

(2015) 08 MP CK 0075

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 412 of 2015

Vallabh Kumar Gandhi and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228(1)(a), 397, 401
Penal Code, 1860 (IPC) — Section 147, 149, 294, 306, 323

Citation : (2015) 08 MP CK 0075

Hon'ble Judges : J.K. Jain, J

Bench : Single Bench

Final Decision : Disposed off

Judgement

J.K. Jain, J—This revision petition has been filed u/s. 397 read with Section 401 of the Cr.P.C. against the order dated 20.2.2015 passed by Addl. Sessions Judge, Ratlam in S.T. No. 23/2015, whereby framed the charges against the applicants.

2. Brief facts of the case are that the applicants No. 1 to 4 and deceased Abhay Kumar are real brothers, whereas applicant No. 5 is their maternal Uncle. On 9.11.2013, a Merg No. 54/2013 was registered at Police Station Manak Chowk, Ratlam that an unknown person has committed suicide by jumping under a running train. The dead body was identified as body Abhay Kumar. An enquiry was conducted and it revealed that before the incident, applicants insulted and manhandled the deceased Abhay Kumar, therefore, deceased Abhay Kumar committed suicide. On the basis of enquiry report, Crime No. 69/2013 for the offence punishable u/s. 294, 306, 506 Part- II has been registered against the applicants. Eventually, a final report was filed against the applicants. After considering the material on record, by the impugned order learned Addl. Sessions Judge framed the charges against the applicants for the offence punishable u/s. 147, 323 read with Section 149 (two counts), 294, 506 (Part-II) and 306 of the I.P.C.

3. Learned counsel for applicants submitted that from perusal of entire

prosecution story and the material on record, there is no evidence to show that the applicants have instigated the deceased to commit suicide.

4. Learned counsel for applicants further submitted that as per prosecution case, there had been a quarrel between the parties on 5.11.2013 and after four days of the alleged incidence of quarrel, the deceased committed suicide on 9.11.2013. Therefore, there is no nexus between the quarrel and the commission of suicide by the deceased. He submits that for constituting an offence u/s. 306 of I.P.C., the necessary ingredient is an abetment and mens rea to instigate the deceased for committing suicide which is absent. There is no material to frame charges against the applicants for the offence punishable u/s. 306 of the I.P.C. For this purpose, he cited many judgments of this Court as well as of Hon''ble Apex Court.

5. On the other hand, learned Dy. Govt. Advocate supported the impugned order and submitted that learned Addl. Sessions Judge after considering the material on record framed the charges u/s. 306 of I.P.C., therefore, the revision is liable to be dismissed.

6. For appreciating the arguments of learned counsel for the parties, it will be useful to refer the relevant portion of the statement of wife of deceased Abhay Kumar viz Smt. Suman, which reads as under :-

The statements of other witnesses, in sum and substance, are the same as of statement of wife of deceased-Smt. Suman.

7. From the aforesaid statement, it reveals that the deceased had filed a civil suit for declaration, permanent injunction and partition against the applicants claiming share in the ancestral house viz. House No. 84-85, Dhan Mandi, Ratlam. On 5.11.2013, there was a quarrel between the applicants and the deceased and during that quarrel, applicants insulted and manhandled the deceased and also threatened to kill him and after four days of this incident i.e. on 9.11.2013, deceased committed suicide. From these facts, it cannot be inferred that the applicants No. 1 to 4 who are real brothers of deceased and applicant No. 5 who is maternal Uncle of deceased had any mens rea to instigate the deceased to commit suicide.

8. Hon''ble Apex Court in the case of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 SC 1998 : (2002) CriLJ 2796 : (2002) 1 DMC 773 : (2002) 1 JT 248 Supp : (2002) 4 SCALE 270 : (2002) 5 SCC 371 : (2002) 3 SCR 668 : (2002) 1 UJ 769 : (2002) AIRSCW 2035 : (2002) 3 Supreme 650 , held that the word "instigation" denotes incitement or urging to do some drastic inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is necessary. In the present case, after scanning of material which is placed along with the final report, there is no iota of evidence to infer that the applicants have instigated the deceased to commit suicide.

9. This Courts finds that there is no evidence that soon before the incident, the

applicants had any quarrel with the deceased and thereafter, the deceased committed suicide. Moreover, even if some quarrel took place between the applicants and the deceased in regard to their ancestral property for which a civil suit is pending, it cannot be said that the applicants had abetted the deceased to commit suicide. In this regard, the decision of Supreme Court in the case of Assoo Vs. State of M.P., (2012) 1 DMC 79 is relevant. Hence, I am of the considered view that the learned Addl. Sessions Judge has erred in law in framing the charges against the applicants u/s. 306 of the I.P.C.

10. Resultantly, this revision deserves to be and is hereby allowed and the applicants are hereby discharged from the charge u/s. 306 of the I.P.C. The matter is remitted back to learned Addl. Sessions Judge for re-hearing on the question of framing of charge and pass an appropriate order. If required, learned Addl. Sessions Judge may exercise power u/s. 228(1)(a) of Cr.P.C. Parties are also directed to appear before the learned Addl. Sessions Judge on 01.09.2015.

11. With the aforesaid, this revision petition stands disposed of.