

(2020) 02 GUJ CK 0033

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 13010 Of 2018

Nileshbhai Arvindbhai Gandhi Director, Cube Construction
Engineering Limited

APPELLANT

Vs

State Of Gujarat & 1 Other(s)

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 107, 114, 306
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 02 GUJ CK 0033

Hon'ble Judges : S.H.Vora, J

Bench : Single Bench

Advocate : Pratik B Barot, Vn Sevak, Chaitanya M Vyas, Manan Mehta

Final Decision : Allowed

Judgement

S.H.Vora, J

1. Rule. Learned APP waives service of notice of rule for the respondent â?" State and learned advocate Mr.VN Sevak waives service of notice for

respondent No.2 â?" original complainant. With the consent of learned advocates appearing for the respective parties, the matter is taken up for

hearing today.

2. By way of this Criminal Misc. Application u/s 482 of the Code of Criminal Procedure, 1973, the applicant â?" original accused No.6 has made

folllowing prayer in terms of para 12(a).

â??To pass an order quashing of the First Information Report No.CR â?" 1 32 of 2018 dated 11.5.2018 came to be registered with Vadodara Taluka

Police Station, Vadodara (Rural) for offences punishable under section 306 and 114 of the Indian Penal Code.

3. According to the case of the applicant, aforementioned complaint came to be filed by one Ms. Hinaben wd/o Mr. Alpeshbhai Thakkar - respondent

No.2 herein on 11.5.2018, inter alia, disclosing circumstances leading to the act of commission of suicide by her husband. According to first informant,

her husband was involved in construction business and used to take work on contract basis from various parties in an area of Vadodara and thus, her

husband was involved in various construction works for various projects including the project of the applicant in Vadodara city in the name and style of

â??Sahyog Infrastructureâ??.

4. It is alleged by the first informant that her husband used to tell her that he has not been paid by lot of builders for whom he had done construction

work in the past and total amount close to Rs.4.5 crores is recoverable by him. It is alleged in the complaint that a month prior to her husband

committing suicide on 16.4.2018, the first informant and her husband had gone to the office of one Mr. Rameshbhai Patel of Kasata Homotech India

Private Limited requesting him to pay the old dues to them, but it was told by Rameshbhai that he does not have to pay them anything and instead he

has to recover about Rs.10 crore from them.

5. It is alleged in the complaint that her husband borrowed money against payment of interest from accused No.12 Mr. Dilipsinh Chauhan and

therefore, he had pressurized her husband to repay the borrowings. Said accused came at the house of the first informant in the morning and took

away their car. So, on 16.4.2018, first informant accompanied her husband and her husband mentioned on the group that he is saying goodbye and he

has no complaint or grievance against anyone and both consumed poison together. However, the first informant survived, whereas her husband died of

consuming poison.

6. It is further alleged in the complaint by the complainant â?" first informant that because of non-payment of money by various accused persons,

more particularly, present applicant â?" original accused No.6 to whom her husband owed a sum of Rs.71,04,748/- pursuant to work contract dated

6.5.2013, her husband committed suicide .

7. Before submissions made at bar is considered, it requires to be noted that it is the case of the applicant â?" original accused No.6 that the deceased

was entrusted with contract for the RCC work of construction of â??Government

Hostel for SC/ST and Developing Students 2000 Boys and Girls

Hostel, which was to be completed by 31.1.2014. According to the applicant â?" accused No.6, said contract came to be terminated in the month of

July, 2013 on account of slowness of the work as per communication dated 8.7.2013 annexed at Annexure A3. Not only that, the deceased was paid

for the work he has carried out and amount so paid is also shown in TDS form No.16A annexed at Annexure A4 and such payment also reflects in

the ledger account of the deceased annexed at page 36 showing receipt of payment from the applicant.

