

(2016) 08 BOM CK 0056

In the Bombay High Court

Case No : Criminal Application (Apl) No. 332 of 2016

Dilip S/o Ramrao Shirasao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 306

Citation : (2016) ALLMRCri 4328 : (2016) 4 BomCR(Cri) 197 : (2016) 4 Crimes 118 : (2016) 5 MhLJCri 323

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. Anil S. Mardikar, Senior Advocate with Mr. S.G. Joshi, Advocate, for the Applicant; Mr. M.K. Pathan, Addl. Public Prosecutor, for the Non-Applicant No. 1; Mr. Shantanu K. Bhoyar, Advocate, for the Non-Applicant No. 2

Final Decision : Allowed

Judgement

B.R. Gavai, J.(Oral)—Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. We have to deal with this unfortunate case wherein four Judicial Officers of the Maharashtra State judiciary from Yavatmal district, including the Principal District Judge of the said district, have approached this Court praying for quashing and setting aside the first information report for the offence punishable under Section 306 of the Indian penal Code, alleging that they are responsible for the suicide committed by another Judicial Officer.

3. The facts in brief giving rise to the present application are as under :

Applicant no.1 is a senior Judicial Officer and presently posted as the Principal District Judge of Yavatmal district. Applicant no.2 is also in the cadre of Civil Judge, Senior Division and presently working as a Secretary of District Legal Services Authority at Yavatmal. The other three applicants are also working as

Civil Judge, Senior Division at Yavatmal. A judicial officer namely Anup Jawalkar was posted at Yavatmal as Civil Judge, Senior Division on 02.08.2014. Subsequently, he was transferred at Darwha within the same district on the same post on 01.10.2015. The dead body of said Anup Jawalkar was found at a place near Chandur Railway in Amravati district on railway track on 06.03.2016. Accordingly, accidental death (AD) case came to be registered by Chandur Railway police station. However, subsequently, non-applicant no.2 contending that when the articles of the deceased were shifted to Pune, a suicide note was found wherein it was alleged that the present applicants were responsible for suicide of the deceased, lodged a report against the present applicants with Chandur-railway Police Station. On the basis of said oral report, an offence punishable under Section 306 read with Section 34 of the Indian Penal Code came to be registered vide Crime No. 113 of 2016 on 07.04.2016.

4. The present applicants have, therefore, approached this Court by way of present application under Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings. Vide order dated 04.05.2016, this Court issued notice to the respondents and accordingly replies are filed by both the respondents.

5. Mr. Anil Mardikar, the learned senior counsel appearing on behalf of the applicants submits that even taking the allegations in the complaint lodged by the non-applicant no.2 and the suicide note at its face value, no case is made out for the offence punishable under Section 306 of the Indian Penal Code so far as present applicants are concerned. He submits that the only allegation, as could be found from the affidavit filed by the non-applicant no.2, is that the wife of deceased was informed about the alleged harassment by the applicant no.1. He submits that the respondent no.2 does not have personal knowledge and the affidavit filed by him is only on the basis of hearsay material. In any case, he submits that even taking the allegations at its face value, at the most what could be attributed is that the applicant no.1, in discharge of his official duties, had done some act or omissions on account of which, the deceased was aggrieved. However, he submits that even taking the same to be true in entirety, the same cannot be said to be an instigation to commit suicide so as to bring the matter within the scope of Section 306 of the Indian Penal Code.

6. The learned senior counsel submits that in any case, the said allegations are also without any substance. He submits that as a matter of fact, there was no case of harassment in transferring the deceased to Darwha. He submits that the deceased was the junior most Judicial Officer in the cadre of Civil Judge Senior Division and as such he was transferred to Darwha. He submits that it was not the case of pick and choose. He further submits that the allegation that the applicant no.1 ill-treated the deceased in the workshop is also without substance. He submits that in any case, if the deceased had any grievance against the present applicants, he could have very well made a representation either to the Hon"ble Guardian Judge of said district or to the Registry of this Court. The

learned senior counsel, therefore, submits that the allegations made against the applicants are by way of an after thought. The learned senior counsel further submits that in any case insofar as applicant nos.2 to 4 are concerned, there is not even a whisper against them in the affidavit of non-applicant no.2.

