

(2023) 06 UK CK 0097

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 717 Of 2023

Badal Agrawal And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 107, 306

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Constitution Of India, 1950 — Article 226

Citation : (2023) 06 UK CK 0097

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Arvind Vashistha, Hemant Mehra, Lalit Miglani, S.R.S. Gill

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The petitioners seek quashing of FIR/Case Crime No.196 of 2023, dated 17.04.2023, under Section 306 IPC, Police Station Bazpur, District Udham Singh Nagar and charge-sheet dated 06.06.2023 filed in the matter.

2. Heard learned counsel for the parties and perused the record.

3. During the pendency of the writ petition, it was brought on record that charge-sheet has already been filed in the matter. The petitioners have also challenged the charge-sheet dated 06.06.2023, filed in the matter.

4. According to the FIR, deceased Gurmeet Singh had sold two gold bangles to the petitioners on 15.04.2023. On 16.04.2023, both the petitioners telephoned Gurmeet Singh that the gold is not pure. They are going to lodge the report. Hearing it, Gurmeet Singh told the petitioners that he would return the money, subject to return of the gold bangles, but according to the FIR, both the petitioners abused and threatened Gurmeet Singh and also told that they would lodge a report and send him in jail. They continued threatening Gurmeet Singh

telephonically, due to which, Gurmeet Singh frustrated, get humiliated and committed suicide on 17.04.2023. The report was lodged by the respondent no.3, the son of the deceased Gurmeet Singh. It is this matter, in which, after investigation charge-sheet under Section 306 IPC has been filed.

5. Learned Senior Counsel appearing for the petitioners would submit that perusal of the FIR itself does not reveal that the petitioners have made any kind of abetment to suicide. It is not a case of suicide.

6. Learned State counsel would submit that the witnesses have supported the prosecution case. They have supported the FIR. He would submit that the petitioners made multiple calls to the deceased, due to which, he committed suicide.

7. Learned counsel for the informant would submit that the deceased was telephonically called by the petitioners to return the money, due to which, he felt humiliated and committed suicide.

8. This is writ petition under Article 226 of the Constitution of India. If FIR discloses commission of offences, generally no interference is warranted unless there are compelling circumstances to do so. The principles that guide the Court in exercise under Article 226 of the Constitution of India have been summed up by the Hon'ble Supreme Court.

9. In the case of State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court has illustrated the list of the circumstances under which the jurisdiction under Section 482 of the Code may be exercised. In paragraph 102 of the judgment, the Hon'ble Supreme Court observed as hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.”

10. It is the case of the petitioners that the perusal of FIR, itself does not disclose any commission of offence. On the other hand, it is the case of the prosecution that, in fact, the FIR has been culminated in the charge-sheet and the Investigating Officer has found that the offence under Section 306 IPC is made out.

11. The discussion which would follow now is for the purpose to find out, as to whether the contents of the FIR disclose commission of offence under Section 306 IPC?

12. Section 306 IPC reads as hereunder:-

“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.”

13. Abetment, as such has been defined under Section 107 of the IPC which contained three basic ingredients i.e. instigates, conspiracy and intentional aids. This Section reads as hereunder:-

“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 any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful 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 facilitates the commission thereof, is said to aid the doing of that act.”

14. The provision of Section 306 IPC had come up for discussion in umpteen cases before the Hon’ble Supreme Court. In the case of *Rajesh & others v. State of Haryana*, 2019 SCC OnLine SC 44, the Hon’ble Supreme Court held that, “Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there 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.”

15. In the case of *Ude Singh & others v. State of Haryana*, (2019) 17 SCC 301, the Hon’ble Supreme Court observed that , “In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide..... In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence.”

16. In the case of *M Arjunan v. State*, (2019) 3 SCC 315, the Hon’ble Supreme Court further added that, “The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide.”

17. After discussing the law on the point, this Court in Criminal Appeal No.322 of 2021, *Sardar Gurjeet Singh and another vs. State of Uttarakhand* on 18.01.2022 summed up the principle as follows:-

“(i) If accused created such a circumstance that the deceased was left with no other option except to commit suicide, it is instigation.

(ii) Words uttered in a fit of anger or emotion without any intention is not instigation.

(iii) The harassment without any positive action on the part of the accused does not amount to abetment.

(iv) The accused must have played an active role by an act of instigation or by doing a certain act to facilitate the commission of suicide.

(v) The accused must have a guilty mind.

(vi) The ingredients of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

(vii) Instigation literally means to provoke, incite, urge on or bring about by persuasion to do anything.

(viii) If a person, who commits suicide is hyper sensitive and his action is otherwise not ordinarily expected, conviction for abetment of suicide may not be safe.

(ix) If an accused played an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment to suicide.

(x) The question of mens rea may be gathered from actual acts and deeds of the accused.

(xi) If the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide.

(xii) The act of accused, however insulting by using abusive language, will not by itself constitute the abetment of suicide.

(xiii) Mere allegations of harassment may not be sufficient, unless there are allegations of such action on the part of the accused, which compelled the deceased to commit suicide."

18. The FIR records that the petitioners telephonically threatened the deceased. The transaction of gold bangles took place on 15.04.2023. According to the prosecution case, on 16.04.2023, telephonically the petitioners threatened the deceased and asked him to return the money and take his gold bangles back or else threatened the deceased to lodge a report. On 17.04.2023, the deceased committed suicide.

19. Mere threatening over telephone, in such a matter, when there was some transactions between the parties particularly, requiring the deceased to return money and take the gold bangles back cannot be termed as abetment to suicide. Therefore, this Court is of the view that prima facie no offence under Section 306 IPC is made out. Accordingly, the petition deserves to be allowed.

20. The petition is allowed. The FIR/Case Crime No.196 of 2023, dated 17.04.2023, under Section 306 IPC, Police Station Bazpur, District Udham Singh Nagar as well as the charge-sheet dated 06.06.2023 filed in the matter is hereby quashed.

21. The petitioners are in jail. Let they be set free forthwith, if not wanted in any other case.

22. Let a copy of this judgment be supplied to the learned counsel for the parties today itself, as per Rules.