
(2018) 03 MP CK 0179
In the Madhya Pradesh High Court
Case No : M.Cr.C. No.17745 OF 2017

Bannasingh Rajpur & Ors.

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 107, 306

Code Of Criminal Procedure, 1973 — Section 227, 482

Citation : (2018) 03 MP CK 0179

Hon'ble Judges : S.K. AWASTHI, J

Bench : Single Bench

Advocate : Mnish Manana, Hemant Sharma

Final Decision : Allowed

Judgement

This petition has been filed u/s. 482 of the Criminal Procedure Code, 1973 (hereinafter, for short, 'the Code') for quashment of Criminal Case No.

740/2017 registered on the basis of FIR by Police-Station-Nagda, District-Ujjain against the applicants under Section 306 of the IPC.

2. The facts of the case are in brief that the agricultural land of the deceased-Bahadur Singh is adjacent to the agricultural land of applicant No.1-

Banne Singh. In the intervening night of 23-24/06/2017, Banne Singh made a boundary of heaps of soil. On 24/06/2017, deceased-Bahadur Singh

alongwith Prahlad Nai lodged a complaint against applicant No.1-Banne Singh at Police Station-Mandi alleging that because of heaps made on the

boundaries by applicant No.1-Banne Singh, the water would accumulated in their fields and their agricultural produce would be spoiled. On 24/06/2017

at about 19:45 p.m., Bahadur Singh committed suicide by hanging himself in the house. During investigation the statement of his nephew-Lakhan were

recorded, in which he deposed that the Bahadur Singh informed him prior to his death that when he returned from the Police-Station after lodging

the report against Banne Singh then Banne Singh, Sanjay, Nepal Singh and Sure Singh surrounded him at bus stand and threatened him that if he

lodged the complaint against them, they will kill him, due to fear of this threat, deceased-Bahadur Singh has committed suicide.

3. It is submitted by the learned counsel for the applicant that the allegations made against the applicants, even if accepted in their entirety, do not

make out a case u/s. 306 of the IPC. It is submitted that to constitute abetment within the meaning of Section 107 read with Section 306 of the IPC,

there should be instigation, provocation, incitement, suggestion, persuasion or goading to commit suicide and that, the accused must have intended

that the deceased commits suicide. Reliance in this regard has been placed on Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002

S.C. 1998 and Ramesh Kumar vs. State of Chhatisgarh, (2001) 9 SCC 618.

4. Per contra, it is submitted by the learned Public Prosecutor that prima-facie charge for offence under Section 306 of the IPC is made out against

the applicant on the basis of material available in the charge-sheet, therefore, it cannot be said that learned trial Court has committed any legal or

factual error in framing the charge for offence under Section 306 of the IPC.

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

6. The law is well settled that the jurisdiction of this Court under Section 482 of 'The Code' is wide enough and that if the proceedings are going to

result in abuse of process of the Court, then the high Court in exercise of powers under Section 482 of 'The Code' can quash such proceedings and

nothing will come in the way.

7. The Hon'ble Supreme Court in the case of Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135, has laid down the scope for

consideration in the following manner:-

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the

Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section

has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused

has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained

the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the judge is

satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully

justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as

a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the

documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was

conducting a trial (see *Union of India v. Prafulla Kumar Samal* [(1979) 3 SCC 4: 1979 SCC (Cri) 609]).

8. In the context of above observation by the Hon'ble Supreme Court, now the facts of the present case are required to be discussed.

9. To constitute abetment within the meaning of Section 107 read with Section 306 of the IPC, it must be demonstrated that the accused had

instigated, provoked, incited, suggested or goaded the deceased to commit suicide and that, such result was intended by the accused. In a number of

decisions, the apex Court has considered whether assault or harassment simpliciter can amount to abetment within the meaning of Section 107 read

with Section 306 of the IPC. Each time, the apex Court has answered the issue in negative, stating that harassment or assault simpliciter cannot

amount to abetment. In the matter of *Babbi @ Jitendra v. State of M.P.*, 2008(2) MPHT 160 considering a case under Section 306 read with

Section 107 of IPC, it has been held as under by this Court:—

9. 'Abetment to commit suicide' is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and

fine. Expression 'Abetment' has been defined in Section 107 of IPC which runs as under:—

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

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 facilitates the commission thereof, is said to aid the doing of that

act

10. In the State of Punjab Vs. Iqbal Singh, AIR 1991 SC 1532, the apex Court explaining the meaning and expanse of word "abetment" as used

in Section 107 of IPC, has held as under:

"Abetment" as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for

the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor as a person who

abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word "instigate"

in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word "aid" is to

give assistance, help etc.

11. In Ramesh Kumar vs. State of Chhatisgarh, (2001) 9 SCC 618, a three Judge Bench of the "apex" Court explaining the meaning and

connotation of word "instigation" has held as under (para. 20):

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.

