

(2024) 09 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 26747 of 2024

Chandrashekhar Verma

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 10-09-2024

Acts Referred:

Code of Criminal Procedure 1973 — Section 482, 161

Indian Penal Code 1860 — Section 155(2), 156(1), 306, 498A Constitution of India

1950 — Article 21, 226

Citation : (2024) 09 MP CK 0007

Hon'ble Judges : Prem Narayan Singh, J

Bench : Single Bench

Advocate : Neeraj Kumar Soni, Surendra Gupta

Final Decision : Dismissed

Judgement

Prem Narayan Singh, J

1. The petitioner has filed the present petition under Section 482 of CrPC for quashment of FIR dated 25.05.2024 in crime no. 362/2024 filed against the applicant alongwith all subsequent proceedings of the above said crime number.

2. Fact of the Prosecution story in brief are that, the deceased Arti Sahu committed Suicide on 29.04.2024 midnight 1 O'clock by consuming Sulfas. In this regard police started the inquiry and recorded the statements of the family members of the deceased named Gayatri Bai - mother of the deceased, Dines - Father of the deceased and Gajendra - brother of the deceased. The family members of the deceased stated in their statements that the deceased was working in the HDFC Bank Gold Loan Department, Khategaon. She borrowed Rs.3,00,000/- rupees from Manish Jat on interest for her personal uses and returned it, however, Manish Jat has demanded for the additional amount and made pressure for it and the present applicant borrowed Rs.5,00,000/- from the deceased for his uses and has not returned it. Thereafter, Manish Jat and the applicant have harassed the deceased consequently, due to which the deceased

committed suicide.

3. Learned counsel for the applicant submitted that the applicant is innocent and he is falsely implicated in the present matter. the applicant fairly produced the record of money transactions between the applicant and the deceased and if the applicant borrowed the amount from the deceased that would reflect in the mobile chats or transactions between the applicant and the deceased. The applicant came into the acquaintance of the deceased. three weeks prior to her suicide and no documents on records by which the deceased paid any single amount except the returned amount of the loan obtained from the applicant In a newspaper, the applicant has read the news that the deceased has not said anything about him. The applicant has been wrongly added as an accused in the present matter and his arrest would violate personal liberty under Article 21 of the Constitution of India, There is no opportunity of a hearing provided to the applicant in the present matter by the non-applicant. He placed reliance in the judgment passed by Hon'ble Apex Court in the cases of State of Haryana and another Vs. Bhajanlal and others AIR 1992 SC 604. K.V. Prakash Babu V/s. State of Karnataka reported as AIR 2016 SC 5430, M. Arujunan V/s. State (2019) 3 SCC 315, State of Bengal Vs Indrajeet Kundu (2019)10 SCC 188.

4. On the other hand, learned counsel for the State has vehemently opposed the prayer made by counsel for the applicant and submitted that Since the applicant has mentally harassed the deceased by not returning the borrowed loan amount, he is liable to abetment owing to his continues conduct of torturing. In this case, an innocent lady has lost her life owing to mental harassment caused by the applicant. On these grounds, counsel requested for rejection of the present petition filed for quashment of FIR.

5. Heard rival submissions of the parties and perused the record of the case in view of contentions made by both the parties.

6. At the outset, this Court has gone through the law laid down in which the counsel for the applicant has placed reliance.

7. Firstly, the facts of the judgement passed by Hon'ble Apex Court in the case of K.V. Prakash Babu V/s. State of Karnataka (Supra) has been considered. This case is related to suicide of wife due to extra marital relations of her husband and is also related with the cruelty under Section 498-A of the IPC and abetment for suicide under Section 306 of IPC. whereas the facts of the present case is on different footing.

8. Now, coming to the case of M. Arujunan V/s. State(supra), this case has arisen out of the judgment of the High Court of madras by which the High Court affirmed the conviction of the applicant under Section 306 of IPC wherein the Court has imposed the punishment of three years with fine of Rs. 500 against the applicant. In this case, the applicant demanded Rs.50,000/- towards the interest and another Rs.50,000/- towards principal amount. The deceased stated that he would discharge the entire loan amount; but he was not able to keep up his

promise. However, in the present case, the deceased has given the money to the applicant of Rs. 5 lakhs and she demanded the money but the applicant has refused to pay and in addition to that he also mentally harassed the deceased. The law laid down in the case is related against the conviction while the present case is only for quashment of FIR, hence, the factual matrix of the case is different from the present case.

9. So far as the case of State of Bengal Vs Indrajeet Kundu (supra) is concerned, the learned Apex Court reiterating the view of Chitresh Kumar Gupta Vs. State of NCT (2009) 16 SCC 605 held that the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred.

10. In upshot of the aforesaid law, it can be adjudged that in order to draw the inference of instigation, the facts and circumstances of the case would be considered. The Court has to see as to whether the continuous acts committed by accused will constitute the ingredients of abetment or committing suicide in circumstance of the case.

