

(2020) 06 MP CK 0041

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 5448 Of 2019

Mohanlal Rathore S/o Radheshyamji

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 19-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 107, 108, 306
Evidence Act, 1872 — Section 113A

Citation : (2020) 06 MP CK 0041

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Vivek Singh, Yogesh Gupta

Final Decision : Allowed

Judgement

1. The petitioner has filed the present revision challenging the order dated 24/10/2019 passed by Sessions Judge, Neemuch, District-Neemuch in S.T. No. 46/2019, thereby charge has been framed against the petitioner for offence under Section 306 of IPC.

2. Brief facts of the case are that, the complainant has filed a report against the present petitioner that, Vidyabai, wife of Poonamchand(deceased), has made a complaint two years ago that Poonamchand (deceased) has sold two bighas of land to the present petitioner for a sum of Rs.6,00,000/- and has told that the rest of the amount would be payable at the time of execution of the sale deed. However, although a period of two years has been passed the said payment has not been made in spite of repeated demands. Therefore, on 8.9.2019 Poonamchand went to the house of the present petitioner saying that he is going to take the money from the petitioner and after that, he did not return to the home. On 9.9.2019, one Vikram had come to the house of Poonamchand and stated that Poonamchand has committed suicide by hanging. The police thereafter, carried on investigation the matter and after investigation, the Police has registered a FIR against the petitioner under Section 306 of IPC and challan

was filed and learned Sessions Judge has framed charge against the petitioner on 24/10/2019 under Section 306 of IPC. Being aggrieved by that order, the petitioner has filed the present revision for quashment of charges.

3. Learned counsel for the petitioner has submitted that, from perusal of the allegations made in the FIR, no case is made out against the petitioner. He further submitted that the allegation against the petitioner is that he demanded the money from the deceased, which was due to him and because of this demand, the deceased has committed suicide. To bolster his submissions, learned counsel for the petitioner has relied on the order passed by this Court in the case of *Banshilal vs. State of Madhya Pradesh* decided on 19.6.2019. He further submitted that even if the allegation made in the FIR is accepted at its true value, no case under section 306 of IPC is made out against them. Necessary ingredients to constitute the offence under section 306 of IPC are lacking in the present case. There is no allegation against the present petitioner that at any point of time, he has provoked, engaged, goaded or instigated the deceased to commit suicide. It is further stated that recovery of loan does not constitute abetment to commit suicide within the meaning of section 306 read with section 107 of IPC. There is no prima-facie evidence against the petitioner that by doing positive act, he has instigated, aided or provoked the deceased to commit suicide. In such circumstances, he submits that the charges framed against the petitioners be quashed. He has further placed reliance upon the judgment delivered by this Court in the case of *Radheshyam Vs. State of M.P.* reported in 2014 Cr.L.R. (M.P.) 416 as well as the order dated 07/03/2017 passed in the case of *Chandmal Dandwani Vs. State of Madhya Pradesh*.

4. On the other hand, learned counsel for the respondent has stated that prima-facie, on the basis of oral evidence collected by police during investigation, offence under section 306 of IPC is made out against the petitioner. Due to the harassment by the petitioner for recovery of the amount, the deceased has committed suicide. In such circumstances, he submits that the order passed by the trial Court is just and proper and does not call for any interference. Hence, present revision be dismissed.

5. Heard learned counsel for the parties and perused the records.

6. For commission of offence punishable under section 306 of IPC, the prosecution is required to prove that before committing suicide, there was instigation or provocation on the part of the accused. In the present case, from the fact narrated above, the petitioner was demanding the amount from the deceased, therefore, due to this, he committed suicide. On this fact, the prosecution has lodged FIR against the petitioner, however, from perusal of the FIR, there is no direct provocation or instigation done by the petitioner against the deceased for committing suicide. The demand of money does not constitute an offence of abetment as held by this Court in the case of *Radheshyam(supra)*, in which, this Court, while dealing with the offence of abetment of suicide under section 306 of IPC has laid down the law as under :

6. On considering the above submissions, I find that there is no other evidence on record to indicate that the accused in anyway abetted suicide. Besides the diary of accounts as has been produced by the police and alleged to be recovered from the accused petitioner; clearly indicated that the deceased Kamlesh used to borrow money heavily from the employer then under the circumstances, it cannot be said that the demanding money back was an act of harassment to the deceased. In the matter of Devendra Singh (supra) suicide note contains the name of the accused petitioner undoubtedly, however the Court held that it cannot be demand of money or loan amount or the alleged threatening in connection with the demand of money cannot be said to be a provocation for committing suicide u/S. 107 of the IPC, which defines abetment of thing and involvement of instigating or intentionally aided by any act of illegal omission and, therefore, there must willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures for a thing to be done and in the present case the petitioner was an employer to deceased Kamlesh and the deceased was in service for quite some time as indicated by the account book. Moreover the employer is bound to keep account of his money advanced to the employee in the nature of the business and then in such circumstances, it cannot be said that the words used in heat of the moment were threats which amount to abetment to commit suicide.

7 Consequently I place reliance Laxmi Prasad Vishwakarma (supra) to hold that demand made by petitioner Radheshyam from deceased Kamlesh did not amount to threats; the test or touchstone as per various authorities cited above; clearly indicated that the act of the petitioner would not come under the act of instigation; and if all ingredients of S. 107 of the IPC are scanned in proper perspective it would be clear that there is no instigation or any illegal omission. Therefore, in my considered opinion there is nothing on record to show that the petitioner did anything by which it can be said that he abetted in the suicide of the deceased Kamlesh. I find that the order of framing charge against the petitioner u/S. 306 of the IPC requires to be quashed. It is hereby quashed. The Criminal Revision is accordingly allowed to the extent here in above indicated."

