

(2010) 10 DEL CK 0251

In the Delhi High Court

Case No : Criminal Revision Petition No's. 816-19 of 2005

Rohtas Singh and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 107, 120A, 120B, 306, 452

Citation : (2011) 2 AD 612 : (2010) 120 DRJ 745

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Maninder Singh, Ajay Kumar, Sanjay Chaubey, A.K.S. Mishra, Vibhor Agarwal and Gurdeep Kaur, for the Appellant; R.N. Vats, APP for Respondent No. 1 and Z.S. Lohat, for the Respondent

Final Decision : Allowed

Judgement

Ajit Bharihoke, J.—Shri Rohtas Singh, Ms. Vibha, Shri Vivek and Shri Inder Singh, the petitioners herein, vide this petition have prayed for quashing of the order dated 23.09.2005 of learned Additional Sessions Judge whereby he framed charges u/s 120B IPC and Section 306 read with Section 120B IPC against the petitioners.

2. Briefly stated, relevant facts for the disposal of this petition are that petitioner Ms. Vibha was married to Anipal, son of the complainant, who committed suicide on the night intervening 27th/28th August, 1999.

3. Petitioner No. 1 is the father and petitioner No. 3 is the brother of petitioner No. 2 Vibha. Petitioner No. 4 is their family friend.

4. Complainant Ramanand, father of deceased Anipal filed a complaint u/s 200 Cr.P.C. against the petitioners alleging that they, in furtherance of a conspiracy hatched by them, had abetted commission of suicide by Anipal. It is alleged in the complaint that soon after the marriage, petitioner No. 2 started pressurising

and compelling deceased Anipal to seek division of joint family property and sell his share with a view to provide a separate house/flat away from village atmosphere to petitioner No. 2. Since Anipal was reluctant to leave his parents and did not agree to the proposal, there used to be frequent quarrels and exchange of hot words between them. It is also alleged in the complaint that petitioner No. 2 was employed and earning handsome salary, but she never gave her salary to Anipal and instead she used to give her salary to her father, which was another bone of contention. It is also alleged in the complaint that on 26.08.1999, the day of festival of Rakshabandhan, deceased Anipal and petitioner No. 2 had visited the house of the parents of petitioner No. 2 and when they returned back, Anipal was tense and unhappy. On enquiry, he told that petitioners Nos. 1 to 3, at the instance and on the active support of petitioner No. 4, had pressurised him to seek partition of family property and purchase a flat/kothi for petitioner No. 2 by selling his share and that they threatened that in the event of Anipal failing to seek partition, they would marry petitioner No. 2 to someone else and if her son Lakshaya came in the way of her marriage, he would be removed from the scene. On the night intervening 27th/28th August, 1999, Anipal hanged himself with a rope. According to the complainant Ramanand, Anipal had committed suicide on the abetment of petitioner No. 2 in furtherance of the criminal conspiracy hatched by the petitioners. Thus, the complainant alleged that the petitioners may be summoned and prosecuted for the offences punishable under Sections 306/120B and 452/506(11)/120B IPC.

5. Learned Metropolitan Magistrate conducted preliminary inquiry and examined three witnesses, including the complainant Ramanand. On the basis of the inquiry, he came to the conclusion that, prima facie, commission of the offence u/s 306/120B IPC was made out. Accordingly, he committed the case to the Sessions Court.

6. Learned Additional Sessions Judge, on consideration of the allegations in the complaint and the evidence, vide order dated 23.09.2005 concluded that, prima facie, commission of offence u/s 120B IPC and Section 306 IPC read with Section 120B IPC was made out, as such he framed charges against all the four petitioners.

7. Learned Counsel for the petitioners has submitted that the impugned order of framing charges against the petitioners is bad in law because there is no evidence on record to prima facie support the contention that the petitioners had hatched a criminal conspiracy or in furtherance of such criminal conspiracy or otherwise either of the petitioners have abetted commission of suicide by Anipal. Thus, he has urged for quashing of the charges against the petitioners and their discharge.