11. Now, coming to the facts of the instant case, I have gone through the evidence available on record and found that there is sufficient evidence for constitute suspicion against the applicant regarding the fact that he has not only declined to repay the amount but also tortured the deceased. It is found that due to torture of the applicant and co-accused, the deceased has taken such unfortunate step to end her life by consuming Salfas as she was left no other option except to commit suicide. Counsel for applicant also relied upon the case of State of Haryana and another Vs. Bhajanlal 1992 SCC (CRI) 426 and others. The view of Hon'ble Apex Court is required to be quote in this regard.

"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 Art. 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 NEUTRAL CITATION R/CR.MA/9092/2024 ORDER DATED: 09/05/2024 undefined 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 noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 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 NEUTRAL CITATION R/ CR.MA/9092/2024 ORDER DATED: 09/05/2024 undefined with a view to spite him due to private and personal grudge."

12. In view of the aforesaid guidelines, the matter has been considered. At this stage, it cannot be assumed that if the allegations made in the FIR for the complaint are taken at their face value and accepted in their entirety, they do not prima facie constitute any offence under Section 306 of IPC. In this regard, the following observation of the aforesaid case is also worth to mention here:-

"109... We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or other wise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

13. Now, the question arises as to whether this Court can use its extra ordinary jurisdiction or inherent power to quash the proceedings under Section 306 of IPC against the applicant?

14. Learned counsel has vehemently stressed that the ingredients of Section 306 of IPC has not been made out on the basis of material available on record. On this aspect, the observations made by Hon'ble Apex Court in the case of Rajeev Kaurav vs. Baishab and others [2020 (3) SCC 317] is relevant in context of this

case. The Hon'ble Apex Court reversing the order of this Court as to the offence of 306 of IPC observed as under:-

"Moreover, the High Court was aware that one of the witnesses mentioned that the deceased informed him about the harassment meted out by Respondent Nos.1 to 3 which she was not able to bear and hence wanted to commit suicide. The High Court committed an error in quashing criminal proceedings by assessing the statements under Section 161 Cr. P.C.

10. We have not expressed any opinion on the merits of the matter. The High Court ought not to have quashed the proceedings at this stage, scuttling a full-fledged trial in which Respondent Nos.1 to 3 would have a fair opportunity to prove their innocence."

15. It is also well settled that Section 482 of Cr.P.C can only be exercised sparingly in the rarest of the rare cases where ends of justice demands. It can be used only to prevent the abuse of process of law and to secure the ends of justice. In the case of State of W.B. vs. Narayan K. Patodia [AIR 2000 SC 405] the Hon'ble Apex Court ordained that "Inherent powers of the High Court as recognized in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

16. In the case of Janata Dal vs H.S. Chowdhary And Ors. reported in (1992) 4 SCC 305 the Hon'ble Apex Court held as under:

"132 The criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

135 This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction to quashing the proceedings at any stage."

17. In another case Paramjeet Batra vs State Of Uttarakhand & Ors (2012 Lawsuit (SC) 840) the Hon'ble Supreme Court has ordained that while exercising

its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

18. Again, on this aspect, the verdict of Hon'ble the Apex Court in a recent judgment of Directorate of Enforcement Vs. Niraj Tyagi and Ors. reported in 2024 LawSuit (SC) 112 decided on 13.02.2024, is significant to quote here:-

24. Without elaborating any further, suffice it to say that judicial comity and judicial discipline demands that higher courts should follow the law. The extraordinary and inherent powers of the court do not confer any arbitrary jurisdiction on the court to act according to its whims and caprice.

The word 'Law' (stated in the aforesaid precedent) includes not only the provisions of constitution and other respective laws but also consists the Law of the Land laid down by the Hon'ble Apex Court. This aforesaid precedent has been endorsed by this Court in its recent judgment passed in the case of Shubam & Anr vs. State of Madhya Pradesh and Anr. reported as 2024 Law Suit (MP) 160.

19. In conspectus of the aforesaid settled legal position, extraordinary power conferred under Section 482 of Cr.P.C. for quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It does not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry with regard to the reliability or genuineness of the allegations made in the FIR or the complaint. Such arbitrary use of this extraordinary inherent power enshrined under Section 482 of Cr.P.C. will be disheartening and menacing for the whole criminal judicial system of India.

20. On due consideration of the above, legal propositions and looking to the statement of witnesses, the facts mentioned in First Information Report and other circumstances of the case, this Court is of the considered opinion that the request for quashing the FIR by using extraordinary powers of this Court, cannot be accepted. Accordingly, this M.Cr.C. is hereby dismissed.

21. Before parting, this Court clarifies that any view or observation made herein would not be binding in any manner on the merits of the case for the concerned trial Court while adjudicating the matter in accordance with law.

22. It is also worth to mention that as per the contention of both the parties the

applicant did not appear before the Trial Court and tries to avoid the trial, therefore, he is directed to remain present before the learned trial Court as well as investigation authority and cooperate with the investigation.

23. A copy of this order be sent to the concerned trial court for information.