
(2010) 01 DEL CK 0046

In the Delhi High Court

Case No : Criminal Rev. P. No. 454 of 2008 and Criminal M.A. No. 9621 of 2008

Shri Dinesh

APPELLANT

Vs

The State Delhi (Govt. of NCT)

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Citation : (2010) 2 ILR Delhi 523

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : R.S. Malik, for the Appellant; Arvind Kumar Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

V.B. Gupta, J.—Present petition has been filed against order dated 23rd July, 2008, passed by Additional Session Judge, Delhi, for setting aside the order on charge as well as charge framed against the petitioner.

2. As per allegations made in the FIR deceased (Deepak) and petitioner Dinesh were cousins. There was some discord between them with regard to the transfer of some property by their grandmother in the name of petitioner to the exclusion, inter-alia of the deceased. It is alleged that on 23rd July, 2005, at about 7 P. M. deceased called petitioner at his house for some conversation. At about 9.10 P.M., when complainant Amit (who is brother of deceased), came back to his house, he found the door bolted from inside. He peeped into the room down through the door and saw that deceased had hanged himself with a plastic rope by tying the same with T-iron rod of the roof with the support of the washing machine lying on the floor. Complainant opened the door and raised an alarm and immediately neighbours also came. Deceased was brought down on the ground and was taken to a nursing home, where he was declared as "brought dead".

3. It is alleged by the complainant that, petitioner used to pick up quarrel

frequently with him (complainant) and his family members. Thus, the complainant has full suspicion that his brother Deepak was tortured and harassed by the petitioner, which compelled/forced Deepak to commit suicide.

4. On basis of this complaint, a case u/s 306 IPC was registered against the petitioner. After completion of investigation, challan was filed in the Court.

5. It is contended by learned Counsel for the petitioner that charge has been framed against the petitioner without there being an iota of evidence of any abetment by the petitioner to commit suicide by deceased. In the FIR, there are no allegations that petitioner ever abetted the deceased to commit suicide. FIR in question does not disclose the commission of offence punishable u/s 306 IPC, as the essential ingredients of the offence defined u/s 107 IPC are not fulfilled.

6. In support of its contentions, learned Counsel for petitioner referred the following judgments;

(i) Hira Lal Jain v. State 2000 VI AD (Delhi) 902;

(ii) Ms. Taposhi Chakervarti v. State 2000 VII AD (Delhi) 629 and;

(iii) Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, .

7. On the other hand, it is contended by learned Counsel for the State that there are specific allegations against petitioner in the FIR, that he used to pick up quarrel with deceased and complainant from time to time, over the issue of the property, belonging to the grandmother of the complainant. All the documents are in possession of the petitioner. On this issue, petitioner harassed and tortured deceased, to such an extent which forced deceased to commit suicide. Petitioner came to the house of deceased and both of them, were together just before deceased committed suicide. At this stage, the Court is not required to meticulously judge the truth, the veracity and effect of the evidence. Only prima facie, allegations made in the FIR are to be seen. 8. As per allegations made in the FIR, as petitioner has harassed and tortured the deceased immediately before he committed suicide, there is sufficient material on record, to frame charge against petitioner and no infirmity can be found in the impugned order.

9. Section 306 of IPC reads as under;

306. Abatement of suicide.-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

10. Abetment has been defined in Section 107 of IPC, which states:

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.

Explanation1.- 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.

11. Above given ingredients are essential to complete abetment of a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107 of IPC.

12. In Sohan Raj Sharma Vs. State of Haryana, , the Court observed;

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing

It further observed;

In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide

13. Similarly in Sanju @ Sanjay Singh Sengar (Supra), it was held:

The word "instigate" denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional

14. In the present case, there is no material on the record which shows that the suicide has been abetted by the petitioner. There is no suicide note or any eye witness to the quarrel between petitioner and the deceased. In the FIR, no averment has been made with regard to the petitioner's instigating the deceased, for suicide.

15. After careful perusal of the facts and circumstances of the case, even by any wild stretch of imagination, no ground is made out for holding the petitioner, prima facie liable for abetment of suicide of the deceased. The entire charge rests on the basis of mere assumptions and has no merit. To attract the ingredients of abetment, intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary, which is not there at all.

16. Under these circumstances, the present revision petition is allowed and the impugned order on charge as well as charge dated 27th July, 2008 framed against the petitioner by the trial court are set aside. The petitioner is discharged in this case.

17. Surety and bail bond stands cancelled.

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18. Disposed of being infructuous.

19. Trial court record be sent back.