

(2023) 05 OHC CK 0309
In the Orissa High Court
Case No : CRLMC No.496 Of 2022

Rohit Agarwal & Others

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 482
Indian Penal Code, 1860 — Section 294, 306, 448, 506

Citation : (2023) 05 OHC CK 0309

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Bijaya Kumar Ragada, Sitikanta Mishra

Final Decision : Partly Allowed

Judgement

R.K. Pattanaik, J

1. Instant petition under Section 482 of the Cr.P.C is at the behest of the petitioners for quashment of the impugned order dated 6th July, 2020 passed in connection with G.R. Case No. 1808 of 2019 by the learned S.D.J.M., Sambalpur whereby cognizance of the offences under Sections 306, 448, 294 and 506 read with 34 of the I.P.C. has been taken against them on the grounds inter alia that the same is not tenable in law.

2. In the case at hand, the F.I.R. was lodged by the informant alleging therein that her husband was working in Inland World Logistic Pvt. Ltd. Company, Bareipali, Sambalpur as its Branch Manager and since 7 to 8 months from then, the company was illegally deducting Rs.5000/- every month from his salary, for which, the family suffered financially and on 29th May, 2019 at about 2.30 P.M., five persons of the said company including petitioner No.1 arrived and after entering into their residence, in absence of husband, abused her in filthy language and threatened her to kill and also asked them to pay back the money of the company or else would commit murder of her husband and due to such

harassment, her husband attempted to commit suicide by consuming poison on 30th May, 2019 at night. On such report being lodged, Ainthapali P.S. Case No. 225 of 2019 was registered on 4th June, 2019 under Sections 448, 294 and 506 I.P.C and finally, after the death of the victim, chargesheet under the alleged offences along with Section 306 of the I.P.C was submitted, whereupon, the learned court below passed the impugned order under Annexure-1.

3. Heard Mr. Ragada, learned counsel for the petitioners and Mr. Mishra, learned ASC for the State opposite parties.

4. Mr. Ragada, learned counsel for the petitioners by referring to a decision of the Apex Court in *Kanchan Sharma Vrs. State of Uttar Pradesh & Another* (2021) 84 OCR (SC) 407 contends that the allegations do not make out a prima facie case against the petitioners and especially with reference to the offence under Section 306 I.P.C. as its essential ingredients are not fulfilled. It is submitted that the petitioners neither house trespassed nor threatened the informant on the date of alleged occurrence, whereas, her husband (deceased) being an employee of the company was entrusted for collection of cash from its customers and to deposit the same with the company but in the year 2017-18, he misappropriated an amount of Rs.10,30,338/- (rupees ten lac thirty thousand and three hundred thirty eight), later to which, the company was issued with three cheques, however, all stood dishonored, for which complaints in C.N. Case Nos. 587, 590 and 591 of 2018 were filed in the court of the learned 8th Metropolitan Magistrate, Kolkata, which are still pending and in so far as the F.I.R is concerned, it was lodged in order to escape from the said liability. It is also contended that the abetment is not established to show that the petitioners harassed the deceased, which compelled him to commit suicide and therefore, an offence under Section 306 I.P.C is not at all made out.

5. Mr. Mishra, leaned ASC for the State opposite party on the other hand submitted the Case Diary (CD) and contended that because of the mischief and misconduct of the petitioners, who had been to the house of the informant, the deceased committed suicide by consuming poison, which is proved by the suicidal note sent to her through Whatsapp and hence, an offence under Section 306 I.P.C is prima facie proved so also the rest of the offences and thus, they cannot escape from the criminal liability.

6. Gone through the CD.

7. The deceased was working by then as a Branch Manager in the alleged company. As per the informant, so revealed from Annexure-2, petitioner No.1 and four others had visited their house and allegedly committed the excess. After considering the CD and the connected materials including the statements of the witnesses recorded under Section 161 Cr.P.C., the question is, whether, apart from other offences, a case under Section 306 I.P.C. is really made out?