8. Learned Shri Z.S. Lohat, Advocate appearing on behalf of respondent No. 2/complainant has argued in support of the impugned order. He has submitted that the learned Additional Sessions Judge has rightly framed the charges and that the petition is liable to be dismissed, firstly on the ground that the petitioners

have concealed the material fact that the earlier petition filed by petitioner No. 4 being CrI. Misc.(M). No. 52/2005 was dismissed by this Court vide order dated 17.02.2005. He further submitted that this is a case based upon circumstantial evidence. From the allegations in the complaint as well as the statement of complainant Ramanand, it is prima facie established that petitioner No. 2, at the instance of petitioners Nos. 1, 3 and 4, used to nag and pressurise the deceased Anipal to seek partition of joint family property and sell his share to buy a house/flat for living separately in an environment outside the village, which was not acceptable to Anipal. Even on 26.08.1999 at the house of petitioner No. 1, all the four petitioners pressurised Anipal for seeking partition of family property and threatened him that in the event of his failing to do so, they would marry petitioner No. 2 to someone else and in case the child of Anipal Lakshaya created any hindrance in the second marriage of petitioner No. 2, they would remove him from the scene. Learned Counsel submitted that aforesaid consistent threat and pressure by the petitioners had pushed Anipal to take drastic step of committing suicide. Thus, learned Counsel submitted that the learned trial Judge has rightly framed charges against the petitioners.

9. The petitioners have been charged on two counts i.e. for having committed the offence of criminal conspiracy punishable u/s 120B IPC and the offence of abetment to commit suicide punishable u/s 306 IPC.

10. Criminal conspiracy is defined u/s 120A IPC which provides that when two or more persons agree to do or cause to be done an illegal act or agree to commit an act which is not illegal by illegal means, those persons are said to have entered into a criminal conspiracy.

11. Section 306 IPC provides punishment for abetment of suicide. Abetment is defined u/s 107 IPC and it provides that a person abets doing of a thing, if he firstly instigates any person to do that thing or secondly engages with one or more other person or persons in any conspiracy for doing that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to do that thing or thirdly, intentionally aids by any act or omission for doing that thing.

12. In view of the above, the charges u/s 120B IPC and Section 306 IPC read with Section 120B IPC could justifiably be framed against the petitioners, provided the learned Additional Sessions Judge was satisfied that there was sufficient prima facie evidence to raise a reasonable suspicion of involvement of the petitioners in a criminal conspiracy to abet the commission of suicide by the deceased Anipal and that in furtherance of said conspiracy, they actually committed the acts of omission or commission which instigated Anipal to commit suicide.

13. In the instant case, there is not even a whisper of allegation in the complaint or in the statement of PW Ramanand to suggest that petitioner No. 2 or for that matter any other petitioner instigated the commission of suicide by Anipal nor is there prima facie evidence which may show that the petitioners had entered into

a criminal conspiracy to abet the commission of suicide by Anipal and in furtherance of that conspiracy, some act was committed. There is even no evidence to suggest that any of the petitioners aided the deceased in commission of suicide. Thus, in my view, prima facie the offences u/s 120B IPC or 306 IPC read with Section 120B IPC are not made out.

14. Even if the evidence led by the complainant during preliminary inquiry is taken to be gospel truth, what has come on record is that petitioner No. 2 had been nagging and harassing the deceased to seek partition of family property and life separately after buying a house/flat and that she did not give her salary to her husband and instead she used to give her salary to her father. This by itself cannot be taken as a circumstance to infer that the petitioners had hatched a conspiracy to abet the commission of suicide by Anipal or in furtherance of that conspiracy they abetted the offence of suicide. Instigating a person denotes inciting or urging that person to do some drastic or inadvisable act or to stimulate or incite him to commit that act. The presence of mens rea is necessary to constitute instigation. Asking the deceased to seek partition from his joint family or failure by petitioner No. 2 to give her salary to the deceased cannot be taken as the circumstances to infer that there was a conspiracy amongst the petitioners to instigate Anipal to commit suicide or that in furtherance of the conspiracy they abetted the suicide. If the deceased Anipal due to infirmity of mind, under some strain or depression has committed suicide, the blame cannot be placed upon petitioner No. 2 or the other petitioners.

15. Thus, under the circumstances, I find that the complainant has failed to provide sufficient evidence on record which may justify the framing of charges u/s 120B or Section 306 IPC read with Section 120B IPC. In my aforesaid view, I seek strength from the judgment of the Supreme Court in the matter of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, .

16. In view of the discussion above, revision is allowed and the charges framed against the petitioners are set aside. They are accordingly discharged.