
(1999) 12 DEL CK 0020
In the Delhi High Court
Case No : Criminal M. (M) No. 2305/97

Laxmi and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Citation : (2000) 4 AD 318 : (2000) 85 DLT 319 : (2000) 53 DRJ 814

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. R.N. Mittal and Mr. Punit Mittal, for the Appellant; Mr. Akshay Bipin, for the Respondent

Judgement

J.B. Goel, J.—The petitioners seek quashing of the proceedings for the offence u/s 306/34 IPC in FIR No.262/97, PS Vasant Vihar, New Delhi.

Information was received at PS Vasant Vihar, New Delhi through PCR on 13.6.1997 which was registered as DD No.22-A at 1606 hrs. that the body of Pawan Kumar was hanging from a tree in C Block Jungle side Vasant Vihar. On receipt of copy of this DD entry, SI Shailender Singh reached the spot and found the dead body hanging with lungi tied around his neck. After completing inquest proceeding, the dead body was sent for postmortem. Postmortem was conducted on 14.6.1997. The postmortem doctor had opined that it was a suicidal death due to hanging. No FIR was registered and thereafter Ram Singh, father of the deceased, r/o House No.143, Harijan Basti, Vasant Vihar made a report to the SDM concerned on 28.6.1997 which on translation is to the following effect :-

".....I am employed as Sweeper in MCD. My son Pawan Kumar was also employed as Sweeper in MCD and was attached to the Office at Sector XII R.K. Puram Market. That on 9.6.1997, on coming home in the evening, my son told that he had a quarrel with his Asstt. Sanitary Inspector Hari Prakash Sharma. He told that Laxmi, another lady sweeper was having illicit relations with Hari Prakash Sharma. My son had asked the said lady to stop her illicit relations with

Hari Prakash. On 9.6.1997 when my son had gone to attend the office said Laxmi Sweeper had taken him inside the office. Hari Prakash was already present with some boys who gave beatings to my son. Thereafter, Pawan Kumar became mentally disturbed. I tried to counsel him. Hari Prakash was harassing my son for some time. I had also 2-3 times tried to counsel Hari Prakash Sharma but to no effect. Today on 13.6.1997 my son Pawan Kumar with his wife had gone to his office. There Hari Prakash rebuked them saying that by my son complaining to his wife about his relations with Laxmi, his wife had died and he will not keep Pawan Kumar in service and will not spare him. At this, my son and his wife returned home. My son went out in the afternoon after taking meals and later we came to know that my son had committed suicide. Hari Prakash Sharma and Laxmi had conspired and compelled my son to commit suicide. Action may be taken against them."

2. The SDM with his endorsement that a case for abetment to suicide be registered and the matter investigated thoroughly sent the same to the SHO, Vasant Vihar. The SHO got the FIR registered on 28.6.1997 at 5.40 P.M. Investigation was entrusted to SI Puran Chand who made investigation and also recorded further statements of witnesses including that of Smt. Rajni Devi, wife of the deceased Pawan Kumar who corroborated the facts stated by Ram Singh in the FIR. A suicide note to the similar effect is also alleged to have been recovered from his house. After completion of the investigation, a report u/s 173 Cr.P.C. that a case u/s 306/34 IPC was made out was submitted to the Magistrate who took cognizance, summoned the accused and in due course committed the case to the Sessions Court. In the meantime, the present petition u/s 482 Cr.P.C. has been filed by the petitioners to quash the FIR and prosecution on the ground that on the material on record no case is made out for proceeding against them.

3. Learned counsel for the petitioners has read the material available on record and has contended that there is no evidence from which it could be inferred that a case u/s 306/34 IPC was made out against the petitioners. He has relied on some case law and has contended that the FIR and the proceedings be quashed. Learned counsel for the respondent has contended on investigation prima facie case is made out. The M.M. has taken cognizance and committed the case to the Session Judge. It will be for the Sessions Judge to proceed under Sections 227 or 228 of the Cr.P.C. In the circumstances this petition is not proper and is liable to be dismissed.

