

(2006) 09 CAL CK 0010
In the Calcutta High Court
Case No : C.R.R. No. 1830 of 2006

Bishnu Chakraborty and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 173(5), 401, 482
Penal Code, 1860 (IPC) — Section 120B, 306, 34, 498A

Citation : (2007) 3 CHN 754

Hon'ble Judges : Sailendra Prasad Talukdar, J

Bench : Single Bench

Advocate : Joymalya Bagchi and Pushpal Satpathi, for the Appellant; Debabrata Roy, for the Respondent

Judgement

Sailendra Prasad Talukdar, J.—The petitioners by filing the instant application u/s 401 / 482 of the Code of Criminal Procedure sought for quashing of the impugned proceedings as well as for setting aside the impugned order dated 17th May, 2006 passed by the learned Additional Chief Judicial Magistrate, Barrackpore, 24-Parganas (North) in G.R. Case No. 258 of 2006.

2. It relates to Bizpure P.S. Case No. 18 of 2006 dated 19th January, 2006 u/s 306 / 120B / 34 of the Indian Penal Code

3. The backdrop of the present case may briefly be stated as follows:

One Sovana Routh filed an application u/s 156(3) of the Code of Criminal Procedure before the learned Court of Additional Chief Judicial Magistrate, Barrackpore on 3rd January, 2006 against the present petitioners. She alleged that she is a widow. Her son, Keshab Routh, constructed his own house and was residing there with his family situated at Sharat Villa Gali, Kanchrapara Police Station, Bizpur. On 22nd November, 2005 the son of the complainant met her mother and told her that he was going to his house to meet the intending buyers of his house and at about 3.30 p.m. he left for his house. He felt asleep and as

such could not bear the call of the buyers, who came to meet him. At about 5.30 p.m. accused Manju Ganguly called up the son of the complainant. She entered into the house along with other accused persons and threatened him and wanted him to sell the house to none other than Goutam Ganguly. They assaulted him with fists and blows. The complainant's son, Keshab, was terrified and shocked. The accused persons threatened to implicate him in a scandal involving woman. They forcibly took him to the party office of CPIM where he was again heckled and threatened. They told the son of the complainant to pay Rs. 50,000/- to the party office. He collected the amount and handed over the same to the accused persons. The complainant found her son in a distressed condition and only on enquiry could know about all these. She asked her son to lodge complaint but she was told that the accused persons had threatened to kill him if he goes to the police. On 24th November, 2005, Chandan and Bishnu called the son of the complainant in the evening and asked him to hand over the deed of his house. The complainant's son, accordingly, approached her for such deed. The complainant, however, refused to hand over the same. On 26th November, 2005 in the morning the son of the complainant met his mother and told her that he had no alternative but to commit suicide due to inhuman torture and assault by the accused persons. He went out of the house and committed suicide by throwing himself before a running train at Kanchrapara Railway Station. The complainant due to such sudden tragic death of her son was in trauma for quite sometime. Thereafter, she went to the police. She was assured of necessary redress, but to no avail. The complainant lodged complaint before the Sub-Divisional Police Officer, Barrackpore. A petition of complaint was filed, which was referred to Bizpur Police Station for investigation after treating the same as First Information Report. The police authority after completion of investigation submitted chargesheet u/s 306 / 120B / 34 of the Indian Penal Code. The learned Additional Chief Judicial Magistrate, Barrackpore, by order dated 17th May, 2006 took cognizance. The petition of complaint was filed on 3rd January, 2006 after a lapse of more than one month from the date of the alleged incident, which took place on 22nd November, 2005. There was no explanation for such inordinate delay. The wife of the deceased, namely, Rekha Routh filed a petition of complaint u/s 156(3) of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Barrackpore on 21st February, 2006 vide M. P. Case No. 81 of 2006 against the de facto complainant of the present case and four other accused persons, namely, Uttam Routh, Khokan Routh, Madhusudan Routh and Pintu Routh alleging commission of offence punishable u/s 498A / 120B of the Indian Penal Code. The learned Additional Chief Judicial Magistrate, Barrackpore, referred the said complaint to Bizpur Police Station for investigation. The wife of the deceased also affirmed an affidavit before the learned Court of Executive Magistrate declaring that her mother in law had filed the case falsely against the present petitioners and others as named in the First Information Report.

