

(2021) 03 P&H CK 0435

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 29791 Of 2019

Gurmail Singh And Another

APPELLANT

Vs

State Of Punjab And Another

RESPONDENT

Date of Decision : 05-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 34, 107, 120B, 306, 323, 406, 498A, 506

Citation : (2021) 03 P&H CK 0435

Hon'ble Judges : Arun Kumar Tyagi, J

Bench : Single Bench

Advocate : Dr. Naresh Kaushik, P.S. Walia, Naveen Siwach

Final Decision : Allowed

Judgement

Arun Kumar Tyagi, J

(The case has been taken up for hearing through video conferencing.)

1. Petitioners-Gurmail Singh and Kusalia Devi have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.8 dated 28.01.2018 registered under Section 306 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Mahilpur, District Hoshiarpur along with all consequential proceedings arising therefrom in view of the compromise effected with respondent No.2-Vijay Kumar.

2. The above said FIR was registered on statement of respondent No.2-Vijay Kumar. In his statement-Vijay Kumar alleged that on 24.01.2018 his father Ajit Ram left the house on his scooter and told him that he was going to Mahilpur. After sometime his father came back and went to the upper room and vomitted on which he and his mother asked him as to what had happened on which his father took out a bottle from his pocket containing Salfas tablets and told him that he was harrassed by his (Vijay Kumar's) wife-Sandeep Kaur. his father-in-law Gurmail Singh and his mother-in-law Kausalia Devi due to which had

consumed three selfas tablets. His uncle Harminder Singh and Tarlochan Ram also reached the spot. They arranged the vehicle and took his father to Hospital. On the way, his father also took out suicide note from the pocket of his shirt and handed over the same to him. His father died on 27.01.2018. In the suicide note, his father implicated his (Vijay Kumar's) wife-Sandeep Kaur, father-in-law-Gurmail Singh and mother-in-law-Kusalia Devi. His wife-Sandeep Kaur, father-in-law-Gurmail Singh and mother-in-law-Kusalia Devi had filed false case under the Prohibition of Dowry Act, 1961 against him, his father and other members of the family. His father committed suicide due to above said case filed by his wife-Sandeep Kaur and harassment by his wife-Sandeep Kaur, father-in-law-Gurmail Singh and mother-in-law-Kusalia Devi.

3. The petitioners have filed the present petition for quashing of the FIR on the ground that offence under Section 306 of the IPC is not made out and FIR is abuse of process of law and liable to be quashed and also on the ground that after intervention of respectable persons, the matter has been amicably compromised between the parties whereby they resolved their differences and decided that criminal complaint filed by Sandeep Kaur will be withdrawn and respondent No.2 will support for quashing of the FIR and all consequential proceedings.

4. Vide order dated 21.11.2019, Co-ordinate Bench of this Court directed the private parties to appear before the trial Court/Illaq Magistrate on 27.11.2019 for recording of their statements with regard to compromise/settlement and directed the Trial Court/Illaq Magistrate to submit a report before 25.02.2020 regarding the genuineness and voluntary nature of the compromise.

5. In compliance of the above said order, learned Sessions Judge, Hoshiarpur has recorded the statements of both the parties and submitted report dated 06.12.2019. The relevant part of the same reads as under:-

".....It is submitted that trial is pending in FIR No.

8 dated 28.1.2018, under Sections 306, 34 IPC, Police Station Mahilpur, against Gurmail Singh and Kaushalya Devi under Section 306 IPC and it is fixed for prosecution evidence. So far as accused Sandeep Kaur is concerned, she is kept in column No.2 of the Challan Report. The report of Illaq Magistrate has been received vide letter No. 601 dated 6.12.2019 according to which, arrest warrants of Sandeep Kaur were issued but the proceedings against accused Sandeep Kaur had been stayed by the Hon'ble High Court vide order dated 16.7.2019 passed in Criminal Misc. M. No. 18240 of 2019. Till date Sandeep Kaur has not been declared proclaimed offender.

Statement of investigating officer ASI Ram Lal, No. 619/Hpr of Police Station Mahilpur, was recorded, who has stated that Gurmail Singh, Kaushalya Devi and Sandeep Kaur are not involved in any other case. He has further stated that Vijay Kumar is the complainant, who is son of Late Ajit Ram, Manjit Kaur is the wife of Late Ajit Ram whereas the other children of Ajit Ram are residing in foreign

country.