12. Taking note of the fact that each person's suicidability pattern is different from others and that each person has his own idea of self-esteem and selfrespect, the apex Court in *M. Mohan Vs. State, Represented by the Deputy Superintendent of Police*, 2011 CRI.L.J. 1900 (S.C.), referring to its earlier decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, 2009 (16) SCC 605, held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

13. Reference can also be made to the decision of the apex Court in *Gangula Mohan Reddy Vs. State of Andhra Pradesh*, 2010 (Suppl.) Cr.L.R. (SC)

261, wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he committed

suicide by consuming poisonous substance. The apex Court referring to its earlier decisions in *Mahendra Singh & Anr. Vs. State of M.P.*, (1995)

Supp. 3 SCC 731 and *Ramesh Kumar Vs. State of Chhatisgarh*, (2001) 9 SCC 618, holding that offence of abetment to commit suicide under Section

306 of IPC is not made out, observed as under:

“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”.

14. In *Deepak V. State of M.P.*, 1994 Cri. LJ 767 (M.P.), the deceased girl was threatened with defamation, if she refused to have sexual

intercourse with two accused; within an hour she committed suicide leaving a suicidal note. Accepting the plea that the act of the accused might have

been a reason for committing suicide but the same did not constitute abatement within the meaning of Section 306 read with Section 107 of the IPC, it

was held that -

“neither there was any intention nor any positive act on the part of the accused to instigate her or aid her in committing suicide. The two accused

persons, therefore, cannot be held guilty of the offence under Section 306 of the I.P.C. and their conviction on that count by the trial Court, is liable

to be set aside.”

15. In the case of *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh*, AIR 2002 S.C. 1998, the accused was charged under Section 306 of

IPC for abetting his brother-in-law to commit suicide; the accused allegedly said

to him to 'go and die'; the deceased left behind a suicide note stating that accused is responsible for his death. It was held that words 'go and die' do not constitute instigation for mens rea of offence under Section 307 of IPC.

16. In Mahendra Singh and Anr. Vs. State of M.P., 1996 Cri.L.J. 894=1995 Supp (3) SCC 731, a case prior to the insertion of Section 113-A in the

Evidence Act, the charge under Section 306 IPC proceeded on the basis of dying declaration of the deceased to the effect that 'My

'My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My

husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I

want to die by burning.'

Considering legal sustainability of the same the apex Court held as under:

'Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a 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.

Neither of the ingredients of abetment are attracted on the statement of the deceased.'

17. From the aforesaid pronouncements of the apex Court, it flows that to constitute abetment to commit suicide, there must be material, prima-facie,

indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

18. In Devendra and others vs. State of Uttar Pradesh and another, (2009) 7 SCC 495, it has been held as under:

'when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an

offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.'

10. In the case of Devendra Singh Vs. State of M.P. 2007(3) M.P.H.T. 247, the co-ordinate Bench of this Court in para 6 held as under:

'6. Now, advertent to the facts of the instant case, the suicide note allegedly

left by the deceased indicates that the deceased committed suicide being fed-up with his life. It also prima facie indicates that the applicant was threatening the deceased for last one month prior to the occurrence in order to recover his money lent to the deceased. It nowhere indicates that the applicant intended that deceased should commit suicide or instigated him to commit suicide. The consistent view of this Court as enunciated in various decisions cited above, has been that demand of money or loan does not amount to an abetment of commission of suicide.â??

11. The facts of the case are required to be considered in the light of the aforesaid legal position. As per prosecution, that the agricultural land of the deceased-Bahadur Singh is adjacent to the agricultural land of applicant No.1-Banne Singh. In the intervening night of 23-24/06/2017, Banne Singh made a boundary of heaps of soil. On 24/06/2017, deceasedBahadur Singh alongwith Prahlad Nai lodged a complaint against applicant No.1-Banne Singh at Police Station-Mandi alleging that becauseÂ of heaps made on the boundaries by applicant No.1-Banne Singh, the water would accumulated in their fields and their agricultural produce would be spoiled. On 24/06/2017Â at about 19:45 p.m., Bahadur Singh committed suicide by hanging himself in the house. During investigation the statement of his nephew-Lakhan were recorded, in which he deposed that the Bahadur Singh informed him prior to his death that when heÂ returned from the Police-Station after lodging the report against Banne Singh then Banne Singh, Sanjay, Nepal Singh and Sure Singh surrounded him at bus stand and threatened him that if he lodged the complaint against them, they will kill him, due toÂ fear of this threat, deceased-Bahadur Singh has committed suicide. However, the statement of relatives of the deceased and other prosecution witnesses, did not indicate that at any point of time deceased was provoked, incited, goaded or persuaded by the present applicants to commit suicide. Therefore, even if all the allegations made against the applicants are accepted in their entirety, still they not make out a case u/s. 306 read with Section 107 of the IPC.

12. The learned trial Court while framing the charge has not considered the aforesaid factual and legal aspects of the matter and has mechanically framed the charge. Therefore, the charge u/s. 306Â of the IPC against the applicant cannot be sustained.Â

13. Accordingly, this petition deserves to be and is hereby allowed and the impugned order is hereby set aside and the charge with regard to offence

u/s. 306 of the IPC against the applicants- Bannesingh Rajput, Sanjaysingh Rajput, Nepalsingh Rajput and Suresingh Rajput are hereby quashed.

14. Let a copy of this order be sent to the concerned trial Court for information and necessary compliance.

Certified copy as per rules