
(2022) 04 CAL CK 0041
In the Calcutta High Court
Case No : CRR No. 2840 Of 2019

Shyamal Das @ Sanu.

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 107, 306

Code Of Criminal Procedure, 1973 — Section 161, 207, 228, 277, 309, 482

Citation : (2022) 04 CAL CK 0041

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Kallol Mondal, Saswati Ghosh Sinha, Krishan Ray, Souvik Das, Anamitra Banerjee, Ranabir Roy Chowdhury, Sandip Chakraborty

Final Decision : Dismissed

Judgement

Tirthankar Ghosh, J

The present revisional application has been preferred challenging the order dated 19.08.2019 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Bongaon, North 24-Parganas wherein the Learned Trial Court was pleased to refuse the prayer for discharge advanced on behalf of the petitioner in connection with S.C. No. 241 of 2018 corresponding to G.R. No. 1440 of 2018 arising out of Gaighata Police Station Case No. 514 of 2018 dated 06.06.2018.

Records of the revisional application reflect that the instant case was registered on the basis of a complaint filed by one Panchu Gopal Bairagi with the Officer-in-Charge, Gaighata Police Station on or about 06.06.2018, pursuant to which Gaighata Police Station Case No. 514 of 2018 was registered for investigation. On conclusion of investigation the Investigating Authorities submitted charge-sheet under Section 306 of the Indian Penal Code against the present petitioner. In course of proceedings documents under Section 207 of the Code of Criminal Procedure were supplied to the accused/petitioner and the case was thereafter committed to the Court of Sessions and prior to consideration of charges a

discharge petition was preferred and main crux of the application under Section 227 of the Code of Criminal Procedure (discharge petition) was that the documents relied upon by the prosecution, prima facie, fails to connect the present petitioner with the alleged offence and as such no charge can be framed under Section 306 of the Indian Penal Code. The Learned Trial Court on an appreciation of the materials elaborately dealt with the issues particularly in relation to the materials which surfaced in course of the investigation. The Learned Court assessed the dying declaration, the different materials appearing in the Case Diary relating to the relationship existing between the present petitioner and the deceased for a considerable period of time and more particularly the statement of the witnesses and the attending circumstances.

Mr. Kallol Mondal, learned Advocate appearing for the petitioner criticized the order passed by the learned Trial Court, refusing to discharge the petitioner. Learned Advocate submits that the alleged dying declaration relating to the transcripts of the diary of the deceased and the contents of the same taken as a whole do not by any stretch of imagination make out an offence under Section 306 of the Indian Penal Code thereby asking the present petitioner to face the ordeal of trial. Learned Advocate submits that the deceased could have been the best witness if she was alive regarding the circumstances prevailing and if the contents of the suicide note is taken in its entirety, she has held that 'no one is responsible'. Learned Advocate relies upon the following decisions:

Annakali Dutta & Ors. –Vs. – State, 1990 SCC OnLine Cal 80; Sanju alias Sanjay Singh Sengar –Vs. – State of M.P., (2002) 5 SCC 371; Subha Narayan –Vs. – State of West Bengal & Anr., 2006 SCC OnLine Cal 53; Bishnu Chakraborty & Anr. –Vs. – State of West Bengal, 2006 SCC OnLine Cal 549; Madan Mohan Singh – Vs. – State of Gujarat & Anr., (2010) 8 SCC 628; Sri Swapan Roy & Anr. –Vs. – State of West Bengal & Anr., 2016 SCC OnLine Cal 1790 and State of West Bengal –Vs. – Indrajit Kundu & Ors., (2019) 10 SCC 188.

Learned Advocate appearing for the State produces the Case Diary and draws the attention of this Court to the statement of the different witnesses more particularly the relations and invites the Court to read the suicide note along with statement of the witnesses. It is the stand of the State that the present petitioner is responsible for abetting the suicide and as such at this juncture when the stage is for consideration of charge there is no scope for interference.

The authorities relied upon by the learned advocate appearing for the petitioner requires consideration in the background of the facts of the present case. In State of West Bengal –Vs. – Indrajit Kundu & Ors (supra) the Hon'ble Supreme Court was pleased to observe that the suicide committed by the victim cannot be said to be the result of any action of the accused persons nor the commission of suicide by the victim was the only course open to her due to action of the accused. Further it was observed that there was no goading or solicitation or insinuation by any of the accused/respondents to the victim to commit suicide and thereafter the Hon'ble Supreme Court was pleased to quash the proceedings.