4. The de facto complainant of the present case also made a prayer for stopping

the investigation, which was received by the concerned authorities on 26th May, 2006. She affirmed an affidavit before the Notary Public at Barrackpore on 9th June, 2006 in which she affirmed that all the chargesheeted accused persons are innocent and as such, she is not willing to proceed further.

5. Being aggrieved by, and dissatisfied with, the impugned proceeding, the petitioners approached this Court with a prayer for quashing of the proceeding.

6. Mr. Bagchi, appearing as learned Counsel for the petitioner, submitted that the facts and circumstances of the present case demand that the instant criminal proceeding should be quashed.

7. Mr. Debabrata Roy appeared as learned Counsel for the opposite party/State. He referred to the materials in the case diary, while opposing the prayer for quashing of the proceeding.

8. Mr. Bagchi, as learned Counsel for the petitioners, submitted that taking of cognizance cannot be done mechanically. In fact, the expression "taking of cognizance" implies application of judicial mind for the purpose of proceeding further. It appears that the police authority after completion of investigation of the case, being Bizpur P. S. Case No. 18 of 2006 dated 19th January, 2006 u/s 306 / 120B / 34 of the Indian Penal Code submitted chargesheet against the present two petitioners as well as two others. The learned Additional Chief Judicial Magistrate-in-Charge, Barrackpore, on the basis of such relevant materials, as forwarded u/s 173(5) of the Code of Criminal Procedure, took cognizance and directed issuance of warrant of arrest. Mr. Bagchi submitted that the factual backdrop of the case was not at all appreciated by the learned Court while taking cognizance. Referring to the decision in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , it was submitted that the allegations made in the present case being inherently absurd, the First Information Report as well as the chargesheet submitted are liable to be quashed. Relying upon the decision in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , it was submitted that power to investigate into the cognizance of offences must be exercised properly and any unlimited discretion can become ruthless destroyer of individual freedom. Reference was also made to the decision in the case of Netai Dutta Vs. State of West Bengal, , in support of the contention that in order to attract Section 306 of the Indian Penal Code, it must be shown that the accused persons instigated the deceased to commit suicide and as a result of such instigation, the deceased brought his life to an end. It was also submitted on behalf of the petitioners that even the de facto complainant made a prayer before the investigation authority for submission of final report wherein she claimed that the case was filed inadvertently.

9. Before proceeding further it is, perhaps, necessary to refer to the materials in the case diary.

10. The application, which was filed by Smt. Sovana Routh against two petitioners and others, was referred to the police authority for investigation after

treating the same as First Information Report u/s 156(3) of the Code of Criminal Procedure. There are specific allegations in the said written complaint to the effect that the accused persons virtually pressurized the son of the de facto complainant and directed him to sell out the house to none other than Goutam Ganguly. There is allegation that the accused persons assaulted the son of the de facto complainant with fists and blows. As a result of which the victim virtually got shattered and lost his nerve. The victim was also taken to the party office where he was further heckled and threatened. He was directed to pay an amount of Rs. 50,000/-, which he collected and handed over the same to the accused persons. The victim was again called by Chandan and Bishnu on 24th November, 2005 and was asked to hand over the deed in respect of the house, it was specifically alleged in the petition of complaint that on 26th November, 2005, the deceased met his mother in the morning and told her that he had no alternative but to commit suicide due to inhuman torture and assault-by the accused persons. As alleged in the petition of complaint, he thereafter went out and threw himself before a running train at Kanchrapara Railway Station. In the petition of complaint it was specifically alleged that the accused persons are responsible for the death of the son of the de facto complainant. It was specifically claimed that this was due to the mental and physical torture inflicted upon the victim by the accused persons.

11. The allegations made in the petition of complaint find support in the statement of one Uttam Routh and Tinku Routh. The case diary, of course, contains statement recorded u/s 161 of the Code of Criminal Procedure made by number of other witnesses, who do not seem to have lent much support to the prosecution case. It is neither desirable nor possible to analyze all such statements u/s 161 of the Code of Criminal Procedure within the scope and ambit of the present application.