8. In *Kanchan Sharma* (supra), in the facts and circumstances of the said case, the Apex Court held that in absence of any material except self-serving

statements of the complainant and other witnesses and merely because the deceased had been to the house of the accused and consumed poison by itself would not establish that the latter abetted suicide of the former within the meaning of Section 306 I.P.C. In the decision (supra), the Supreme Court referred to the following decisions, such as, Chitresh Kumar Chopra Vrs. State (Govt. of NCT of Delhi) (2009) 44 OCR (SC) 354 ; Amalendu Pal @ Jhantu Vrs. State of West Bengal (2010)1 SCC 707; and S.S. Chheena Vrs. Vijay Kumar Mahajan & Another (2010)12 SCC 190 while dealing with the aspects of abetment. In fact, in S.S. Chheena and in other two decisions (supra), it has been held that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing and that because of the cruel manner of harassment, the victim had been left with no alternative except to put an end to life, inasmuch as, in case of suicide, intention to provoke, incite or encouraging the victim to take the drastic step must exist. Furthermore, by placing reliance on a case in Rajiv Thapar & Others Vrs. Madan Lal Kapur (2013) 3 SCC 330, the Apex Court in Kanchan Sharma (supra) held that jurisdiction under Section 482 Cr.P.C. may be exercised in a given set of facts and circumstances of a particular case.

9. In so far as the petitioners are concerned, they happened to be the officials of the company and according to Annexure-2 had been to the house of the deceased in whose absence allegedly abused and threatened the informant wife. As it is made to suggest, the petitioners had gone to the house of the informant in connection with realization of the company's due and at that point of time, said to have committed the overt acts. It is claimed by Mr. Ragada, learned counsel for the petitioners that the complaints were filed against the deceased since the cheques issued by him in paying back the company's money had bounced back. Without confirming to the veracity of such claim of the petitioners, the Court is to ascertain, if any of the offences and particularly, in respect of Section 306 I.P.C., in view of the settled legal position as discussed hereinbefore, is/are prima facie established for the purpose of inquiry and trial.

10. Having considered the entire of the evidence besides the statements of the informant and other witnesses recorded under Section 161 Cr.P.C., there is no material to suggest that the petitioners at that point in time had any such requisite intention to harass the deceased, which in the end resulted in committing his suicide. No doubt, there is evidence on record to show that the petitioners did commit mischief during the incident dated 29th May, 2019 which was followed by the death of the deceased. As earlier stated, abetment is a mental process of instigation which involves means rea. In Chitresh Kumar Chopra (supra), the Apex Court observed that each person's suicidability pattern is different from the other as is influenced by one's own idea of self-esteem and self-respect and therefore, it is impossible to lay down any straight jacket formula while dealing with cases of suicide and thus, a particular case has to be decided on the basis of its peculiar facts and circumstances.

11. The Court on a meticulous examination of the CD and other materials do not find any such clear and specific evidence to satisfy that there was continuous and constant mischief committed by the petitioners, which would amount to abetment of suicide by the deceased. It was an act by the petitioners, who being the officials of the company, had visited the house of the deceased demanding the due of the company and at that time, allegedly abused and threatened his wife. With such excess committed by the petitioners, as a single instance, would not be justified to allege that all of them to have abetted in the death of the deceased and such aspect was not considered and examined by the learned court below while taking cognizance of it along with other offences, which are, however, prima facie established. The demand of the officials of a company to realize the dues and in course of events them committing some excess without any mischief really intended to corner the victim leaving him with no other option except to do away with his life could be sufficient to criminally prosecute the offenders for an offence of abetment but not otherwise since mens rea to do it is sine qua non.

12. Accordingly, it is ordered.

13. In the result, the CRLMC stands allowed in part. As a necessary corollary, the impugned order dated 6th July, 2020 passed in connection with G.R. Case No. 1808 of 2019 by the learned S.D.J.M., Sambalpur is hereby quashed to the extent as aforesaid and only with reference to the offence under Section 306 I.P.C. vis-à-vis the petitioners for the reasons briefly stated above.

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