8. It appears that after termination of the contract on 8.7.2013, the deceased did not challenge the action of termination or raised any grievance as to

non-payment or short payment of the amount for the work done by him under the contract dated 6.5.2013 till he committed suicide on 16.4.2018. Nor

the deceased issued any notice or filed any suit during the interregnum period of about five years.

9. The averments so made in the application has not been controverted by the first informant though she put her appearance through her advocate and

has chose not to file any affidavit-in-reply in the present proceedings.

10. This Court heard the submissions of learned advocate Mr. Pratik Barot appearing for the applicant and learned advocate Mr. VN Sevak appearing

for learned advocate Mr. Chaitanya Vyas for respondent No.2 â?" original complainant and minutely examined the averments/allegations made in the

FIR itself so also materials provided during the course of hearing.

11. To constitute an offence u/s 306 of the IPC, it has to be established that a person committed suicide and that such suicide was abetted by the

accused. An offence u/s 306 would stand only if there is an â??abetmentâ? for the commission of the crime. The parameters of abetment have been

stated in section 107 of the IPC. In order to prove that the accused abetted commission of suicide by a person, it has to be established that accused

kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased

reacted or pushed or forced the deceased by his deeds, words, or willful omission or conduct to make the deceased move forward in a direction and

secondly that the accused had intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. The

definition of "abetment" as given in section 107 of the IPC not only includes instigation, but also intentional aiding by an illegal omission .

12. Bearing in mind the scope of provisions of sections 306 of and 107 the IPC, if we analyzed the scrutinized the FIR and other material as it is, does

not disclose with any qualified clarity to come to conclusive finding that the applicant's unassailable finding of culpability u/s 306 of the IPC. The

material on record and facts of the case as asserted in the application do not indicate prima facie any act of cruelty or harassment mentally or

physically so as to persistently/continuously provoke the deceased to take extreme steps with no other option. No such persistent or consistent

applicant's conduct, which requires culpability, is found in the present case, more particularly, from the averments/allegations made in the FIR

itself. The facts, as brought on record, clearly indicate that the contract between the applicant and the deceased came to be terminated on account of

slowness of the work on 8.7.2013 and the deceased was paid the money under work contract and such payment was made as far back as in the year

2013 itself. Such fact reflects in the TDS form No.16A and also in the ledger account of the deceased contractor. So, in absence of any contractual

relationship between the parties, more particularly, applicant " original accused No.6 and the deceased during the interregnum period from the date

of termination of contract till the date he committed suicide and in absence of any steps taken by the deceased to ventilate any grievance on the order

of termination of contract or non-payment of any money under the contract and in absence of any legal proceedings being filed or initiated by the

deceased, there cannot be any instigation by the applicant. Apart from it, there is no proximity or reasonable link between the commission of suicide

and act attributed to the applicant " original accused No.6.

13. Thus, bare reading of complaint does not reveal any instigation by the applicant herein in a manner, which can be said to have pushed the

deceased to take extreme steps of ending of his life. The complaint does not mention any specific instance of any instigation or doing of any act by the

applicant, which can be said to cause any pressure upon the deceased so as to end his life. Thus, looking to the allegations made in the FIR vis-a-vis

uncontroverted facts asserted and averred in the present petition u/s 482 of the Code of Criminal Procedure, 1973, there is no iota of evidence that the

deceased ever visited the applicant's company for his alleged dues either immediately before the date of her husband committing suicide or even after termination of the work order till the date of suicide.

14. In light of this position and material on record, prima facie, no any case is made out to infer occurrence of any offence u/s 306 of the IPC, as

alleged in the FIR and considering over all facts and circumstances of the case, present Criminal Misc. Application deserves to be accepted.

15. Resultantly, this application is allowed. Impugned F.I.R. being C.R.No.I-32 of 2018 registered with Vadodara Taluka Police Station for the

offence u/s 306 and 114 of the IPC and all other consequential proceedings arising out of the impugned FIR is hereby quashed and set aside qua

present applicant only. Rule is made absolute to the aforesaid extent. Direct service is permitted.