Notice was given to the complainant Vijay Kumar, who is son of Late Ajit Ram and Manjit Kaur, wife of Late Ajit Ram. As per their version, the FIR was got registered by Vijay Kumar with regard to unnatural death of Ajit Ram against Gurmail Singh, Kaushalaya Devi, who are facing trial and Sandeep Kaur, ex.wife of Vijay Kumar. Accused Gurmail Singh and Kaushalya Devi are the parents of Sandeep Kaur. At the instance of Sandeep Kaur, one complaint was filed under Sections 406, 498-A IPC against their entire family i.e. Vijay Kumar, Ajit Ram (victim), Manjit Kaur wife of Ajit Ram, Ajay Kumar son of Ajit Ram as well as Sunita Rani and Geeta Rani are residing abroad and they were declared proclaimed offenders. Because of the criminal litigation between both the families, pending since long, the matter has been compromised and they have decided to withdraw all the criminal cases filed against each other. The complaint filed against them is already withdrawn by the Advocate by giving statement in the court and now there is no dispute left with Gurmail Singh, Kaushalaya Devi or Sandeep Kaur, who is also residing abroad. This compromise is with their free consent without any pressure from any quarter and the same may kindly be accepted.

Joint statement of accused Gurmail Singh and Kaushalya Devi was also recorded who had stated that the FIR was got registered against them on the statement of Vijay Kumar. One criminal complaint was also filed by their daughter Sandeep Kaur, who is residing abroad, against the complainant and his entire family. Due to their long criminal litigation pending against each other, they have effected compromise. Even their daughter has already taken divorce from Vijay Kumar. Therefore, the counsel for Sandeep Kaur has withdrawn the criminal complaint, which was initiated against Vijay Kumar and his family. No dispute is left between them and the compromise has been effected with their free consent.

Therefore, considering the statements of both the parties, it appears that both the parties were involved in criminal litigation since long and now they have decided to end the criminal litigation by effecting compromise. The compromise arrived at between the parties is genuine, voluntary and without any coercion or undue influence."

6. Sandeep Kaur filed petition CRM-M No.18240 of 2019 for quashing of the above said FIR on merits.

7. The respondent No.-1-State has not filed any reply to the petitions.

8. I have heard learned Counsel for the petitioners, learned State Counsel and learned Counsel for respondent No.2 and gone through the relevant record including the alleged suicide note dated 24.01.2018 photostat copy of which is placed on record.

9. In the present case, Ajit Ram is alleged to have committed suicide by consuming selfas tablets due to harassment caused by Sandeep Kaur wife of

complainant-Vijay Kumar, her father Gurmail Singh and mother Kusalia Devi. The deceased is alleged to have left suicide note dated 24.01.2018. In the suicide note deceased alleged that he was committing suicide due to harassment by his daughter in law Sandeep Kaur, her father Gurmail Singh and mother Kusalia Devi and as Sandeep Kaur had ruined the life of his son-Vijay Kumar. The question which arises is as to whether the petitioners can be said to have abetted commission of suicide by the deceased.

10. Section 306 of the IPC, which provides punishment for abetment of suicide, reads as under :-

"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."

11. Section 107 of the IPC, which defines abetment of a thing, reads 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 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.

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 facilitate the commission thereof, is said to aid the doing of that act."

12. In Criminal Appeal No.742 of 2020 titled as 'Arnab Manoranjan Goswami Vs. The State of Maharashtra and others' decided on 27.11.2020, Hon'ble Supreme Court observed in Para 47 of the Judgment as under:

"The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgements of this Court in State of West Bengal vs Orilal Jaiswal : (1994) 1 SCC 73, Randhir Singh vs State of Punjab : (2004) 13 SCC 129, Kishori Lal vs State of MP : (2007) 10 SCC 797 and Kishangiri

Mangalgi Goswami vs State of Gujarat : (2009) 4 SCC 52. In Amalendu Pal vs State of West Bengal : (2010) 1 SCC 707, Justice Mukundakam Sharma, speaking for a two judge Bench of this Court and having adverted to the earlier decisions, observed:

"12...It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

The Court noted that before a person may be said to have abetted the commission of suicide, they must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Instigation, as this Court held in Kishori Lal (supra), "literally means to provoke, incite, urge on or bring about by persuasion to do anything". In S S Chheena vs Vijay Kumar Mahajan : (2010) 12 SCC 190, a two judge Bench of this Court, speaking through Justice Dalveer Bhandari, observed:

"25. 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.""

