

MCRC.2915/2016

Sadhuram Udhvani & Ors.

V.

State of M.P. & Anr.

03/05/2017

Shri Mahavir Pathak, counsel fro the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent no.1/State.

None for the respondent no.2 though served.

This application under Section 482 of CrPC has been filed against the order dated 30/12/2015 passed by ACJM, Gwalior in Case No.61/2016 by which the ACJM has taken cognizance of the offence under Section 306/34 of IPC as well as all subsequent proceedings arising thereof.

The necessary facts for the disposal of the present application in short are that the complainant/respondent no.2 lodged a FIR on 17/09/2014 to the effect that his wife Kirti has informed him on phone that the brother of the complainant namely Vasudev and his son Jaiprakash have committed suicide by hanging themselves. He immediately went to the house of his brother where he found that the sister of Jaiprakash was standing outside the house. The doors of the house were opened and he found that his nephew Jaiprakash and brother Vasudev have committed suicide. During investigation, the police seized a suicide note of Vasudev. After sending the bodies for postmortem and after recording the statements of the witnesses, the police filed the charge-sheet against the applicants for offence punishable under Section 306/34 of IPC. By order dated 30/12/2015, the Magistrate took cognizance of the charge-sheet filed by

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the police.

This petition has been filed by the applicants for quashing the order dated 30/12/2015 passed by the ACJM, Gwalior by which he had taken cognizance against the applicants on the charge-sheet filed by the police.

The counsel for the applicant has submitted that the charges have been framed but the order framing charge was never challenged. It is further submitted that in the light of the judgment passed by the Supreme Court in the case of **Satish Mehra v. State of N.C.T. Of Delhi** reported in **2013 CrLJ 411**, this petition under Section 482 of CrPC is maintainable even if charges are framed or even if some evidences are also recorded in the trial.

None appears for the respondent no.2 though he was served on 13/02/2017.

The necessary facts for the disposal of the present application in short are that the deceased Vasudev and the applicant no.4 Smt. Anju Hotwani had lost their spouses. Deceased Vasudev had two children whereas Smt. Anju Hotwani had three children from her first marriage. The deceased Vasudev lost his wife in the year 2013 whereas Smt. Anju Hotwani had also lost her husband. As the deceased Vasudev and the applicant no.4 Anju Hotwani had lost their life partners, therefore, they thought it appropriate for remarriage and, accordingly, the deceased Vasudev and the applicant no.4 Anju Hotwani got married on 27/06/2013 as per Hindu rites and rituals. It appears that immediately after

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the marriage, they realized that they are not made for each other and they had certain basic differences which they could not resolve and they started living separately from 10/07/2013 i.e., just 13 days after the marriage. As the deceased Vasudev and the respondent no.4 Anju Hotwani were not able to resolve their disputes, therefore, they decided to obtain decree of divorce by mutual consent. In the meanwhile, it is alleged that the articles or ornaments which were exchanged/given at the time of marriage were returned by the parties and the deceased Vasudev also agreed to pay an amount of Rs.5,75,000/- to the applicant no.4 Anju Hotwani by way of permanent alimony. Accordingly, an application under Section 13-B of Hindu Marriage Act was filed by the deceased Vasudev and the applicant no.4 Anju Hotwani for grant of divorce on mutual ground on 27/11/2014. Their statements were recorded and the case was adjourned for six months. Thereafter, again the parties were directed to reconcile their disputes but since they failed to do so, therefore, a decree of divorce on mutual consent was granted on 03/08/2015 by the Court of Principle Judge, Family Court, Gwalior. It appears that the deceased Vasudev was very much disturbed with the developments which had taken place in his life, therefore, he alongwith his son committed suicide on 21/08/2015 i.e., just 18 days after the decree of divorce by mutual consent was passed. Before committing suicide, it is the prosecution case that the deceased Vasudev left a suicide note which reads as under:-

