

(2024) 03 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 14788 Of 2023

Virendra Patel

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 14-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174, 228, 482
Indian Penal Code, 1860 — Section 107, 109, 306, 420

Citation : (2024) 03 MP CK 0026

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : Neeraj Singh Chouhan, K.S. Baghel, Sheshraj Kushwaha

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

1. Case diary is available.

2. This application under Section 482 of Cr.P.C. has been filed for quashment FIR in Crime No.437/2022 registered at Police Station Bichiya, District Rewa for offence under Sections 306, 420 of IPC as well as further proceedings in criminal case pending before the Court of Additional Sessions Judge, Rewa arising out of aforesaid FIR.

3. It is the case of prosecution that an information was received from Sanjay Gandhi Memorial Hospital Rewa on 07/11/2022 at 08:50 AM that the deceased Dilip Bhartiya has been brought in dead condition, who has died on account of hanging. The proceedings under Section 174 of Cr.P.C. were registered and an inquest enquiry was conducted. Statements of witnesses were recorded and accordingly, Police after conducting the preliminary enquiry registered the case for offence under Sections 306, 420 of IPC. According to the statement made by Pradeep Kumar Patel, brother of the deceased, he is a farmer by profession and he has two sons. Pradeep Kumar Patel has three sisters and one more brother.

All his three sisters are married and they are residing in their matrimonial house. Pradeep Kumar Patel and his brother namely Dilip Bhartiya (deceased) are residing jointly with their parents. Father of Pradeep Kumar Patel has transferred 5 acres of land each to both of his sons. It was further alleged that both the brothers have joint bank account. About three years back, his younger brother Dilip Bhartiya met with Virendra Patel and enquired about formalities for taking loan for establishing Polyhouse. Thereafter, Virendra Patel started frequently visiting his house. It is alleged that Virendra Patel and his partner Manish Patel took Pradeep Kumar Patel and deceased Dilip Bhartiya to Union Bank of India, Transport Nagar, Dhekaha along with entire record and got the papers concerning loan prepared and took the signatures of both the brothers, i.e. Pradeep Kumar Patel and deceased Dilip Bhartiya on those papers. Their signatures were also obtained on voucher. When deceased Dilip Bhartiya informed his father about the loan taken for the purposes of establishing Polyhouse, then his father refused to take loan. However, thereafter accused Virendra Patel and his partner Manish Patel got a KCC prepared in the name of both the brothers i.e. Pradeep Kumar Patel and deceased Dilip Bhartiya and accordingly, withdrew an amount of Rs.2,50,000/- from the joint account of Pradeep Kumar Patel and deceased Dilip Bhartiya on 24/11/2020. Rs.1,00,000/- on 22/03/2021 and Rs.2,25,000/- on 15/12/2020 from the account of Pradeep Kumar Patel and in all Rs.5,75,000/- were withdrawn by them and after including interest, Pradeep Kumar Patel and deceased Dilip Bhartiya had a loan of Rs.7,00,000/-. Deceased Dilip Bhartiya and his family members came to know about the fraudulent loan account about six months back, as a result, his brother was very upset. Virendra Patel had got the amount transferred in the account of his Rudra Grah Udyog. In spite of repeated requests for return of the amount, his brother was threatened thereby causing mental harassment to him. Accordingly, on 06/11/2022 at about 10:30 in the night, his younger brother Dilip Bhartiya has committed suicide by hanging. Similar are the statements of other witnesses.

4. By referring to the statements of witnesses, it is submitted by counsel for the applicant that even if the entire allegations are accepted, then it would be clear that no offence under Sections 306 or 420 of IPC would be made out. If any cheating was done with the deceased, then he had an opportunity to approach the Police for lodging FIR against the applicant but if he chose the easier method of putting his life to an end, then it cannot be said that applicant had instigated the deceased to commit suicide. Accordingly, it is prayed that ingredients of abetment as provided under Sections 107 & 109 of IPC are not there.