7. Mr. Bhoyar, the learned counsel appearing for the non-applicant no.2 submits that the material placed on record would show that harassment by the applicants was to such an extent that the deceased was left with no other alternative but to give an end to his life. The learned counsel submits that the deceased was sincere, hardworking and devoted Judicial Officer and putting a blot on his career and transferring him in the mid term, caused a great mental turbulence to him, which led to commission of suicide. The learned counsel submits that it is all done by the applicant no.1 and rest of the applicants have abetted him. It is, therefore, submitted that no case is made out for quashing and setting aside of the charge sheet.

8. Mr. Pathan, the learned Additional Public Prosecutor submits that the investigation is almost complete. He submits that from the perusal of the statement of the witnesses recorded, it cannot be said that the first information report is wholly unsustainable.

9. The learned Additional Public Prosecutor as well as Mr. Bhoyar, the learned counsel, appearing for the non-applicant nos.1 and 2 submit that the application deserves to be dismissed.

10. The investigation is almost complete. The learned Additional Public Prosecutor has placed on record the entire papers of investigation before us.

11. The law as to what are the requirements to constitute an offence punishable under Section 306 of the IPC is no more res integra. The law is very well crystalized by the Hon''ble Apex Court in the catena of cases including in the cases of Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh, reported in 2002 Cri.L.J. 2796; Madan Mohan Singh v. State of Gujarat and another, reported in (2010) 8 SCC 628; and in the case of S.S. Chheena v. Vijay Kumar Mahajan reported in 2010 All MR (Cri) 3298 (S.C.).

12. In the case of Sanju @ Sanjay Sengar cited supra, the appellant before the Apex Court was the brother of Neelam wife of deceased Chander Bhushan @ Babloo. It was the prosecution case that after marriage of Neelam with the deceased, there was continuous ill-treatment by the deceased and his family members to Neelam. As such she had gone to her parents house and started living with her brother, the appellant before the Apex Court. About two months prior to the incident, the appellant advised the deceased to take his sister back to her matrimonial house and treat her properly. It was the prosecution case that on 25th July, 1998, the appellant visited the place of the parents of the deceased and pleaded with them that his sister should be rehabilitated in the matrimonial home and should not be physically ill-treated or harassed. It was also the prosecution case that on that day the appellant also said to have threatened the

parents of the deceased that if they do not mend their behaviour towards his sister, he would be compelled to resort to filing a complaint under Section 498-A of the Indian Penal Code. On this, the parents of the deceased expressed helplessness. It was the further prosecution case that the parents of the deceased informed the deceased about the same. He went to the house of parents of the appellant, where quarrel took place between them. Therefore, the deceased returned alone and told his brothers and other acquaintances that the appellant had threatened and abused him by using filthy words. On the next date i.e. on 27th July, 1998, the deceased was found hanging with a rope by neck on the raft of his house and he was found dead. A suicide note was left by the deceased. On the basis of the said suicide note, the charge-sheet was filed against said Sanju alias Sanjay Sengar. A petition challenging filing of charge-sheet was filed before the High Court under Section 482 of the Code of Criminal Procedure. The same was rejected. Hence, said Sanju alias Sanjay Sengar approached the Hon"ble Apex Court.

13. The Apex Court in Sanju @ Sanjay Sengar's case considered the earlier judgments in paragraphs 9 to 12 of the said judgment. It would be appropriate to refer to the same -

"9. In Swamy Prahaladdas v. State of M.P. & Anr., 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased "to go and die" . This Court was of the view that mere words uttered by the accused to the deceased "to go and die" were not even prima facie enough to instigate the deceased to commit suicide.