That, similarly in the case of Chandmal Dandwani (supra), this Court has relied upon the various judgments passed by this Court and came to the following conclusion:

6. The law is well settled that unless it is shown that the deceased was being instigated, suggested, goaded or provoked to commit suicide and that, the accused intended to abet the deceased to commit suicide, a prosecution for offence u/s. 306 of IPC cannot be launched. It has repeatedly been held that to constitute an offence u/s. 306, element of instigation, provocation, suggestion, etc. must invariably be present.

7. In M.Cr.C. No.13075/2016 (Omprakash Agrawal vs. State of M.P., Order dated 20.01.2017, Bench Indore) the legal position regarding offence under Section 306 r/w Section 107 of IPC has been considered by this Court in the light of

various pronouncements of Hon'ble the apex Court; relevant paras whereof run as under:

'Abetment to commit suicide' is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and fine. Expression 'Abetment' has been defined in Section 107 of IPC which runs 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 willful misrepresentation, or by willful 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 facilitates the commission thereof, is said to aid the doing of that act"

In the State of Punjab Vs. Iqbal Singh, AIR 1991 SC 1532, the apex Court explaining the meaning and expanse of word 'abetment' as used in Section 107 of IPC, has held as under:

"Abetment" as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor as a person who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word "instigate" in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word "aid" is to give assistance, help etc.

In Rakesh Kumar vs. State of Chhatisgarh, (2001) 9 SCC 618, a three Judge Bench of the apex Court explaining the meaning and connotation of word "instigation" has held as under (para. 20):

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

Taking note of the fact that each person's suicidability pattern is different from others and that each person has his own idea of self-esteem and self-respect, the apex Court in *M. Mohan Vs. State of Madras*, 2011 CRI.L.J. 1900 (S.C.), referring to its earlier decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, 2009 (16) SCC 605, held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

Reference can also be made to the decision of the apex Court in *Gangula Mohan Reddy Vs. State of Andhra Pradesh*, 2010 (Suppl.) Cr.L.R. (SC) 261, wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he committed suicide by consuming poisonous substance. The apex Court referring to its earlier decisions in *Mahendra Singh & Anr. Vs. State of M.P.*, (1995) Supp. 3 SCC 731 and *Ramesh Kumar Vs. State of Chhatisgarh*, (2001) 9 SCC 618, holding that offence of abetment to commit suicide under Section 306 of IPC is not made out, observed as under:

"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".

In *Deepak V. State of M.P.*, 1994 Cri. LJ 767 (M.P.), the deceased girl was threatened with defamation, if she refused to have sexual intercourse with two accused; within an hour she committed suicide leaving a suicidal note. Accepting the plea that the act of the accused might have been a reason for committing suicide but the same did not constitute abatement within the meaning of Section 306 read with Section 107 of the IPC, it was held that - "neither there was any intention nor any positive act on the part of the accused to instigate her or aid her in committing suicide. The two accused persons, therefore, cannot be held guilty of the offence under Section 306 of the I.P.C. and their conviction on that count by the trial Court, is liable to be set aside."

In the case of *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh*, AIR 2002 S.C. 1998, the accused was charged under Section 306 of IPC for abetting his brother-in-law to commit suicide; the accused allegedly said to him to 'go and die'; the deceased left behind a suicide note stating that accused is responsible for his death. It was held that words "go and die" do not constitute instigation for mens rea of offence under Section 307 of IPC.

In *Mahendra Singh and Anr. Vs. State of M.P.*, 1996 Cri.L.J. 894=1995 Supp (3) SCC 731, a case prior to the insertion of Section 113 -A in the Evidence Act, the charge under Section 306 IPC proceeded on the basis of dying declaration of the deceased to the effect that - "My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law.

Because of these reasons and being harassed I want to die by burning."

Considering legal sustainability of the same the apex Court held as under:

"Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a 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. Neither of the ingredients of abetment are attracted on the statement of the deceased."

From the aforesaid pronouncements of the apex Court, it flows that to constitute abetment to commit suicide, there must be material, prima-facie, indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

In the instant case, the allegation made in the suicide-note is that the petitioner had harassed the deceased because the money borrowed by one Rajendra Singh was not being repaid to the petitioner. The allegations that have been in the suicide-note or statement of Bane Singh - father of the deceased, even if taken true at their face value does not a prima-facie indicate that the petitioner by positive act on his part instigated, incited, aided or provoked the deceased to commit suicide. A bare act of harassment in absence of anything else cannot amount to abetment to commit suicide, therefore, in the considered opinion of this Court, on the basis of material collected by the police during investigation and filed with the charge-sheet, prima-facie a case under Section 306 of IPC is not made out against the petitioner.

In *Devendra and others vs. State of Uttar Pradesh and another*, (2009) 7 SCC 495, it has been held as under:

"when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing."

8. In the light of aforesaid, even if all the allegations made in the charge-sheet against the petitioner are accepted as such, still necessary ingredients to constitute an offence u/s. 306 of the IPC, even prima facie, are not made out, therefore, it is a fit case for quashment of first information report so also all consequent proceedings against the petitioner.

9. Accordingly, this petition deserves to be and is hereby allowed. The first information report and the consequent proceedings in Crime No.644/2016 registered at Police Station Sarangpur, District Rajgarh against the petitioner are hereby quashed."

7. In view of the aforesaid discussions, present revision is allowed and the criminal proceedings of S.T. No.46/2019 pending before the Sessions Judge, Neemuch, District-Neemuch are hereby set aside and the petitioner is discharged

from the aforesaid offence.