5. Counsel for the applicant has also relied upon the judgments passed by Supreme Court in the case of V.P. Singh Etc. Vs. The State of Punjab & Ors. decided on 24/11/2022 in Criminal Appeal No.2103/2010 as well as in the case of Sanju @ Sanjay Singh Sengar Vs. State of M.P. reported in (2002) 5 SCC 371 and in the case of Netai Dutta Vs. State of W.B. reported in (2005) 2 SCC 659.

6. Per contra, application is vehemently opposed by counsel for the respondents.

It is submitted that not only the applicant had fraudulently got the KCC prepared in the joint name of Pradeep Kumar Patel and deceased Dilip Bhartiya but he fraudulently withdrew the amount of Rs.5,75,000/- which ultimately went to Rs.7,00,000/- after adding interest. Thus, it is clear that prima facie case for offence under Section 420 of IPC is made out. So far as the allegations of abetment of committing suicide is concerned, it is submitted that once a person has been deprived of his finances by illegally withdrawing the amount by fraudulently using his documents, then in given facts and circumstances of the case, offence under Section 306 of IPC would be made out warranting framing of charges and prosecution.

7. Heard learned counsel for the parties.

8. Before considering the allegations made against the applicant, this Court would like to consider the law governing the field.

9. Section 306 of I.P.C. reads as under :-

"306. Abetment 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" is defined under Section 107 of I.P.C. which reads as under :-

"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.

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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

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

11. The Supreme Court in the case of Chitresh Kumar Chopra vs. State (Government of NCT of Delhi) reported in (2009) 16 SCC 605, while dealing with the term "instigation", held as under :-

"16.....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.)."

12. The Supreme Court in the case of Praveen Pradhan vs. State of Uttaranchal and Others reported in (2012) 9 SCC 734 held as under :-

"17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh ((1991) 3 SCC 1), Surender v. State of Haryana ((2006) 12 SCC 375, Kishori Lal v. State of M.P. (2007) 10 SCC 797) and Sonti Rama Krishna v. Sonti Shanti Sree ((2009) 1 SCC 554)

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."

13. The Supreme Court in the case of Sanju @ Sanjay Singh Sengar vs. State of M.P. reported in (2002) 5 SCC 371 has held as under :-

"6. Section 107 IPC defines abetment to mean that a person abets the 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 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."

Further, in para 12 of the judgment, it is held as under:

"12. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation."

14. The Supreme Court in the case of Gangula Mohan Reddy vs. State of Andhra Pradesh reported in (2010) 1 SCC 750 needs mentioned here, in which Hon'ble Apex Court has held that "abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under section 306 IPC, there has to be a clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide. Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out. Hence, appellant's conviction, held unsustainable".

15. In the case of State of West Bengal vs. Orilal Jaiswal and Another reported in (1994) 1 SCC 73, the Supreme Court has held that "This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that that accused charged of abetting the offence of suicide should be found guilty."

16. The Supreme Court in the case of M. Mohan vs. State represented by the Deputy Superintendent of Police reported in AIR 2011 SC 1238 has held that

"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 is clear that in order to convict a person under Section 306, IPC 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."

17. The Supreme Court in the case of Kishori Lal vs. State of M.P. reported in (2007) 10 SCC 797 has held in para 6 as under:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. 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."

18. In the case of Amalendu Pal @ Jhantu vs. State of West Bengal reported in (2010) 1 SCC 707, the Supreme Court has held as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said

offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

14. The expression 'abetment' has been defined under Section 107 IPC 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 IPC. Section 109 IPC 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 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act of doing of that thing when in Explanation 2 it is provided as follows:

"Explanation 2.- Whoever, either prior to or at the time of the 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."

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC."

19. The Supreme Court in the case of Amit Kapur vs. Ramesh Chander and Another reported in (2012) 9 SCC 460 has held as under :-

"35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605 to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618 to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct

evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence."

20. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Instigation is to goad, urge forward, provoke, incite, urge or encourage to do an act. To satisfy the requirement of 'instigation', it is not necessary that actual word should be uttered but what constitutes 'instigation' necessarily is suggestive of the consequence. A reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused by his acts or omission has created such circumstances that the deceased was left with no other option except to commit suicide, in that case, 'instigation' can be inferred.

