
(2015) 08 SC CK 0067

In the Supreme Court Of India

Case No : Criminal Appeal No. 2086 of 2014

State of Kerala and Others

APPELLANT

Vs

S. Unnikrishnan Nair and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228, 482

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 107, 109, 182, 194, 195

Citation : (2015) 3 ACR 2375 : (2015) 10 AD (SC) 448 : (2015) 9 AD (SC) 83 : AIR 2015 SC 3351 : (2015) 3 CCR 343 : (2015) CriLJ 4495 : (2015) 3 Crimes 293 : (2016) 1 JCC 25 : (2015) 3 JLJR 486 : (2015) 4 MLJ(Cri) 122 : (2016) 1 NCC 205 : (2015) 4 PLJR 154 : (20

Hon'ble Judges : Dipak Misra, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : L. Nageshwara Rao, Senior Advocate, Ramesh Babu M.R. and Abdul Rashed, for the Appellant; Prashant Bhushan, Govindjee, O. Kuttan, P.K. Dey, T.A. Khan and B.V. Balaram Das, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J—The seminal question that emerges for consideration in this appeal is whether the High Court of Kerala at Ernakulam, is justified in quashing the F.I.R. lodged against the Respondents for the offences punishable Under Sections 182, 194, 195, 195A and 306 of the Indian Penal Code in exercise of jurisdiction Under Section 482 of the Code of Criminal Procedure by the impugned order dated 14th December, 2012.

2. At the outset, we must state that Mr. L. Nageshwar Rao, learned senior Counsel appearing for the State has submitted that there is no grievance as far as the quashment of the offences punishable Under Sections 182, 194, 195, 195A Indian Penal Code is concerned. Therefore, the central challenge pertains to quashing of the offence punishable Under Section 306 Indian Penal Code

3. The facts in detail need not be stated, for the controversy really lies in a narrow compass. As the factual matrix would unfurl, one Sampath was alleged to have been beaten to death by the investigating agency, that is, the State police, while he was in custody. His brother, Murukeshan, preferred W.P. (C) No. 13426 of 2010 and during the pendency of the writ petition, he filed I.A. No. 16944 of 2010. His prayer was basically for issuance of a direction to the Director, Central Bureau of Investigation (C.B.I.) to submit a detailed report regarding the investigation so far conducted and production of the entire case diary. As is manifest, he was not satisfied with the investigation conducted by the State police and his prayer was for better and more rigorous investigation. Be it noted, the High Court by an earlier order had directed the C.B.I. to investigate as there were certain allegations against the State police.

4. While dealing with the interlocutory application filed by Murukeshan, the brother of Sampath, the High Court has opined thus:

The re-constitution of the investigation team by inducting one Haridath as the Chief Investigating Officer, naturally engendered a fear in the mind of the Petitioner that some attempt was afoot to deflect the course of investigation. It is that fear which has necessitated this application.

From the aforesaid, it is clear as crystal that Haridath was the Chief Investigating Officer. After the investigating team was constituted by the higher officer, the High Court, as the order would further unveil, had given immense protection to Haridath as far as investigation is concerned. We may profitably reproduce the said paragraph hereunder:

The induction of Haridath at the helm of affairs in the investigation of Sampath Murder Case need not cause any concern either to the Petitioner or to anybody else. Haridath is believed to be an officer of proven integrity and of bold disposition. He shall, however, submit a report every three weeks, under intimation to this Court, to the Chief Judicial Magistrate, Ernakulam, regarding the progress of the investigation. The Chief Judicial Magistrate shall also monitor the investigation and if need be call for the case diary for his perusal. The present team of investigation shall not be dislocated or changed without the orders of this Court. Should any member of the investigating team feel that there is any interference with his freedom either from the C.B.I. or from elsewhere, such member shall be free to address this Court through the Registrar General in a sealed cover.

5. The aforesaid paragraph makes it quite vivid that the High Court had really reposed faith in Haridath and also granted him freedom to investigate and liberty to address the court through the Registrar General in a sealed cover. The said order was passed on 22nd December, 2010.

