

(2013) 01 RAJ CK 0168

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1117 of 2012 and Criminal Miscellaneous Petition No. 3524 of 2012

Kiran Pal Choudhary

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174, 482
Penal Code, 1860 (IPC) — Section 107, 120B, 306

Citation : (2013) 01 RAJ CK 0168

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : Shiv Charan Gupta, for the Appellant; Laxman Meena Public Prosecutor for the State and Mr. Saransh Saini, for the Respondent

Final Decision : Allowed

Judgement

1. As these two criminal misc. petitions have arisen out of the same FIR bearing No. 304/2011 registered at Police Station Civil Line, Ajmer for offence under Sections 306 read with Section 120B IPC, therefore, with the consent of parties, the same were heard together and are being disposed of by this common order. The S.B. Criminal Misc. Petition No. 1117/2012 has been preferred by the accused-petitioner when the matter was at the stage of investigation with the prayer that the FIR and the investigation being made thereupon be quashed. During the course of pendency of this petition, the investigation was completed and charge-sheet for aforesaid offences was filed against the petitioner before the Court concerned and cognizance was taken vide order dated 19.7.2012 and the case was ordered to be committed to the Court of Sessions Judge, Ajmer. Feeling aggrieved by the order of taking of cognizance, the accused-petitioner, therefore, filed S.B. Criminal Misc. Petition No. 3524/2012. Brief relevant facts for the disposal of these petitions may be stated as below:-

(i) At the relevant time the petitioner was serving as Administrative Officer in

Inspection Department of Life Insurance Corporation of India at Zonal Office in New Delhi and at that time he was also holding the post of All India Zonal Secretary of the Welfare Association of LIC SC/ST/Backward Employees/Officers Association whereas the deceased Shri Laxman Meena was working on the post of Assistant Divisional Manager, LIC of India's Sales Training Centre at Ajmer and he stayed during the period from 15.1.2011 to 4.2.2011 at the LIC Guest House, situated on the second floor of Laxmi Building, H-52, Connaught Place, New Delhi for some official work at Zonal Office of the LIC at New Delhi. On the first floor of the aforesaid building petitioner was also residing with his family as residential accommodation was allotted to him at that place.

(ii) In the intervening night of 4.2.2011 and 5.2.2011, an unpleasant incident allegedly took place involving a lady with the deceased-Shri Laxman Meena and regarding that incident the Security Guard of the Guest House submitted a report on the next day in the Zonal Office and regarding the same incident the caretakers, of the Guest House also reported in writing to the Zonal Office vide their complaints dated 5.2.2011.

(iii) On the basis of complaints so made the Zonal Office of the LIC took a decision to hold enquiry against Shri Laxman Meena vide note dated 17.8.2011 and an observation was sought from him by the Zonal Manager vide letter dated 30.8.2011. Shri Meena sought some more information and documents vide his letter dated 13.9.2011 which were provided to him and ultimately Shri Meena sent his detailed reply vide letter dated 4.10.2011. Thereafter, the enquiry was closed with an advise to Shri Meena vide Zonal Office note dated 12.10.2011 and the same was communicated to Shri Meena vide letter 27.10.2011. It was advised by the Zonal Office to Shri Laxman Meena to be careful in future. It is to be noted that no complaint was made by the deceased about the manner in which the incident occurred in the Guest House as narrated by him in the reply dated 4.10.2011 at an earlier date.

(iv) Shri Laxman Meena was found dead in the morning of 2.11.2011 at about 11.15 a.m. in his rented house and in this respect Marg (death) Report No. 21/2011 u/s 174 Cr.P.C. was registered at Police Station Civil Line, Ajmer on the basis of written report lodged by his landlord-Shri Gopal S/o. Shri Laxminarayan. During the enquiry conducted on the basis of the aforesaid report on 2.11.2011 itself a suicide-note allegedly written by the deceased was recovered from the room of the deceased and was taken into possession by the police and photostat copy of the same was furnished to the family members of the deceased also. In this letter some allegations were levelled against the petitioner which compelled the deceased to take extreme step of committing suicide.

(v) On 6.11.2011 brother of the deceased, Shri Ramjilal Meena lodged a written report at the Police Station alleging that his brother committed suicide due to conduct of some Officers of the LIC. In this report also allegations against the present petitioner were levelled. On the basis of the written report, FIR No. 304/2011 was registered for offences under Sections 306, 120B IPC and Section

3(2) (v) of SC/ST (Prevention of Atrocities) Act and investigation commenced. The file of the Marg Report No. 21/2011 was also tagged with the file of the aforesaid FIR. The investigation of the case was conducted by more than one Investigating Officer and statements of some of the prosecution witnesses were also recorded more than once and after usual investigation charge-sheet for offence u/s 306 IPC was submitted against the present petitioner alone.

