

(2005) 02 MP CK 0107
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 1889 of 2004

Vishnu Prasad

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 306

Citation : (2005) 3 MPLJ 23 : (2005) 3 RCR(Criminal) 777

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Ramesh Tamrakar, for the Appellant; J.K. Jain, Government Advocate, for the Respondent

Judgement

U.C. Maheshwari, J.

This revision petition is directed u/s 397/401 of Criminal Procedure Code (In brief "the Code") against the order dated 26-8-2004 passed by First Additional Sessions Judge, Sagar in S. T. No. 213/04 whereby the direction for framing the charges for an offence u/s 306 of Indian Penal Code has been given and in pursuance of it the same are framed.

The brief facts of the case are that one Chintu @ Vivek gave a loan of Rs. 15,000/- to Vivek Gautam (the deceased), again the said amount was given by the deceased to the present applicant and as alleged this amount was not repaid by the applicant to the deceased in his life time and was tortured and harassed in respect of demand of said loan amount by Chintu @ Vivek and due to this some unhappy incident took place in between the deceased Vivek Gautam, Chintu @ Vivek and present applicant and when the deceased was pressurized by Chintu for repayment of said loan amount and the same was not paid by the present applicant to the deceased, in such a circumstance he committed suicide by consuming poisoning substance by leaving a suicidal note in which abovesaid facts were mentioned.

On the death of Vivek Gautam, a Murg was registered and in continuation of it an offence u/s 306 of Indian Penal Code against the present applicant and Chintu. Charge sheet was submitted after holding the investigation and same was committed to the Sessions Court where the direction for framing the charges u/s 306 of Indian Penal Code against applicant and other accused was given.

Learned counsel for the applicant contended that on the basis of charge sheet and its contains no ingredients of the offence are made out against the applicant even on evaluating the entire facts as enumerated in the charge sheet.

He further submitted that as per section 306 of Indian Penal Code till the abetment of any count as enumerated and defined in section 107 of Indian Penal Code is not proved till then no case is made out for framing the charges. For giving strength to his contention he cited the following decisions : (1) Sanju @ Sanjay Singh Sengar vs. State of M. P., AIR 2002 SC 2035 (2) Ved Prakash Tarachand Bhaiji vs. State of M. P., 1995 MPU 458 (3) Laxmi Prasad Vishwakarma vs. State of M. P., 2003 (1) MPWN 34.

He further submitted that in the present matter the other accused Chintu @ Vivek has already been discharged by this Court vide order dated 3-11-2004 in Criminal Revision No. 1464/04 and copy of this order has also placed on record.

On the other hand learned counsel for the respondent State supported and justified the impugned order of framing of charges and prayed for dismissal of this revision.

Section 306 of Indian Penal Code reads as under:

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.

It is apparent that from the language of this section the abetment is most important ingredients of the offence and the abetment is not defined separately in that section. Therefore, section 107 of Indian Penal Code which defines abetment is referable at this stage in which the ingredients of the abetment are explained. Section 107 of Indian Penal Code reads as under :

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 things, 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.

It is apparent that the 3 ingredients are basic requirement for determining the case of abetment. First, the concerning person who committed suicide should be

instigated by the accused for the same and secondly there should be an involvement of the accused in conspiracy whereby the deceased committed said act, and thirdly there should be intentional criminal aids to deceased at the instance of the accused either by act or by omission for doing such act.

When present case is examined in view of the abovesaid background then certainly not a single ingredients of the offence is made out on the basis of entire papers of the charge sheet. For the sake of argument if story of prosecution is relied as it is then it speaks that there was some loan transaction in between the Chintu @ Vivek and deceased and also in between the deceased and present applicant and there was a regular demand of repayment of loan amount and even an altercation took place in between the accused and the deceased and the loan was not repaid by the applicant to the deceased then deceased was having only cause of action to recover this amount through prescribed procedure of law, but it does not mean that if the payment has not been made and some altercation took place in between them and deceased committed suicide only on the ground of non-payment of loan amount. It appears that incident took place because of breach of contract in between them but it does not give any indication in respect of criminal offence and in the totality of the facts and circumstances and scenario of case do not reflect any circumstances in which the alleged charges could have been framed and can be sustained.

All above cited cases by the counsel of the applicant are also decided on the same principles that if the ingredients of offence of abetment as envisaged u/s 107 of Indian Penal Code are not made out then the offence u/s 306 of Indian Penal Code is also not made out, so all the cited cases are directly applicable to the case at hand and in view of this the applicant deserves to be discharged. I would also like to mention here if the other accused Chintu has already been discharged from the same charges then even on principle of parity the present applicant is also entitled for the same,

In view of the aforesaid premises I am of the considered view that the trial Court has committed a grave error or jurisdiction in framing the charges against the applicant by impugned order. Therefore, the same is hereby set aside and the applicant is discharged from the alleged offence of section 306 of Indian Penal Code.

Revision is allowed.