6. She said Haridath was assisted by a team of officers which included the Respondent Nos. 1 and 2. While the investigation was in progress, Haridath committed suicide on 15th March, 2012, leaving behind a suicide note. The said

note reads as follows:

Rajan and Unnikrishnan (CBI TVPM) are responsible for my this situation. Nobody else has any role in this. They who compelled me to do everything and cheated me and put me in deep trouble. Advocate Seekumar also has some role. CJM Sri Vijayan also put pressure on me.

Nobody else has any role in this.

On the basis of the aforesaid suicide note, the criminal law was set in motion and the Respondents were arrayed as accused. The said situation compelled them to invoke the inherent jurisdiction of the High Court Under Section 482 of the Code of Criminal Procedure, and eventually, as has been stated earlier, the High Court quashed the same.

7. It is submitted by Mr. Rao, learned senior Counsel that the High Court has fallen into gross error by quashing the criminal proceeding inasmuch as it is a fit case where there should have been a trial. He has taken us through the statement of the wife of the deceased and the other witnesses. Learned senior Counsel has also commended us to the authority in Praveen Pradhan Vs. State of Uttranchal and Another, (2012) 10 JT 481 : (2012) 10 JT 478 : (2012) 9 SCALE 745 : (2012) 9 SCC 734 : (2012) AIRSCW 5372 , to show that the instant case is one where ingredients of Section 107 of Indian Penal Code have been met with.

8. Mr. P.K. Dey, learned Counsel appearing for the C.B.I., has also supported the submissions of Mr. Rao.

9. Mr. Prashant Bhushan, learned Counsel appearing for the Respondent Nos. 1 and 2, per contra, would contend that the High Court has justifiably quashed the investigation, for Haridath, the deceased, was holding a superior rank and there is nothing to suggest that the Respondents had instigated him or done any activity that had left the deceased with no option but to commit suicide. He has placed reliance upon Netai Dutta Vs. State of West Bengal, (2005) CriLJ 1737 : (2005) 3 JT 46 : (2005) 2 SCC 659 and M. Mohan Vs. The State represented by The Deputy Superintendent of Police, AIR 2011 SC 1238 : (2011) CriLJ 1900 : (2011) 2 JCC 1078 : (2011) 3 JT 32 : (2011) 2 RCR(Criminal) 272 : (2011) 3 SCALE 78 : (2011) 3 SCC 626 : (2011) 2 SCC(Cri) 1 : (2011) 3 SCR 437 : (2011) AIRSCW 1601 : (2011) 2 Supreme 220 .

10. To appreciate the rivalised submissions in the obtaining factual matrix, it is necessary to understand the concept of abatement as enshrined in Section 107 Indian Penal Code. The said provision reads as follows:

107. 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.

Explanation 1.-A person who, by wilful misrepresentation, or by wilful 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.

Explanation 2-Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

11. The aforesaid provision was interpreted in *Kishori Lal Vs. State of M.P.*, AIR 2007 SC 2457 : (2007) 4 CTC 158 : (2007) 8 SCALE 591 : (2007) 10 SCC 797 : (2007) 7 SCR 1051 : (2007) AIRSCW 4380 : (2007) 4 Supreme 674 by a two-Judge Bench and the discussion therein is to the following effect:

Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in Indian Penal Code. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.

12. In *Amalendu Pal @ Jhantu Vs. State of West Bengal*, AIR 2010 SC 512 : (2009) 4 Crimes 192 : (2010) 1 DMC 23 : (2009) 14 JT 195 : (2009) 13 SCALE 663 : (2010) 1 SCC 707 : (2009) 15 SCR 836 : (2009) 10 UJ 4917 dealing with expression of abetment the Court observed:

The expression "abetment" has been defined Under Section 107 Indian Penal Code which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause Firstly or to do anything as stated in clauses Secondly or Thirdly of Section 107 Indian Penal Code. Section 109 Indian Penal Code provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned Counsel for the Respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 Indian Penal Code only would be attracted. According to him, a case of abetment of suicide is made out as provided for Under Section 107 Indian Penal Code.