2. In support of the petitions, learned counsel for the petitioner has raised the following grounds:-

(i) In the written report lodged on 2.11.2011 there is no mention that suicide-note was recovered from the room of the deceased and it was in his statement recorded u/s 161 Cr.P.C. on 15.11.2011 after registration of FIR, landlord-Shri Gopal for the first time stated that suicide-note was also recovered and, therefore, it is highly doubtful that suicide-note was recovered on 2.11.2011 itself. It has also not been explained if suicide-note was recovered on 2.11.2011 and family members of the deceased were also made aware of the same even then how the delay of five days was made in lodging the FIR. This clearly shows that the suicide-note is a forged and fabricated document.

(ii) There is no evidence on record even prima facie involving the petitioner in the incident occurred in the intervening night of 4.2.2011 and 5.2.2011 in the Guest House of the LIC situated at New Delhi and, therefore, the petitioner cannot be held responsible for the suicide committed by the deceased.

(iii) In the detailed reply dated 4.10.2011 filed by the deceased to the show cause notice issued by the competent authority during departmental enquiry held on the basis of complaints made by the Security Guard and caretakers of the Guest House, no allegations of whatever nature were made against the petitioner holding him in any way responsible for the incident occurred in the Guest House.

(iv) It is an admitted fact that on the basis of explanation dated 4.10.2011 furnished by the deceased the enquiry was closed and only advisory-note was made to the deceased to be careful in future and the same was communicated to him on 27.10.2011 and, therefore, there was no proximate or direct reason for the deceased to commit suicide on account of incident occurred at the Guest House in New Delhi and the enquiry held against him.

(v) The petitioner at the relevant time was posted at New Delhi whereas the deceased was working at a far away place at Ajmer on a post which is much higher than the post on which the petitioner was working and there was no official connection between the posts held by them at the relevant time and, therefore, there was no question of any pressure and blackmail by the petitioner of the deceased resulting in his committing suicide.

(vi) There are contradictory statements of the family members of the deceased more particularly in regard to the manner in which and the reason by which the petitioner pressurised and blackmailed the deceased and the role played by him

which ultimately resulted into commission of suicide by the deceased.

(vii) For an offence u/s 306 IPC to be made out, abatement by the accused is required to be shown but in the present case, there is no evidence even prima facie showing abatement by the petitioner which compelled the deceased to commit suicide. For an offence to be made out u/s 306 IPC, the suicide must be proximate/direct result of the instigation/abatement made by accused but in the present case, it cannot be said that the deceased-Shri Laxman Meena committed suicide due to incident of Guest House or enquiry held against him. The petitioner was not responsible for the incident of guest house or departmental enquiry.

3. According to learned counsel for the petitioner it is a fit case in which by exercising its inherent powers conferred u/s 482 Cr.P.C. the Court must not only quash and set aside the order of cognizance but also the aforesaid FIR and the investigation conducted on that basis. It was also submitted that FIR and investigation can be quashed even after submission of charge-sheet whereas in the present case, order of cognizance has also been challenged by way of above criminal misc. petition.

4. In support of his submissions, learned counsel for the petitioner relied upon the cases of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, , Madan Mohan Singh Vs. State of Gujarat and Another, , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , Keki Hormusji Gharda and Others Vs. Mehervan Rustom Irani and Another, and State of Haryana and others Vs. Ch. Bhajan Lal and others,

5. On the other hand, learned Public Prosecutor assisted by the learned counsel for the complainant submitted that there is sufficient prima facie evidence available on record indicating that the petitioner is directly responsible for creating the circumstances which compelled the deceased-Shri Laxman Meena to commit suicide and, therefore, the Court has no jurisdiction to quash the FIR and the investigation based thereupon or the order of taking cognizance more particularly in view of the fact that after investigation charge-sheet has already been filed against the petitioner. It was further submitted that it is well settled legal position that inherent powers u/s 482 Cr.P.C. can be exercised only in exceptional cases when the Court finds that from the allegation made in the FIR/ complaint even prima facie no offence is made out against the accused but in the present case from the evidence collected during investigation and more particularly on consideration of the suicide-note, it cannot be said that no case is made out against the petitioner for offence u/s 306 IPC. It was also contended that during enquiry u/s 174 Cr.P.C. on the same day i.e. 2.11.2011, suicide-note was recovered from the room of the deceased which was taken into possession and the same was sent to FSL for examination of the handwriting expert and in the report received from the FSL it has been clearly opined that the author of the disputed handwriting and the signature and the admitted handwriting and signature is the one and same person. According to the learned Public Prosecutor

and counsel for the complainant in the suicide-note it has been clearly alleged that for the incident occurred in the Guest House the petitioner was responsible and he was continuously blackmailing the deceased and, therefore, he had no other alternative other than to commit suicide. It was also submitted that opportunity is to be afforded to the prosecution to prove its case and it is not proper to be quashed at the initial stage.

6. I have considered the submissions made on behalf of the respective parties and also perused the material made available to me as well as the relevant legal provisions and the case law.

