
(2014) 05 JH CK 0071
In the Jharkhand High Court
Case No : Cr. M.P. No. 1194 of 2013

Mahavir Mahto

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 304-B, 306, 34

Citation : (2015) 1 DMC 98 : (2014) 2 JLJR 626

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajan Raj, Advocate for the Appellant; Prabhat Kumar Sinha, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and also learned counsel appearing for the opposite party No. 2 as well as learned counsel appearing for the State. This application has been filed for quashing of the entire criminal proceeding of Ramgarh P.S. Case No. 23 of 2011 (S.T. No. 78 of 2013) including the order dated 2.1.2013 whereby and whereunder cognizance of the offence punishable u/s 306/34 of the Indian Penal Code has been taken against the petitioners.

2. Mr. Rajan Raj, learned counsel appearing for the petitioners submits that it is the case of the prosecution that daughter of petitioner No. 1 got married with the son of the informant in the year 1999. Out of their wedlock, one male child was born in the year 2001. On 19.7.2005, daughter of petitioner No. 1, Aarti Devi died while she was in her in-laws' place and for that, U.D. case was lodged by the petitioner No. 1. Subsequently, petitioner No. 1 lodged another case which was registered u/s 304-B of the Indian Penal Code. Since wife of the informant's son had died, son of the informant took another marriage in the year 2006.

3. Further case is that on 25.12.2010 FSL report was received reporting therein

that viscera was containing some poison. Thereupon on 2.2.2011 informant's son committed suicide alongwith his second wife and daughter. On the same day i.e. 2.2.2011, FIR was lodged which was registered u/s 306 of the Indian Penal Code.

4. Further case of the prosecution is that when the case commenced, accused persons (petitioners) started putting forth the demand and therefore, Panchayati was convened wherein it was decided that the petitioners will be compromising the case upon payment of Rs. 1,50,000/- which was allegedly paid to the petitioners but in spite of receiving money, the petitioners did not go for compromise, rather further demand came from the side of the petitioners of Rs. 5 lacs more. When it was not paid, it is alleged that the accused persons started holding threat to the effect that if that amount is not given, they will make the life of informant hell. Since constant threatening was being given on telephone, informant's son committed suicide alongwith wife and children and thereby a case was lodged u/s 306 of the Indian Penal Code.

5. Upon submission of the charge-sheet, when cognizance of the offence was taken, vide order dated 2.1.2013, that was challenged before this Court.

6. Mr. Rajan Raj, learned counsel appearing for the petitioners submits that accepting the entire allegations of not compromising the case in spite of receiving money and of further demand and then holding out threat for creating lots of problem are accepted to be true, those acts cannot be said to be direct or active act on the part of the accused which led the deceased to commit suicide and that even if those threats had been held out, that never indicates that the petitioners had any mens rea to commit offence u/s 306 of the Indian Penal Code.

7. In this respect, learned counsel appearing for the petitioners has referred to a decision rendered in a case of M. Mohan Vs. The State represented by The Deputy Superintendent of Police, .

8. Thus, it was submitted that the court committed illegality in taking cognizance of the offence and thereby the order taking cognizance is fit to be set aside.

9. As against this, Mr. Prabhat Kumar Sinha, learned counsel appearing for the opposite party No. 2 submits that there has been specific allegation that the accused persons took a sum of Rs. 1,50,000/- on the pretext that they would go for compromise but instead of compromising the case, the accused persons started demanding further Rs. 5 lacs. When it was not paid, the accused persons started holding out threat constantly on telephone that they will make their life hell which made the deceased so perturbed that he alongwith wife and daughter committed suicide and thereby the act of the petitioners can certainly be said to be an act of abetment in terms of the provision as contained in Section 107 of the Indian Penal Code.

10. Learned counsel in this respect submits that in similar situation when on repeated inflictions of the cruelty upon the wife when she committed suicide, the

Hon''ble Supreme Court in a case of Sahebrao and Another Vs. State of Maharashtra, held that the offence u/s 306 of the Indian Penal Code is made-out.

11. It was further submitted that by holding out repeated threats, the deceased was subjected to mental torture and on account of that if the deceased has committed suicide, the case is certainly made out u/s 306 of the Indian Penal Code and thereby the order taking cognizance never warrants to be quashed.

12. In this respect learned counsel has referred to a decision rendered in a case of Gananath Pattnaik Vs. State of Orissa, .

13. Thus, it was submitted that the order taking cognizance never warrants to be interfered with.

14. It be reiterated that it is the case of the prosecution that when daughter of the petitioner No. 1 died in her in-laws' place, a case was lodged in the year 2005 which was registered u/s 304-B of the Indian Penal Code against the husband and other family members. Subsequently, informant's son took another marriage in the year 2006. On 2.2.2011 when husband committed suicide along with wife and daughter, a case was lodged which was registered u/s 306 of the Indian Penal Code on the allegation that the petitioners approached to the informant and said that if the money would be paid, they will be withdrawing the case and thereby a sum of Rs. 1,50,000/- was allegedly paid to the petitioners but in spite of that, the case was not withdrawn, rather the petitioners went on demanding further amount of Rs. 5 lacs. When it was not paid, threats were held out through telephone call that if the payment would not be made, they will be putting to all kinds of trouble. According to learned counsel appearing for the opposite party No. 2 that amount to mental cruelty and on account of that, the deceased committed suicide.

15. Thus, the question does arise as to whether all these acts as stated above, can be put to an act of abetment in terms of the provision as contained in Section 107 of the Indian Penal Code.

16. In order to have answer to this question, I need not to travel far as the principle in this regard seems to have been laid down in a case of M. Mohan vs. State represented by the Deputy Superintendent of Police (supra) wherein Their Lordships have held that there should be clear mens rea to commit offence u/s 306. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide.

17. In the context of the said principle laid down by the Hon''ble Supreme Court it is to be seen as to whether the acts of the accused persons amount abetment. If the accused have allegedly put forth the demand of Rs. 5 lacs and on account of its non-fulfillment if the threat had been given of putting the deceased and others to all kind of trouble, the petitioners may not have any mens rea that on account of such threat the deceased would commit suicide as the acts alleged

can never be said to be direct or active act by the accused which led the deceased to commit suicide and therefore, the act of the petitioners cannot be said to be an act of abetment in terms of Section 107 of the Indian Penal Code.

18. So far the decision referred to on behalf of the opposite party No. 2 is concerned, that does not seem to be applicable in the facts and circumstances of the case as in that case the fact was there that on account of subjection of constant cruelty, the wife had committed suicide and therefore, the Hon'ble Court took the act of the petitioners as direct nexus with the act of the deceased committing suicide.

19. Under the circumstances, I do find that the court has committed illegality in taking cognizance of the offence punishable u/s 306/34 of the Indian Penal Code and thereby the order taking cognizance is hereby quashed. In the result, this application stands allowed.