21. If the allegations made in the present case are considered in the light of law laid down by Supreme Court in the abovementioned judgments, then it is clear that by fraudulently withdrawing an amount of Rs.5,75,000/- from the account of deceased as well as Pradeep Kumar Patel thereby making them liable to repay the financed amount of Rs.7,00,000/- would certainly make out a prima facie case warranting framing of charges and prosecution of applicant under Section 306 of IPC.

22. An amount of Rs.7,00,000/- may be a huge amount for some and may be of irrelevant figure for others. Therefore, this Court cannot lay down a universal law that whenever an amount is fraudulently withdrawn from the account of the deceased and if deceased commits suicide, then no offence under Section 306 of IPC would be made out.

23. If the loan amount of Rs.7,00,000/- is not repaid, then it is well known that even the property which was kept as mortgage is liable to be attached and therefore, loan of Rs.7,00,000/- may deprive a person from the property which was mortgaged by way of security to the loan. Thus, the effect of loan which was created on account of fraudulent act of the applicant will have its different effects under the facts and circumstances of each and every case.

24. This Court in exercise of power under Section 482 of Cr.P.C. cannot quash the proceedings merely on the ground that on account of fraudulent withdrawal of amount from the account of deceased if loan amount of Rs.7,00,000/- is outstanding against the deceased, then under no circumstances it can be held that applicant had not instigated the deceased to commit suicide. If the deceased is likely to lose his property thereby raising concern about his future can also be circumstances where deceased may think that no other option is left except for putting his life to an end.

25. Furthermore, in order to frame charges, the Court is not required to conduct a roving enquiry and even the grave suspicion is sufficient to frame charges.

26. The Supreme Court in the case of P. Vijayan Vs. State of Kerala and Anr.

reported in 2010 Cri.L.J. 1427 has held as under:-

"10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

27. Under these circumstances, this Court is of considered opinion that there is sufficient material against the applicant for his prosecution under Section 306 of IPC.

28. So far as the allegation with regard to commission of cheating is concerned, the allegations are clear. It is the case of prosecution that the applicant took both the brothers, i.e. Pradeep Kumar Patel and deceased Dilip Bhartiya to bank along with their documents and got the loan papers as well as vouchers signed. When the father of deceased was told about the loan which was being taken by both the brothers, then he insisted that loan should not be taken. However, applicant not only fraudulently got the KCC prepared in the name of the brothers but also withdrew the amount of Rs.5,75,000/- which went up to Rs.7,00,000/-after including the interest.

29. Fraudulent preparation of KCC limit and fraudulent withdrawal of the amount from the account of the brothers including that of the deceased, would prima facie make out an offence under Section 420 of IPC.

30. So far as the judgment relied upon by the applicant in the case of V.P. Singh (supra) is concerned, in that case a student was reprimanded for misconduct in the College and on endeavor to take disciplinary action and to inform his father, the child committed suicide. Under those circumstances, it was held that no offence under Section 306 of IPC is made out.

31. So far as judgment passed in the case of Sanju @ Sanjay Singh Sengar (supra) is concerned, that aspect has already been taken note of by this Court.

32. So far as the judgment passed by Supreme Court in the case of Netai Dutta

(supra) is concerned, it appears that an employee was transferred and he did not join at the transferred place and after a period of two years, he sent a letter of resignation written in his own handwriting expressing his grievance of stagnancy of salary and also alleged that he was a victim of unfortunate circumstances. The company accepted his resignation with immediate effect and later on his body was found on the railway track and it was revealed that employee had committed suicide and under those circumstances it was alleged that no offence under Section 306 of IPC is made out.

33. Thus, this Court is of considered opinion that the judgments relied upon by the applicant are of no assistance to the applicant because the allegations against the applicant are completely different.

34. No other argument is advanced by counsel for the applicant.

35. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting quashment of FIR in Crime No.437/2022 registered at Police Station Bichiya, District Rewa for offence under Sections 306, 420 of IPC as well as further criminal proceedings arising out of said FIR.

36. Application fails and is hereby dismissed.