

CRR-844-2016

(DINESH Vs THE STATE OF MADHYA PRADESH)

17-08-2016

Shri Brijendra Sharma, learned counsel for the petitioner.

Shri Ajay Jain, learned counsel for the respondent/State.

With the consent of the parties, this petition is heard finally.

ORDER

This petition under Section 397 r/w Section 401 of the Cr.P.C. has been preferred for quashment of the order dated 31.05.2016 passed by 10th Additional Sessions Judge, Ujjain in S.T. No.153/16, whereby and whereunder the charge for offence under Section 306 IPC has been framed against the petitioner.

The petitioner along with 6 other persons has been charge-sheeted for abetting Gaurav Solanki to commit suicide. Allegedly, Gaurav solanki had borrowed money from the petitioner and some other persons. They were demanding the repayment of loan along with interest. It is further alleged that the petitioner and other persons had obtained blank cheques and stamp papers having signatures of the deceased. It is also alleged that

the petitioner and other persons had extended threats to kill Gaurav Solanki if he fails to repay the money along with interest. Feeling, perturbed and depressed on 17.11.2014, around 10.30 am Gaurav Solanki committed suicide in his house by hanging himself from the ceiling of the room. He is said to have left a suicide note which runs as under:

â  eSa xkSjo lksyadh vius
gksâ  k&gokl esa fy[k jgk gwa
fd esjh ekSr dk dkj.k ;g C;kt
okyksa dh otg ls eSa vius vki
dks [kRe dj jgk gwa] muds uke
gSa%& 1- cnzh ukjk;.k
ikVhnkj] 2- uUnw [k=h] 3-
fnusâ  k ik.Ms] 4- ;ksxsâ  k]
5-ftou ijekj izfni] 6- vtqZu jtkor]
7- lqHkk" k xgyksr

buds ikl esjs psd vkSj LVke
gSa] esjh iRuh ds uke ds psd
vksj LVke gS] ;g eq>s tku ls
ekjus dh /kedh ns jgs Fks] bl
dkj.k eSaus budk C;kt 10

izfrâ  kr vkSj 7 izfrâ  kr dk
ysrs Fks budks C;kt Hkj Hkj ds
esa dtZ esa gks x;k FkkA

izkFkhZ

xkSjo lksyadhâ  

The learned counsel for the petitioner has submitted that even if all the allegations made in the charge-sheet are accepted at their face value, a case for abetment to commit suicide punishable under Section 306 of IPC is not made out against the petitioner because demanding back the money or even extending any threat in that behalf by itself cannot amount to an act of abetment as required under Section 107 of IPC.

Abetment to commit suicide is an offence under Section 306 of IPC. Expression â  abetmentâ   has been defined in Section 107 of IPC which runs as under:

â  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.â

In ***Ved Prakash Tarachand Bhaiji vs. State of Madhya Pradesh, 1995 M.P.L.J. 458*** while dealing with the ambit scope and applicability of Section 107 of IPC it has been held as under:

â10. As per definition given in Section 107 of the Indian Penal Code abetment is constituted by:-

- i) Instigating a person

to commit an offence; or

ii) engagingâ in a conspiracy to commit it; or

iii) intentionally aiding a person to commit it

11. A person is said to âinstigateâ another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word âinstigateâ means to goad or urge forward or to provoke, incite, urge or encourage to do an act. In the present case none of the accused goaded or urged forward, provoked, incited or

urged or encouraged the deceased to commit suicide. They merely goaded him to refund or repay the amount advanced by them to him. They never intended that the deceased should commit suicide. On the other hand they wanted the loan advanced by them to the deceased to be repaid by him. For the said purpose, it was at least needed, if not essential, that Ramesh Kumar Sadholia should live.â

Learned counsel has also placed reliance on ***Munnalal Jain vs. State of M.P., 2009(III) MPWN 79***, wherein the deceased committed suicide because he was being forced to repay the remaining loan amount of Rs.1,05,000/- and allegedly, was also beaten in this connection by the accused. This Court after referring to a number of authorities including decision of the apex Court in ***Sanju alias Sanjay Singh Sengar***

vs. State of Madhya Pradesh, AIR 2002 SC 1998, held that in absence of evidence with regard to provocation, incitement, instigation or encouragement by the accused to the deceased to commit suicide an offence under Section 306 of IPC cannot be made out.

In the instant case, no clear and specific allegation is there against the petitioner that he instigated, goaded, urged, provoked, incited, instigated or encouraged the deceased by an act or omission to commit suicide. Merely goading or persuading the deceased to refund the alleged amount of loan may not by itself amount to an act of goading, provoking, inciting or instigating within the meaning of Section 107 r/w 306 of IPC as regards commission of suicide.

If the deceased was being unduly pressurised to repay the loan and he felt harassed then he ought to have taken recourse to law by lodging a report against the petitioner and other persons that they are threatening to kill him for non-payment of loan. The deceased instead of pursuing a legal remedy had committed suicide, obviously to put the petitioner and his other tormentors into hot waters. Be that as it may, a case for abetment to commit suicide is not at all made out against the petitioner.

In view of the aforesaid, it is a fit case for

quashment of charge in the light of law laid down by the apex Court in the ***State of Haryana vs. Bhajanlal Choudhary, AIR 1992 SC 604.***

Consequently, this petition is hereby allowed and the impugned order with regard to framing of charge against the petitioner for offence under Section 306 of IPC hereby set aside and the petitioner is discharged for offence under Section 306 of IPC.

(VED PRAKASH SHARMA)
JUDGE