13. As we find from the narration of facts and the material brought on record in the case at hand, it is the suicide note which forms the fulcrum of the allegations and for proper appreciation of the same, we have reproduced it hereinbefore. On a plain reading of the same, it is difficult to hold that there has been any abetment by the Respondents. The note, except saying that the Respondents compelled him to do everything and cheated him and put him in deep trouble, contains nothing else. The Respondents were inferior in rank and it is surprising that such a thing could happen. That apart, the allegation is really vague. It also baffles reason, for the department had made him the head of the investigating team and the High Court had reposed complete faith in him and granted him the liberty to move the court, in such a situation, there was no warrant to feel cheated and to be put in trouble by the officers belonging to the lower rank. That apart, he has also put the blame on the Chief Judicial Magistrate by stating that he had put pressure on him. He has also made the allegation against the Advocate.

14. In *Netai Dutta* (supra), a two-Judge Bench, while dealing with the concept of abetment Under Section 107 Indian Penal Code and, especially, in the context of suicide note, had to say this:

In the suicide note, except referring to the name of the Appellant at two places, there is no reference of any act or incidence whereby the Appellant herein is alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the Appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

Apart from the suicide note, there is no allegation made by the complainant that the Appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the Appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the Appellant. The prosecution initiated against the Appellant would only result in sheer harassment to the Appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the First Information Report against the Appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the Appellant herein. We find that this is a fit case where the extraordinary power Under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the Appellant and accordingly allow the appeal.

15. In *M. Mohan* (supra), while dealing with the abatement, the Court has observed thus:

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person Under Section 306 Indian Penal Code there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

16. As far as Praveen Pradhan (*supra*), is concerned, Mr. Rao, has emphatically relied on it for the purpose that the Court had declined to quash the F.I.R. as there was a suicide note. Mr. Rao has drawn out attention to paragraph 10 of the judgment, wherein the suicide note has been reproduced. The Court in the said case has referred to certain authorities with regard to Section 107 Indian Penal Code and opined as under:

In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force 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 Code of Criminal Procedure.

Thus, the case is required to be considered in the light of aforesaid settled legal propositions.

In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the Appellant, upon non-fulfillment of which, he would be mercilessly harassed by the Appellant for a prolonged period of time. He had also been forced to work continuously for a long durations in the factory, vis-?-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, "had there been any other person in his place, he would have certainly committed suicide" is what makes the present case distinct from the aforementioned cases considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this Court as

regards the impugned judgment and order of the High Court.

17. We have quoted in extenso from the said judgment and we have no hesitation in stating that the suicide note therein was quite different, and the Court did think it appropriate to quash the proceedings because of the tenor and nature of the suicide note. Thus, the said decision is distinguishable regard being had to the factual score expositied therein.

18. Coming to the case at hand, as we have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, we are disposed to think that the High Court is justified in quashing the proceeding, for it is an accepted position in law that where no prima facie case is made out against the accused, then the High Court is obliged in law to exercise the jurisdiction Under Section 482 of the Code and quash the proceedings. [See V.P. Shrivastava Vs. Indian Explosives Ltd. and Others, (2010) 4 BC 436 : (2010) 159 CompCas 529 : (2010) 10 JT 479 : (2010) 10 SCALE 177 : (2010) 10 SCC 361 : (2011) 105 SCL 234]

19. Before parting with the case, we are impelled to say something. Mr. Bhushan, learned Counsel appearing for the Respondent No. 1 & 2 has drawn our attention to a facet of earlier judgment of the High Court wherein it has been mentioned that at one time the deceased was pressurised by some superior officers. We have independently considered the material brought on record and arrived at our conclusion. But, regard being had to the suicide note and other concomitant facts that have been unfurled, we are compelled to recapitulate the saying that suicide reflects a "species of fear". It is a sense of defeat that corrodes the inner soul and destroys the will power and forces one to abandon one's own responsibility. To think of self-annihilation because of something which is disagreeable or intolerable or unbearable, especially in a situation where one is required to perform public duty, has to be regarded as a non-valiant attitude that is scared of the immediate calamity or self-perceived consequence. We may hasten to add that our submission has nothing to do when a case Under Section 306 Indian Penal Code is registered in aid of Section 113A of the Evidence Act, 1872.

20. In the result, we do not perceive any merit in the appeal and the same stands dismissed accordingly.