10. In Mahendra Singh v. State of M.P., 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"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 those reasons and being harassed I want to die by burning."

11. This Court, considering the definition of "abetment" under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to

go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said :

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

14. After considering the earlier judgments, Their Lordships observed thus at paragraph 13 -

"13. ?..... It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below.

15. Their Lordships of the Apex Court further have reproduced the suicide note in the said case in paragraph 14 of the judgment, wherein Sanjay Sengar was directly implicated to be the person responsible for suicide of the deceased. After reproducing the said suicide note, Their Lordships observed thus at paragraph 15 -

"15. ?..... The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of "abetment" are totally absent in the instant case for an offence under Section 306 I.P.C. ?...."

After these observations, Their Lordships allowed the appeal and quashed and set aside the charge-sheet.

16. In the case of Madan Mohan Singh (cited supra), the petitioner was working as a DET in Bharat Sanchar Nigam Ltd. The deceased i.e. Deepakbhai Krishnalal

Joshi has committed suicide. On the basis of complaint filed by his wife, an FIR came to be registered. The petitioner had applied for discharge. The trial Court rejected it. The Gujarat High Court upheld the order of the trial Judge. Being aggrieved thereby the petitioner has approached the Apex Court. The prosecution heavily relied on the suicide note of the deceased wherein it was stated that the petitioner was responsible for his death. The Apex Court negating the contention on behalf of prosecution observed thus:-

"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused even intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this.

12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution under Section 306 IPC, much more material is required. The courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience. The person

like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in *Netai Duta v. State of W.B.*, this Court had quashed the proceedings initiated against the accused.

14. As regards the suicide note, which is a document of about 15 pages, all that we can say is that it is an anguish expressed by the driver who felt that his boss (the accused) had wronged him. The suicide note and the FIR do not impress us at all. They cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide. If the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work."

(emphasis supplied)

17. In case of *S.S. Cheena* (cited supra), there was a dispute between one Saurav Mahajan, who was a final year student of Law Department and Harminder Singh, a fellow student of the same class with regard to the theft of a mobile phone. This came to the notice of M.D. Singh, the then Head of the Law Department who asked both the students to submit their versions of the incident in writing. The deceased and Harminder gave their versions and, thereafter, M.D. Singh forwarded their versions to the University authorities for taking necessary action. An inquiry was conducted on 13th October 2003 by the Security Officer of the University Shri. S.S. Chheena. During the course of inquiry, on 17th October 2003, Saurav Mahajan committed suicide by jumping in front of the train. A suicide note was seized from the pocket of the deceased. On the complaint of father of the deceased, an offence under section 306 of I.P.C. was registered against Harminder Singh. During the course of trial, S.S. Cheena was also impleaded as accused. Being aggrieved by the framing of charge, S.S. Cheena approached the High Court. The High Court refused to interfere. Being aggrieved thereby, said S.S. Cheena approached the Supreme Court. The Apex Court observed thus:

"27. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. 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.

The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

30. When we carefully scrutinise and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside."

(emphasis supplied)

18. Recently, in the case of State of Kerala and others v. S. Unnikrishnan Nair and others, reported in AIR 2015 Supreme Court 3351, Their Lordships had an occasion to consider a similar case. In the said case, the Chief Investigating Officer had committed suicide pending investigation in a murder case. In the suicide note, it was alleged that two of his subordinates were responsible for his this situation. There were some allegations against one Advocate and the Chief Judicial Magistrate. The First Information Report came to be lodged against the subordinate officers. They filed a petition under Section 482 of the Criminal Procedure Code. The Kerala High Court quashed the First Information Report. Being aggrieved thereby, the State went in appeal before the Hon'ble Apex Court. While dismissing the appeal, the Their Lordships of the Apex Court observed thus :

"13. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it herein-before. On a plain reading of the same, it is difficult to hold that there has been any abetment by the respondents. The note, except saying that the respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reasons, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the

liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate."

