allegation of financial irregularity was found against the deceased by the accused headmaster. It was observed by the co-ordinate bench that the accused being the headmaster of the school got every right to take appropriate action against his subordinate and the deceased was suffering from depression due to various reasons. The factual situation of the present case is quite different from case cited by the Learned Counsel.

In the decision of *State of Kerala and Others Vs. Unnikrishnan Nair and Others* reported in (2015) 9 Supreme Court Cases 639, the Hon'ble Apex Court was pleased to observe that no prima facie case of abetment made out against the accused on the ground the accused were inferior in rank and it was surprising that such a thing could happen and the allegation against the accused was vague. Facts of the above referred case are not similar to that of the facts of the case at hand.

In the decision in *Vaijnath Kondiba Khandke Versus State of Maharashtra and Another*, the Hon'ble Apex Court found that there was no suicide note left behind by the deceased and only material on record was in form of assertions made by his wife in her reporting to police and those facts on record were completely inadequate and insufficient. Factual matrix of the decision cited above is different from the factual matrix of the case at hand.

Another decision in *Mandan Mohan Singh Vs. State of Gujarat and Anr.* in Criminal Appeal no.1291 of 2008 has been cited by the petitioners. In that case the suicide note was discovered 17 days after the deceased committed suicide and such suicide note suffers from cloud of suspicion.

Decisions as referred by the petitioners have no bearing with the present case. Factual situation of the present is quite different from cases on which reliance have been placed.

Coming to the case at hand, from the materials collected during investigation, it is found that the body of the deceased was found in front of the cold storage of petitioner no.1. Subsequently, suicide notes of the deceased were recovered from the bed room of the deceased by his son i.e de facto-complainant. From those suicide notes they came to know that the deceased committed suicide as the petitioners and other accused in conspiracy with each other sold the potatoes of the son of the deceased which had been kept in the cold storage of petitioner no.1 to petitioner no.3 and the course of conduct of the petitioners created a situation that the deceased was left with no other option but to commit suicide. In view of Section 107 of the Indian Penal Code abetment may be committed by instigation, conspiracy or intentional aid. In his suicide notes the deceased narrated the entire situation how the accused conspired and created a situation that the deceased had no other option but to commit suicide. It was alleged in

those suicide notes that the son of the deceased obtained loan from market for storing potatoes.

Petitioners have prayed for quashing of the criminal proceedings pending against them mainly on the grounds viz the alleged recovery of suicide notes is highly suspicious and doubtful and observation of the handwriting expert does not support the prosecution case. I have already dealt with the grounds elaborately as taken by the petitioners.

The first information report, the charge sheet and the materials collected during investigation clearly indicate the existence of prima facie case for proceedings for alleged offence against the petitioners.

Moreover, quashing of prosecution by the High Court by appreciating evidence is not proper when the allegations made in the First Information Report and the materials referred to in the charge sheet prima facie make out alleged offence. The Court while considering the prayer for quashing should not assume the jurisdiction of the Trial Court and to consider the plea of innocence of the accused. While considering the prayer for quashing the High Court should not delving deep into the merit of the case or adjudicate upon a disputed question of fact.

Considering all aspects, I am of the view that the allegations as made in the FIR prima facie constitute the offence alleged. Subsequent submission of charge sheet against the petitioners and the materials collected during investigation make out prima facie case for proceedings against the petitioners.

The instant case does not come within the illustrations as laid down by the Hon'ble Supreme Court in State of Haryana and Others Vs. Ch.Bhajan Lal and Others reported in AIR 1992 SC 604 and in other subsequent cases, regarding exercise of inherent power under Section 482 of the Code of Criminal Procedure. Moreover, from the materials placed on record, it cannot be said that the continuation of the criminal proceedings pending against the petitioner would amount to an abuse of the process of the Court. In my opinion, it is not a fit case to exercise the discretion under Section 482 of the Code of Criminal Procedure. As a result the application under Section 482 of the Code of Criminal Procedure i.e. CRR 3116 of 2015 is dismissed.

Interim order, if any stands vacated.

Case diary produced by the State be handed over to the Learned Advocate for the State, immediately.

Urgent photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance with all formalities.