13. In Ramesh Kumar Vs. State of Chhattisgarh 2001(4) R.C.R. (Criminal) 537: 2001(9) SCC 618 Hon'ble Supreme Court while interpreting the expression "instigation" observed as under:-

"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 consequence to actually follow cannot be said to be instigation."

14. The facts and circumstances mentioned in the FIR and also the suicide note are bereft of the details of any positive act on the part of the petitioners and their daughter Sandeep Kaur of instigating or aiding in committing suicide by the

deceased. In order to attract Section 306 IPC there has to be a clear mens rea to commit the offence and the same 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. In the present case the facts and circumstances alleged in the FIR and mentioned in the suicide note do not make out such a case that the petitioners and their daughter Sandeep Kaur had by their 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 and instigation by them cannot be inferred. Marriage between complainant respondent No.2-Vijay Kumar and Sandeep Kaur had been dissolved by decree of divorce dated 03.10.2016. Filing of criminal complaint No.36 of 2015 under Sections 120-B, 323, 406, 498-A and 506 of the IPC by Sandeep Kaur against respondent No.2-Vijay Kumar and his other family members on allegations of her harassment cannot be said to constitute abetment within the meaning of Section 107 of the IPC. In the present case it appears that the deceased committed suicide due to being hypersensitive to ordinary petulance, discord and difference in life, quite common to the society, to which the deceased belonged and which petulance, discord and difference were not expected to induce a similarly circumstanced individual to commit suicide. It follows that in the present case the essential ingredients of offence punishable under Section 306 of the IPC are not satisfied.

Consequently, the FIR being misuse of process of law is liable to be quashed and the petition deserves to be allowed on merits.

15. However, admittedly in the present case the petitioners have compromised with complainant respondent No.2-Vijay Kumar. Statements of the complainant respondent No.2-Vijay Kumar and his mother Manjit Kaur have been recorded regarding voluntary nature and genuineness of the compromise as referred to above.

16. It is now well settled that the High Court has inherent power to quash the criminal proceedings in non-compoundable cases on the basis of settlement between the parties for securing the ends of justice or to prevent abuse of the process where the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case. Criminal cases having overwhelmingly and predominantly civil character particularly those arising out of commercial transaction or arising out of matrimonial relationship or family dispute can be quashed when the parties have resolved their entire dispute among themselves. However, such power cannot be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape dacoity, etc. which are not private in nature and have a serious impact on society. Similarly, prosecution for offences alleged to have been committed under special enactments like the Prevention of Corruption Act or the offences committed by public servant while

working in that capacity cannot be quashed on the basis of compromise between the victim and the offender. For judicial precedents in this regard, reference may be made to Kulwinder Singh and others Vs. State of Punjab and others (Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052; Narinder Singh Vs. State of Punjab (Supreme Court) : 2014 (2) RCR (Criminal) 482 and State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255.

17. A perusal of the report of learned Sessions Judge, Hoshiarpur reveals that the matter has been compromised by the parties with their free consent, voluntarily and without any coercion or undue influence.

18. Learned State counsel has no objection in case the aforesaid FIR along with all subsequent proceedings arising therefrom is quashed on the basis of compromise effected between the parties in this case.

19. The offence involved in the present case is overwhelmingly and predominantly of private character and does not have any social impact. The parties have resolved their differences. The compromise has been arrived at between the parties at the stage of prosecution evidence. The compromise will restore cordial relations between the parties and contribute to peace and harmony in the society. In view of the facts and circumstances of the case, the possibility of conviction of the petitioners is remote and bleak. Continuation of this case will put the petitioners to great oppression and extreme injustice would be caused to the petitioners if the FIR and all consequential proceedings are not quashed.

20. In view of the above discussion, the petition is allowed and FIR No.8 dated 28.01.2018 registered under Section 306 read with Section 34 of the IPC at Police Station Mahilpur, District Hoshiarpur is quashed along with all consequential proceedings arising therefrom qua the petitioners as well as Sandeep Kaur.