7. The well settled legal position in regard to quashing of FIR/charge-sheet/complaint in exercise of its inherent powers conferred u/s 482 Cr.P.C. is that when the allegations made in the FIR 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, they are liable to be quashed but in a case where there is sufficient evidence against the accused which may establish the charge against him, such proceedings cannot be quashed. A criminal complaint or a charge-sheet can only be quashed in exceptional circumstances such as when the allegation in a complaint do not support even a prima facie case for an offence. The superior Courts may examine the question of fact when the use of the criminal law machinery, in the nature of an abuse of authority or when it could result in injustice. It is the duty of the superior Court to see that a person who is apparently innocent is not subject to prosecution and humiliation on the basis of a false and wholly un-tenable complaint.

8. Section 107 IPC defines abetment to mean that a person abets the doing of thing if he firstly, 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.

9. In the case of Sanju alias Sanjay Singh Sengar Vs. State of M.P. (supra), Hon"ble Supreme Court observed that considering the definition of "abetment" u/s 107 I.P.C., the charge and conviction for an offence u/s 306 is not sustainable merely on the allegation of harassment to the deceased. According to the Hon"ble Court the word "instigate" denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea.

10. In the case Madan Mohan Singh Vs. State of Gujarat & anr. (supra), it was held by the Hon"ble Supreme Court that in order to bring out an offence u/s 306 IPC, specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring out 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 u/s 306, IPC.

11. Although, in the suicide-note of the deceased, which at this stage of the proceedings has to be believed, allegations have been levelled against the petitioner holding him responsible for the incident of the Guest House and the enquiry held against the deceased by the competent authority but the aforesaid conduct of the petitioner, it can not be held to be direct or proximate reason for the commission of suicide by the deceased more particularly in view of the fact that after holding preliminary enquiry no further action was taken against the deceased and he was only advised to be careful in future. It is to be noted that vide letter dated 30.8.2011 explanation of the deceased was sought regarding the alleged incident which occurred in the intervening night of 4.2.2011 and 5.2.2011 by the competent authority of the LIC to which reply was sent by the deceased vide letter dated 13.9.2011 and he sought some more information in detail. Thereafter, vide letter dated 26.9.2011 the required information was furnished to the deceased and he vide his reply dated 4.10.2011 explained his position regarding the aforesaid incident. Although, in the reply it was stated that at the behest of some mischievous elements, who are against him, false allegations have been levelled against him by way of complaints made by the Security Guard and caretakers of Guest House but in this detailed reply no allegation of any kind about involvement of the present petitioner was made. That was the first opportunity for the deceased showing involvement or responsibility of the petitioner for the charge levelled against him for which his explanation was sought by the competent authority. It is also relevant to note that the petitioner and deceased at the relevant time were posted at different places i.e. New Delhi and Ajmer which are at far away distance and they were not in any manner connected with each other in any official capacity other than that both were working in LIC of India. In the reply filed to the notice as well as suicide-note there is even no whisper for what reason the petitioner had intention to malign the deceased and to spoil his reputation in any manner. From the evidence available on record it is also clear that the deceased was working at a post which is much higher than the post which the petitioner was holding. If considered, in the light of well settled legal position, from the allegation made in the suicide-note the petitioner cannot be held liable for the commission of the suicide by the deceased. So far as the allegation made in the FIR and the statements of the family members of the deceased are concerned, it is found that there are several contradictions in the same. In the FIR apart from the suicide-note left by the deceased, further mention is that the deceased used to tell his wife about the petitioner, who was harassing him by the reason that the deceased belongs to Backward Category and blackmailing him on the basis of incident of the Guest House. It is pertinent to note that petitioner also belongs to backward class being member of Schedule Caste Category. In the FIR or the suicide-note no such allegation was made that the petitioner pressurised the

deceased to make selection of some persons of his choice. It is for the first time in the additional statements recorded u/s 161 Cr.P.C. of the family members of the deceased it was alleged that the petitioner pressurised the deceased to make selection of some persons of his choice and when the deceased refused to oblige him he threatened him to dire consequences. Therefore, there are contradictions in the statements of the material witnesses of the prosecution in respect of the role of the petitioner which ultimately compelled the deceased to commit suicide. I am of the considered view that in the light of well settled legal position, the petitioner cannot be compelled to face the prolonged trial for the aforesaid offence and it is a fit case in which inherent powers u/s 482 Cr.P.C. are to be exercised by this Court for not only quashing the FIR and the investigation based thereupon but also the order of cognizance passed by the learned Magistrate. It is pertinent to note that the order of cognizance has been passed mechanically without considering the evidence available on record. Consequently, both the criminal misc. petitions are allowed and the FIR No. 304/2011 registered at Police Station Civil Line, Ajmer and the investigation made thereupon as well as the order of cognizance dated 19.7.2012 are quashed and set aside and the accused-petitioner is discharged from the charge levelled against him. No further proceedings shall be taken against the petitioner on the basis of aforesaid FIR.