
(2019) 04 P&H CK 0211

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 26648 Of 2018 (O&M)

Kuldeep Singh And Others

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 107, 109, 306

Citation : (2019) 04 P&H CK 0211

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Prateek Pandit, Bhupender Beniwal, Vikas Garg

Final Decision : Allowed

Judgement

Anil Kshetarpal, J

Prayer in the petition is to quash the FIR No.39 dated 16.04.2018 under Sections 306, 34 of the Indian Penal Code, at Police Station Bilga, District Jalandhar.

The FIR as translated reads as under:-

"Statement of Baljit Singh son of Mohan Singh caste Baligar R/o village Gorsian Peeran, P.S. Bilga, District Jalandhar age about 30 years Mobile No.95924-65925. Stated that I am resident of above address and due to a road accident I stay at home. Today at about 8.30 AM my father Mohan Singh had brought fodder from the fields when Kuldeep Singh @ Ghuka son of Chanan Singh caste Balmik Singh R/o village Gorsian Peeran, who at his own risk had got my father money on credit and today had come to receive the money and due to money not being repaid was arguing with my father and mother Premjit Kaur. In the meanwhile his wife Bhupi also came and the woman who had lent money to my father namely Gindo R/o Gorsian Peeran also came there. Kuldeep Singh @ Ghuka his wife and Gindo said that you are not giving back our money and we will harvest your wheat crop and started verbally abusing my father and my father went away to his Haveli. My father in anger consumed some pesticide lying at the

Haveli and came back to the house. Kuldeep Singh @ Ghuka along with his wife Bhupi and Gindo had already left our house before my father came back. I and my mother smelled the stench of the medicines from my father. We arranged for a vehicle and took our father to civil hospital, Nakodar but he died on the way. Legal action be taken against the above said accused. Sd/- Baljit Singh above said sd/-Mukhtiar Singh Ex. Sarpanch attested Anwar Masih ASI P.S. Bilga dated 16.04.2018."

Learned counsel for the petitioners has submitted that from the reading of the FIR, no offence under Section 306, IPC is made out. He has further relied upon a judgment passed by the Hon'ble Supreme Court in the case of M. Arjunan Vs. State represented by its Inspector of Police, (2019) 3 SCC 315 on almost pari materia facts wherein a lender of the money had demanded the amount back and the debtor had committed suicide, it was held that the essential ingredients of offence under Section 306, IPC are not made out. Para 8 of the judgment reads as under:-

"The essential ingredients of the offence under Section 306 IPC are (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC."

The abetment has been defined in Section 107 of the Indian Penal Code which is extracted 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."

It is apparent from the careful reading of the definition of abetment that there must be allegations of direct or indirect acts of instigation to commit suicide. Mere allegations of harassment without there being any positive action proximate to the time of occurrence on part of the accused which led or compelled the person to commit suicide would not be sufficient to implicate a person under Section 306 of the Indian Penal Code. This aspect has been examined in detail by the Hon'ble Supreme Court in the case of Amalendu Pal Vs. State of West Bengal (2010) 1 SCC 707. Paras 12 to 14 of the judgment are extracted as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence

adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. 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 their 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.

13. In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

14. The expression 'abetment' has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent-State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC."

It is apparent that there are no allegations that the accused-petitioners had any intention to aid or instigate or abet the deceased to commit suicide. A lender of money cannot be prosecuted under Section 306, IPC merely because he visited the residence of the borrower to demand return of the amount given as a loan to the deceased and thereafter, abused the borrower and threatened to harvest his crop unless ingredients of Section 306, IPC as noticed by the Hon'ble Supreme Court stands fulfilled. Still further, counsel appearing for the complainant on 04.04.2019 has already made a statement that the parties have amicably resolved their dispute.

Although, counsel appearing for the State of Punjab has filed affidavit contesting the petition, however, during the course of arguments, learned counsel appearing for the State could not draw attention of the Court to the material collected which may lead the Court to a conclusion that ingredients of Section 306 of IPC stands fulfilled.

In view thereof, the FIR No.39 dated 16.04.2018 under Sections 306, 34 of the Indian Penal Code, at Police Station Bilga, District Jalandhar, shall stand quashed.

Accordingly, the present petition is allowed.