19. In the light of this legal position, let us examine the suicide note :

"Shri. D.R. Shirsao, the District Judge, Yavatmal, Shri. S.M. Agarkar, Member, Legal Services Authority, Shri. D.N. Khadse, Civil Judge Senior Division, Yavatmal, Shri. R.P. Deshpande, Chief Judicial Magistrate, Yavatmal and H.L. Manwar, 2nd Civil Judge Senior Division, Yavatmal are responsible for my death as they subjected me to harassment."

Sd/- ?..

A.D. Jawalkar

Civil Judge

Perusal of the said suicide note would not reveal as to on what date the deceased has written the suicide note. However, even taking the allegations to be true at its face value, the question would be as to whether is it sufficient to book the persons like applicants for the offence punishable under Section 306 of the Indian Penal Code. Perusal of the various statements recorded of the employees working under the deceased would show that the deceased had never made any complaint with regard to any of the applicants. No doubt that there is a statement of one Judicial Officer, who had friendly relations with the deceased, that the deceased was disturbed on account of he being transferred to Darwaha and not being permitted to do up and down from Darwaha and on account of certain event that happened in the workshop. The question would be as to whether the fact of a person being disturbed on account of official act done by a superior would be sufficient to book such a superior officer for the offence punishable under Section 306 of the Indian Penal Code or not. We find that the issue is squarely answered by the Apex Court in Madan Mohan Singh's case cited supra.

20. As has been held by Their Lordships of the Apex Court that for permitting a trial to proceed against the accused for the offence punishable under Section 306 of the Indian Penal Code, it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. In the absence of availability of such material, the accused cannot be compelled to face trial for the offence punishable under Section 306 of the Indian Penal Code. As has been held by Their Lordships of the Apex Court that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial. Unless there is

clear mens rea to commit an offence or active act or direct act, which led the deceased to commit suicide seeing no option or the act intending to push the deceased into such a position, the trial against the accused under Section 306 of the Indian Penal Code, in our considered view, would be an abuse of process of law.

21. No doubt that the judiciary has lost one of its officers in an unfortunate incident. However, as held by the Hon'ble Supreme Court, the response of a person to a situation may differ from a person to person. A person, who is sensitive, may be hurt if the things do not happen as per his wish and may unfortunately commit an act, which leads to his death. No doubt, our all sympathies are with the family of the Judicial Officer, who lost his life in prime age. However, can that be said to be sufficient to prosecute the other Judicial Officers, for no fault of theirs. As already discussed herein above, except applicant no.1, there is not even whisper in the affidavit of the non-applicant no.2 insofar as the other applicants are concerned. Even the allegations against the applicant no.1 are with regard to discharge of his official duties. As pointed out herein above, it cannot also be a case of harassment inasmuch as the deceased was the junior most Judicial Officer in the cadre of Civil Judge Senior Division and transferring him out of the District headquarters to another place in the same district, cannot be said to be an act by the applicant no.1 causing harassment to the deceased. If the deceased had any grievance against his superiors, it was always open for him to approach the learned Guardian Judge of the District or Registry of this Court.

22. In any case, the transfer of the deceased from Yavatmal to Darwaha had taken place on 01.10.2015. The workshop, in which it is alleged that the applicant no.1 had ill-treated the deceased, had taken place on 14.02.2016 and the unfortunate incident of suicide has taken place on 06.03.2016. Thus, it can be clearly seen that even the causes of action, which are attributed as an abetment to commit suicide are also far remote from the date of death of the deceased. As already discussed herein above, in the case of Sanju @ Sanjay Sengar, the allegation that you go and die and the deceased committing suicide after 48 hours, was found to have no nexus with the suicide.

23. In that view of the matter, we are of the considered view that continuation of criminal proceedings against the present applicants would result in an abuse of process of law and as such we are inclined to allow the application.

24. Rule is, therefore, made absolute in terms of prayer clause (1).