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"सुसाइट नोट

श्रीमान थाना

प्रभारी महोदय

म.प्र. पुलिस
जिला ग्वालियरविषय:- आत्महत्या करने बावत् पिता पुत्र द्वारा।
महोदय,

सेवा में निवेदन है कि मैंने पहली पत्नी की मृत्यु के बाद मेने दूसरी शादी की अन्जु उधवानी निवासी हनुमान चौरहा जनकगंज स्थित रहती हे और मैंने उसके दो बच्चों को आसारा सहारा दिया और 17 जून को शादी फुलबाग गुरुद्वारा में बिना कोई दान-दहेज के रूप में करी बिचौलिया के रूप में ठाकुरदास होतचन्दानी था निवासी फर्श वाली गली हरओम मैरिज ब्यूरो के नाम से ऑफिस का काम करता है। और मेरी दूसरी पत्नी अन्जु होतवानी उर्फ उधवानी ने 17 सितम्बर को अपने भाई पिता और रमेश अग्रवाल द्वारा 4जनों ने मिलकर मेरे घर पिता पुत्र की पिटाई की थी मोहल्ले वालों ने बचाया और अन्जु होतवानी पिता के साथ बच्चों को लेकर घर चली गई और माधव गंज थाने में झूठी रिपोर्ट मारपीट की और घटना की 323,506,294 दर्ज करायी और महिला थाने में दहेज एक्ट के तहत झूठी रिपोर्ट दर्ज करायी आखिरी वक्त पर झूठ नहीं बोलूंगा और तलाक 3 माह की शादी 6 लाख की मांग कर दी और मैन्टेनेंस के रूप में 5 हजार रुपये हर माह के रूप में ले रही है। हम पिता पुत्र के आत्महत्या के पीछे केवल चार लोग हैं। अंजु उधवानी, कमल उधवानी, राजू उधवानी, साधूराम और उसके साथी रमेश अग्रवाल का मारा था। हमारे मरने के बाद उसके खिलाफ कड़ी से कड़ी कार्यवाही कर सजा दिलायी जावे।

प्रार्थी पिता वासदेव सचदेवा पुत्र जयप्रकाश सचदेवा

दिनांक:-

को कुटुम्ब न्यायालय में चल अचल संपत्ति में 13 बी में 5 लाख 75 हजार रुपये देकर तलाक हो गया। हम दोनों पिता पुत्र के बाद मेरे परिवार में केवल एक ही वारिस है, जिसका नाम बेटी अनुष्का जयसिंघानी है। मेरे घर का नाम सपना सचदेवा से जानी जाती हूँ।

03.08.15 वासुदेव सचदेवा

शादी के चक्कर में हम पिता पुत्र सात लाख रुपये बर्बाद हो गये। "

It is submitted by the counsel for the applicants that even if the the entire allegations are accepted in toto, then it cannot be said that the applicants have in any manner abetted the deceased Vasudev or Jaiprakash to commit suicide. The second marriage of Vasudev and the applicant no.4 Anju Hotwani could not be materialized because of the basic differences in the liking and disliking of the parties and, therefore, if they decided

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to amicably get separated and adopted the legal remedy available under the law and obtained the divorce by mutual consent, then it cannot be said that the applicants had in any manner abetted the deceased to commit suicide. It is further submitted that apart from the suicide note even if the statements of the witnesses are considered, then also it cannot be said that the applicants had in any manner abetted the deceased to commit suicide.

Referring to the statement of Suresh, it was submitted by the counsel for the applicants that according to this witness, after the deceased Vasudev got married to the applicant no.4 Smt. Anju, he used to take care of his wife but as the demands of the applicant no.4 Smt. Anju were very high and as the expenses of Smt. Anju were very high, therefore, on this issue there were differences between Vasudev and Smt. Anju. They used to quarrel with each other and in the month of September, 2014 because of some altercations, the deceased Vasudev had slapped the applicant no.4 Smt. Anju and on this issue the applicant no.4 called her relatives (applicants) who jointly assaulted the deceased and his son and also got a criminal case registered against the deceased and his son Jaiprakash. Because of the differences and the registration of the criminal case, the deceased Vasudev got disturbed and went in depression. After the criminal case was registered, Smt. Anju started living separately alongwith her children in her parents house. The panchayats were convened and it

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was decided in the panchayat that the deceased Vasudev would give Rs.5000/- per month by way of maintenance to Smt. Anju and, subsequently, a petition for divorce was filed in which it was agreed upon by the deceased to pay Rs.5,75,000/- by way of permanent alimony to the applicant no.4.

Thus, it was alleged in short that as the demands of Smt. Anju were very high and her expenses were also very high and in spite of all the best efforts made by the deceased Vasudev, the differences were there, in the married life. In the year 2014, the deceased was beaten by the applicants and a criminal case was also registered against the deceased.

