

(2010) 04 PAT CK 0047

In the Patna High Court

Dhirendra Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0047

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard the parties.

2. This application has been filed for quashing the order dated 2.2.2009, passed in Barbiga P.S. Case No. 07 of 2008 arising out of a complaint case filed under Sections 109, 120B and 306 of the Indian Penal Code and order dated 23.11.2009, passed by the Additional District and Sessions Judge, Fast Track Court No. III, Sheikhpura.

3. An occurrence took place on 18.10.2007 in which the petitioner No. 1 was the informant. The deceased is the son of the informant. The allegation is that at about 6:30 p.m. when the informant was in the house, the named accused persons four in number began to abuse him and it is specifically alleged that Satish Singh fired with a pistol which hit his son Narayan Kumar on the head. The wife of the petitioner No. 1, the petitioner and others rushed the boy to the P.M.C.H. where he finally died on 28.10.2007 at about 7 p.m. The First Information Report was instituted on 20.11.2007. Chargesheet was submitted and cognizance has been taken in this case. On 1.12.2007 the complaint was filed by one Ram Gulam who claimed at paragraph 4 of the complaint petition that Narayan Kumar (deceased) had taken a taxi from him on hire for two days and this complainant had gone to the house to take the advance. It is said that when he reached the house of Narayan Kumar he saw that petitioner No. 1 and his wife, petitioner No. 1 of Cr.Misc. No. 46169 of 2009 were abusing Narayan Kumar and the other accused persons i.e. Mantu, Manish and Shambhu Sharan who were allegedly present with Ram Gulam claim to have heard the abuses. It is said that Narayan Kumar was asking them to pay the taxi fare to get his wife

home, whereas petitioner No. 1 Dhirendra Singh asked his son to get her home by train or bus. It is alleged that Narayan Kumar insisted that he wanted to bring his wife by a hired car, whereupon his father pushed him out of the house into the courtyard and told him that when he starts earning money then he can bring his wife in a reserved car, upon which it is said that Narayan Kumar went into his room took out a pistol and fired on his own head. On the basis of the aforesaid facts, the complaint case was instituted.

4. The matter was sent for investigation to the police and Barbigha P.S. Case No. 7 of 2008 was instituted on 16.1.2008. On investigation final report was submitted finding that the petitioners in these two applications were not responsible for the occurrence and the case made out in the complaint is completely false. The Chief Judicial Magistrate has referred to the case diary. It has been submitted that the complainant/informant supported his statement in the case diary. The witnesses recorded at paragraphs 13, 19, 20 and 21 are not the witnesses named in the complaint petition, however, the Chief Judicial Magistrate still differed with the findings of the Investigating Officer and took cognizance u/s 109, 120B and 306 of the Indian Penal Code.

5. The contention on behalf of the petitioners is that even if the entire case and the statements made in the First Information Report are accepted to be the correct version of the occurrence, no offence is made out u/s 306 of the Indian Penal Code.

7. 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.

8. Therefore, the main element for the purposes of proving that a person is responsible for instigating a man to commit suicide is that the ingredients of abatement have to be made out on the basis of the records. Section 107 of the Indian Penal Code defines abatement and reads as follows:

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.

9. On the plain reading of the Section it would appear that the petitioners have not done any act or entered into any conspiracy or had intentionally aided by any act or had instigated his son to commit suicide. The fact that the father and mother have scolded their son and have refused to meet the expenses of paying for a hired taxi in order to enable him to bring his wife home does not constitute an act which would lead to committing suicide. It is not a case that they were not permitting his wife to enter to the house rather they have specifically stated that the son should bring his wife home on a hired taxi when he is capable of earning enough money to hire a taxi on his own. This is not illegal or unreasonable expectation of the parents. This statement does not amount to an act which would facilitate the commission of the act of committing suicide. For the purposes of emphasizing the issues in question learned Counsel refers to the decision of Gangula Mohan Reddy Vs. State of Andhra Pradesh, where the Supreme Court has dealt with the meaning of abatement and the essential ingredients which constitute the offence of abatement. Abatement according to the Supreme Court involves instigating a person to do a thing which he would not otherwise do. The essential ingredient of Section 306 of the Indian Penal Code is abatement and if no case of abatement is made out then it is difficult to secure a conviction on alleged facts even if they are presumed to be correct. Besides which there has to be an element of Mens rea to constitute an offence u/s 306 of the Indian Penal Code. The Supreme Court of course has said that this aspect has to be considered in each and every case. In the present case the parents were angry with their son because he wanted them to spend a certain amount of money, which they did not want to spend, for the purposes of fetching the wife of their son in the luxury of a hired car. The refusal to make such payment or the act of pushing their son away in temper does not lead this Court to conclude that the act was such that should lead to the drastic steps taken by the deceased Narayan Kumar.

10. It is very relevant to refer to the fact that the said complainant of this case is related to the accused of the case filed by the petitioner i.e. Barbigha P.S. Case No. 120 of 2007. It is obvious that the present complaint in which the petitioners are accused has been filed at a belated stage i.e. after one month of lodging of the case by the father of the deceased.

11. Counsel for the petitioners also refers to the case of Sonti Rama Krishna Vs. Sonti Shanti Sree and Another, Again this case referred to the offence u/s 306 of the Indian Penal Code. This case is referred for two purposes. Firstly it has been said that the High Court has held that the wife was not guilty of abatement, although she had insulted her husband at her parents house by refusing to live with him, and had called him impotent and went so far as to threaten her husband by ending her life rather than living with an impotent person. The husband committed suicide when he reached his own home. The Supreme Court upheld that the lady i.e. the wife was not guilty of an offence u/s 306 and 109 of the Indian Penal Code and quashed the proceedings. Secondly, the Supreme Court also did not think it fit to interfere with the order although it was exercised

u/s 482 of the Indian Penal Code, in view of the clear cut findings of the High Courts that no offence was made out u/s 109 of the Indian Penal Code.

12. The submission of the counsel for the petitioner is that if there is no chance of conviction on the facts as stated in the First Information Report although not admitted, as true, it would amount to harassment and unnecessary waste of the time of the Court if the petitioners were to face trial and ultimately be acquitted on the ground that no offence is made out u/s 306 of the Indian Penal Code. Counsel for the petitioners also submits that the entire case is with a malafide intention to protect the persons who were accused for the murder of Narayan Kumar, belated stage and has been instituted in order to dilute the case filed by the petitioners alleging the murder of his son.

13. Considering all facts and circumstances and specially the fact that on perusal of the complaint no case is made out under Sections 306, 109 and 120B of the Indian Penal Code. I quash the orders dated 2.2.2009, passed in Barbiga P.S. Case No. 07 of 2008 arising out of a complaint case and order dated 23.11.2009, passed by the Additional District and Sessions Judge, Fast Track Court No. III, Sheikhpura.

14. This application is allowed.