12. From the materials available on record it appears that in response to the petition of complaint filed by one Sovana Routh, direction was given by the learned Court for investigation after treating the said petition as First Information Report u/s 156(3) of the Code of Criminal Procedure. The said case relates to alleged commission of suicide by the son of the de facto complainant. It was alleged that due to torture inflicted upon the victim by the accused persons, the victim finding no other alternative literally brought his life to an end by throwing himself before a running train.

13. Police authority after completion of investigation submitted chargesheet in the said case. The learned Court took cognizance of the offence u/s 306 / 120B / 34 of the Indian Penal Code by order dated 17th May, 2006.

14. A question had been raised as to how far the materials available before the learned Court could justify taking of cognizance u/s 306 of the Indian Penal Code. It seems to be the categorical stand of the present petitioners that there could be no iota of materials so as to implicate the petitioners with the alleged offence u/s 306 of the Indian Penal Code.

15. Section 306 of the Indian Penal Code reads as follows:

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.

16. In order to constitute an offence u/s 306 of IPC, it is not enough for the prosecution to establish that the victim was subjected to some harassment. It is necessary to establish that the instigation was the proximate cause for commission of suicide. Thus, mere instigation or any vague allegation of torture or harassment does not necessarily lead to constitute an offence u/s 306 of the Indian Penal Code.

17. The present application stands on rather peculiar footings, as submitted by the learned Counsel on behalf of the petitioners, that the de facto complainant herself did not choose to proceed with the matter. This by itself, of course, does not necessarily bring the matter to an end. The learned Counsel for the petitioners relying upon the decision of a learned Single Bench of this Court in the case of Annakali Dutta and Ors. v. State reported in 1990(2) CHN 38 : 1990 Cri. LR 169, submitted that there may be occasions for torture or ill-treatment and it may lead the victim to decide to take his own life. But the person who meted out such torture and ill-treatment may not be said to have abetted the commission of suicide. It was decided in the said case that if someone actively suggests or goads another to the act by express solicitation, insinuation or encouragement, it would certainly amount to abetment of the act.

18. The learned Division Bench of the Apex Court in the case of Swamy Prahalad Das v. State of M.P. and Anr. reported in 1995 SCC 943, observed that suicide may not be the direct result of the words uttered or the alleged ill-treatment meted out by the victim and in such circumstances Section 306 of the Indian Penal Code could have no manner of application.

19. The aforesaid view finds further support from the decision in the case of Sanju @ Sanjay Singh Sengar v. State of M.P. reported in 2002(3) Supreme 650 : 2002 Cri. LR 779.

20. The learned Counsel for the petitioners in this context also referred to a judgment passed by this Court in C.R.R. No. 1891 of 2005. The legal position now stands clear. Mere harassment or ill-treatment or even physical torture may not be sufficient cause so as to justify applicability of Section 306 of the Indian Penal Code. The Court is required to weigh the materials carefully so as to find out if such alleged act of ill-treatment or torture was the proximate cause for the commission of suicide by the victim.

21. Applying the facts and circumstances of the present case to the aforesaid legal position, I find it difficult to brush aside the grievances, as ventilated on behalf of the petitioners. On close scrutiny of the various statements, recorded u/

s 161 of the Code of Criminal Procedure, I do not find any sufficient support of the allegations made in the petition of complaint. Leaving aside the subsequent change of stand on the part of the de facto complainant, I find it practically impossible to hold that there is even prima facie material so as to justify proceeding with the case u/s 306 of the Indian Penal Code.

22. In the backdrop of the present case and in the context of the materials available, if the offence u/s 306 of the Indian Penal Code cannot stand it automatically brings the entire case to an end. In the present case, the offence u/s 120B of the Indian Penal Code cannot have any independent standing nor there is any material in the case diary so as to justify applicability of the said offence either.

23. After due consideration of all relevant facts and circumstances of the case, I am inclined to hold that further proceeding of the case under reference, being G. R. Case No. 258 of 2006, will amount to an abuse of the process of Court. As such, in exercise of Court's power u/s 482 of the Code of Criminal Procedure, the said case being G. R. Case No. 258 of 2006, now pending before the learned Additional Chief Judicial Magistrate, Barrackpore, be quashed. The present petitioners, who are accused persons of the said case be discharged from their respective bail bonds.

24. The present case being C.R.R. No. 1830 of 2006 be allowed.

25. A copy of this order be sent to the learned Court of Additional Chief Judicial Magistrate, Barrackpore, for information and necessary action.