4. Section 306 IPC provides for abetment of suicide and reads:-

"If any person commits suicide, whoever abets the commission of suicide, and if any person commits suicide due to that reason, he shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Abetment has been defined in Section 107 IPC to mean that:-

"A person abets the doing of a thing, who -

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.

5. Abetment is thus constituted (1) by instigating a person to commit an offence, or (2) by engaging in a conspiracy to commit it, or (3) by intentionally aiding a person to commit it.

In Emperor Vs. Amiruddin Salebhoy Tyabjee, , the meaning of the word "instigate" has been explained as under:-

"A person is said to instigate another to act when he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement."

6. In Rishi Kumar Vs. State of ,1988 (1) All CL 615, a Division Bench of the Punjab & Haryana High Court has also explained the meaning of the word "instigate" as under :-

"The word "instigate" literally means to goad, urge forward, to provoke, incite or encourage to do an act. A person is said to instigate another when he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement."

7. Thus, in the context of the offence, the word "instigate" would mean to suggest, provoke, incite or encourage or stimulate to do and act or to urge forward.

8. "Conspiracy" consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means. In order to constitute the offence of abetment by conspiracy, there must be a combining together of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing.

9. And a person abets by aiding when by any act done, either prior to, or at the time of, commission of an act, he intends to facilitate and does in fact facilitate the commission thereof.

10. In order to constitute abetment by aiding, the abettor must be shown to have "intentionally" aided the commission of the Crime (Shri Ram Vs. The State of U.P.,).

11. In the present case, the prosecution case is that the deceased had asked the accused Laxmi not to continue her intimacy with the accused Hari Prakash Sharma. This was not liked by the accused and they got the deceased beaten on 9.6.1997 from some apparently hired boys and again on 13.6.1997 some time

before the suicide was committed when the deceased along with his wife had gone to the accused Hari Prakash Sharma, Asstt. Sanitary Inspector under whom the deceased was working as Sweeper the latter had threatened the deceased not to keep him in service and also that he will not spare him. There is nothing to show that the accused persons intended that the deceased should commit suicide or knew that he was likely to commit suicide. It was an independent act of the deceased himself.

12. Abetment involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence and it is of the essence of the crime of abetment that the abettor should substantially assist towards the commission of the offence. In other words, in order to convict a person of abetting the commission of a crime, it is necessary to connect him with those steps in the transaction which are criminal. It is not the case of the prosecution that when the deceased had committed suicide, the accused were present at the place of incident. There is no material, direct or indirect, to show that the accused had either instigated or conspired or aided the deceased in committing the suicide at that time. And it could not be said that the accused persons had abetted the suicide. On the material available no offence punishable u/s 306/34 IPC is made out against either of the accused.

13. Now, the question is whether the Court should quash the criminal proceedings when cognizance has been taken by the learned Magistrate and the case committed to the Sessions Court for trial. Normally, the petitioners should first approach the Trial Court to quash the proceedings which they have not done. Learned counsel for the petitioners, however, has contended that this Court has inherent powers u/s 482 Cr.P.C. to quash the proceedings at any stage and there is no bar to invoke inherent power of this Court.

14. The power of this Court to quash the prosecution are well settled. A complaint/FIR/prosecution in a criminal case could be quashed. By this court u/s 482 Cr.P.C. "Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused". (Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, and State of Haryana and others Vs. Ch. Bhajan Lal and others, . In State of Karnataka Vs. L. Muniswamy and Others, , the Supreme Court has held that "in the exercise of the inherent power u/s 482 of the Code, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed".

15. Recently in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, it was held that:

"No doubt the Magistrate can discharge the accused at any stage of the trial if he

considers the charge to be groundless but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial....."

Further:-

"It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh; seek their release on bail and then to either move an application u/s 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them.... Provision of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it."

16. As already noticed on the material on record no case u/s 306/34 IPC is made out and as such the proceedings are liable to be quashed under inherent powers of this Court u/s 482 of the Code.

17. This petition is accordingly allowed and the criminal proceedings emanating from FIR No. 262/97 u/s 306/34 IPC, P.S. Vasant Vihar are hereby quashed.

18. Petition stands disposed of.