In *Madan Mohan Singh -Vs. - State of Gujarat & Anr. (supra)* the Hon'ble Supreme Court on perusal of the suicide note (a document of 15 pages) was pleased to observe that the note only express an anguish of the driver who felt that the accused had wronged him. It was held in the said decision that if a person had grudge against the superior officer and committed suicide on account of the grudge, it would not be proper for a charge to be considered/framed under Section 306 of the Indian Penal Code and as such the proceedings may quashed. In *Swapan Roy & Anr. -Vs. - State of West Bengal & Anr. (supra)* relied upon by the learned Advocate appearing for the petitioner the facts of the case relate to an incident wherein the informant after a lapse of two years of the death of her son made allegations against the matrimonial uncle and aunt of the victim regarding their liability for her son's death and in such background of facts the Hon'ble High Court after considering the facts held that the allegations failed to make out a case of abetment under Section 107 of the Indian Penal Code and as such interfered with the continuation of the proceedings and quashed the same. In *Bishnu Chakraborty -Vs. - State of West Bengal (supra)* relied upon by the petitioner it was observed that mere harassment or ill-treatment or even physical torture may not be sufficient cause for justifying applicability of Section 306 of the Indian Penal Code and Court is required to weigh the materials carefully so as to find out if the alleged act of ill-treatment was a proximate cause for the commission of suicide by the victim. On consideration of the facts of the case the Hon'ble High Court was pleased to quash the proceedings. Reliance was also placed by the petitioner in respect of *Sanju -Vs.- State of M.P. (supra)* wherein the interpretation of definition of 'abetment' under Section 107 of the Indian Penal Code was a subject of consideration. The fact of the case related to a quarrel having taken place on 25.07.1998 and the deceased had been found hanging on 27.07.1998. The prosecution story therein was that abusive language was used by the accused, who had told the deceased "to go and die". In the background of such facts it was observed by the Hon'ble Supreme Court that it is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. The same is in a fit of anger and emotion. The other point which was considered regarding the delay of two days after such quarrel having taken place. The decision relied upon has a different factual background and deals with factual interpretation where the deceased has committed suicide pursuant to a quarrel and abuse hurled at the spur of the moment or in a fit of anger. The factual circumstances, thus, do not apply to the present case which is being dealt with. It has been held by the Hon'ble High Court that the instigation was a proximate cause for commission of suicide was absent in the case. The Hon'ble High Court was pleased to quash the proceedings under Section 482 of the Code of Criminal Procedure. In *Annakalli Dutta -Vs. State (supra)* it was observed that owing to occasional torture and ill-treatment the victim/deceased has committed suicide and there was no active suggestion or goading by way of express solicitation, insinuation or encouragement so as to hold that the accused were responsible for commission of such crime and as such the charges under Section 306 of the Indian Penal

Code in the said case was held to be not applicable.

I have considered the submissions advanced on behalf of both the parties and before analysing the same I intend to rely upon some of the verdict of the Hon'ble Supreme Court. In Chitresh Kumar Chopra -Vs. State (Government of NCT of Delhi), (2009) 16 SCC 605, the Hon'ble Supreme Court was pleased to deal with the interpretation of the word 'abetment' as also the assessment of a Court of Law at the stage of consideration of charge. Paragraphs 14 to 20, 24 and 25 of the judgment are relevant which are as follows:

"14. Therefore, the question for consideration is whether the allegations levelled against the appellant in the FIR and the material collected during the course of investigations, would attract any one of the ingredients of Section 107 IPC?

15. As per clause Firstly in the said section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in IPC. The meaning of the said word was considered by this Court in Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] .

16. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

19. As observed in Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , where the accused by his acts or by a continued course of conduct creates such

circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

24. In the light of the material on record, in our judgment, it cannot be said that the trial court was in error in drawing an inference that the appellant had "instigated" the deceased to commit suicide and therefore, there was ground for presuming that the appellant has committed an offence punishable under Section 306 read with Section 34 IPC.

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] .)"

In *Praveen Pradhan -Vs. - State of Uttaranchal & Anr.*, (2012) 9 SCC 734, relying upon the aforesaid judgment the Hon'ble Supreme Court in paragraph 18 was pleased to observe as follows:

"18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC."

In *Saranya -Vs. - Bharathi & Anr.*, (2021) 8 SCC 583, the Hon'ble Supreme Court in paragraphs 10 and 11 has set out a guideline to be followed:

"10. Before considering the rival submissions of the parties, few decisions of this Court on the principles which the High Court must keep in mind while exercising the jurisdiction under Section 482 CrPC/at the stage of framing of the charge while considering the discharge application are required to be referred to and considered.

11. In *Deepak [State of M.P. v. Deepak]*, (2019) 13 SCC 62 : (2019) 4 SCC (Cri) 521] , to which one of us (Dr D.Y. Chandrachud, J.) is the author, after considering the other binding decisions of this Court on the point, namely, *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , *State of Rajasthan v. Fatehkaran Mehdu* [*State of Rajasthan v. Fatehkaran Mehdu*, (2017) 3 SCC 198 : (2017) 2 SCC (Cri) 40 : (2017) 1 SCC (L&S) 545] , and *Chitresh Kumar Chopra v. State (NCT of Delhi)* [*Chitresh Kumar Chopra v. State (NCT of Delhi)*, (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] , it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not."

After considering the various judgments on the issue of abetment to commit suicide, I find that one of the interpretation regarding instigation which has been referred to by the Hon'ble Supreme Court is that 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 then in that case instigation may have to be inferred from such circumstances. In the

present case the suicide note at its end towards the bottom reflect regarding the mental status of the deceased wherein she has expressed regarding her chastity, the other statement under Section 161 of the Code of Criminal Procedure reflects that the deceased and the petitioner had been thickly associated with each other and were seen at different places which were within the social view. The act of disowning the deceased subsequently, fundamentally satisfies the requirements, particularly at the stage of consideration of charge, when the deceased was left with no other option. Additionally it has been settled by the Hon'ble Supreme Court that the assessment of the materials at the stage of consideration of charge is completely different from the appreciation of evidence at the stage of conclusion of the trial when the Court is to either convict or acquit the accused. Again the provisions of Section 228 of the Code of Criminal Procedure states that the Court is to form an opinion on the available materials and in a case of grave suspicion is required to frame a charge.

Having regard to the observations made above, I am of the opinion that the prosecution has prima facie made out a case under Section 306 of the Indian Penal Code for framing of charge and as such no interference is called for in respect of the order dated 19.08.2019 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Bongaon, North 24-Parganas.

Thus, the revisional application being CRR 2840 of 2019 is dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The learned trial Court is directed to proceed with the trial as expeditiously as possible by adhering to the provisions of Section 309 of the Code of Criminal Procedure.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.