Under these circumstances, it was alleged that Vasudev and his son got depressed and they were very disturbed and, accordingly, they committed suicide. The evidence of Banti @ Bharat is also to the same effect.

Anushka @ Sapna who is the daughter of the deceased Vasudev has also stated about the strained relationship between Vasudev and Smt. Anju Hotwani and further stated that after the divorce was granted, she used to cook food. She further stated that her father had remarried for the settlement of his life but the applicant no.4 with the help of the applicants not only had beaten her father but had extracted an amount of Rs.5,75,000/- by way of permanent alimony as a result of which her father and brother were under depression and, accordingly, they had committed suicide.

Kanhaiyalal had stated that after Vasudev got

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married with the applicant no.4 Anju Hotwani, she came to the house of the deceased Vasudev alongwith two children whereas she had left her elder daughter aged about 10 years alongwith her father but her elder daughter also used to visit the house. After the marriage, the deceased Vasudev started living alongwith his son Jeetu and two children of Smt. Anju Hotwani as a result of which the expenses became more and due to the limited income of Vasudev, there were differences between Vasudev and the applicant no.4. Immediately after two months of the marriage, the relations of the deceased Vasudev and the applicant no.4 became strained. The applicant no.4 not only got a criminal case registered against the deceased Vasudev but the deceased Vasudev was also beaten by the relatives of Smt. Anju. As the situation did not improve, therefore, the deceased as well as Smt. Anju decided to obtain divorce and, accordingly, a petition for grant of divorce by mutual consent was filed and the deceased Vasudev had agreed to pay Rs.5,75,000/- to Smt. Anju Hotwani by way of permanent alimony. Thus, it is clear that the allegations in short against the applicants are that the applicant no.4 got remarried with the deceased Vasudev and started living in the house of the deceased Vasudev alongwith her two children. There were some disputes between the deceased Vasudev and Smt. Anju Hotwani on the question of expenses. Even on one occasion, the deceased Vasudev had slapped the applicant no.4 as a result of which it is alleged that the other applicants gave

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a beating to the deceased Vasudev and a criminal case was also got registered against the deceased Vasudev and Jaiprakash. The deceased Vasudev was asked by the panchayat to pay Rs.5,000/- per month to the applicant no.4 by way of maintenance and ultimately they filed an application under Section 13-B of the Hindu Marriage Act for grant of divorce by mutual consent and on 03/08/2015 the divorce was granted. It appears that the deceased was very depressed because of the fact that his second marriage could not get materialized and, therefore, just after 21 days of the divorce, he alongwith his son committed suicide.

The centripetal question for adjudication in the present case is that whether these allegations against the applicants would amount to abetment of suicide or not:-

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.

“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

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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 facilitates the commission thereof, is said to aid the doing of that act."

The Supreme Court in the case of **Chitresh Kumar Chopra v. State (Govt. 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

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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' ... to keep irritating or annoying somebody until he reacts..."

The Supreme Court in the case of **Praveen Pradhan Vs. State of Uttaranchal** 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

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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."

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:

"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."

The Supreme Court in the case of **Gangula Mohan Reddy Vs. State of A.P.** reported in **(2010) 1 SCC 750** needs mentioned here. In which Hon'ble Apex Court has held that:

"abetment involves a mental process of

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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”.

In the case of **State of W.B. Vs. Orilal Jaiswal**, reported in **1994 (1) SCC 73**, the Supreme Court has held as under:-

“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

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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”

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 as under :

“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.”

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

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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."

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

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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

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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.”

If the facts of this case are considered in the light of the judgments mentioned above, it would be clear that there is nothing on record to show that the applicants had ever abetted the deceased to commit suicide. There is nothing on record to show that anything was done by the applicants from which an interference can be drawn that they had abetted the deceased to commit suicide. The allegation of assaulting the deceased persons by applicants is of the year 2014.

Under these circumstances, this Court is of the view that even if the entire allegations are accepted in toto, it cannot be said that the applicants had abetted the deceased persons to commit suicide.

Accordingly, the charge-sheet filed against the applicants as well as the criminal proceedings which are pending against them are hereby quashed.

This application under Section 482 of CrPC succeeds and is hereby **allowed**.

AKS

(G.S.Ahluwalia)
Judge