

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

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| 1 | Case No. | Criminal Revision No.2791/2021 & Criminal Revision No.2727/2021 |
| 2 | Parties Name | <u>CRR No.2791/2021</u> <i>Naresh</i> <i>Vs.</i> <i>State of M.P.</i> <u>CRR No.2727/2021</u> <i>Sanjay</i> <i>Vs.</i> <i>State of M.P.</i> |
| 3 | Date of Judgment | 13/12/2021 |
| 4 | Bench constituted of | Hon'ble Shri Justice Anil Verma |
| 5 | Judgment delivered by | Hon'ble Shri Justice Anil Verma |
| 6 | Whether approved for reporting | Yes |
| 7 | Name of counsels for parties. | Shri Virendra Sharma, learned counsel for the petitioner in CRR No.2791/2021. Shri A.K. Choudhary, learned counsel for the petitioner in CRR No.2727/2021. Shri Neeraj Gour, learned PL for the respondent/State. |
| 8 | Law laid down | At the time of framing of charges, the meticulous appreciation of evidence is not required and even the strong suspicion is sufficient to frame the charges and at the stage of framing the charges, the Court has to prima facie consider whether there is sufficient ground to proceed against the accused. |
| 9 | Significant paragraph numbers | 13. |

(Anil Verma)
Judge

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SINGLE BENCH: HON. MR. JUSTICE ANIL VERMA)

Criminal Revision No.2791/2021

Naresh S/o Chandrabhan Singh Jain

.... Petitioner

Versus

State of M.P. through P.S. Chintaman Ganesh
 District – Ujjain (M.P.)

.... Respondent

Criminal Revision No.2727/2021

Sanjay S/o Govardhan Khujneri

.... Petitioner

Versus

State of M.P. through P.S. Chintaman Ganesh
 District – Ujjain (M.P.)

.... Respondent

Shri Virendra Sharma, learned counsel for the petitioner in CRR No.2791/2021.

Shri A.K. Choudhary, learned counsel for the petitioner in CRR No.2727/2021.

Shri Neeraj Gour, learned PL for the respondent/State.

Whether approved for reporting :

ORDER

(Passed on 13/12/2021)

1. Both these revision petitions have arisen out of the same impugned order dated 27.9.2021 passed by the 2nd ASJ, Ujjain, whereby charge has been framed against the petitioners under Section 306 of IPC, therefore, they were heard analogously and are being decided by this common order.

2. In brief, the facts of the case are that the deceased Shubham Khandelwal was working as a licensee contractor at Municipal Corporation, Indore. He has committed suicide by causing accident of his car with another car. During the Merg enquiry, suicide note was recovered from his car and in

the further enquiry it has been gathered that deceased was being harassed by Sub Engineer Naresh Jain, Sanjay Khujneri and Chinu and other persons. They were demanding illegal money/bribe from him. The deceased has sent so many complaints to the Chief Minister and other ministers of Government of M.P. against the corruption done by the accused persons. Prior to the accident, deceased also tried to commit suicide by consuming poisonous substance sulfas. On account of the harassment soon before the death, deceased Shubham Khandelwal committed suicide, therefore, offence has been registered under Section 306 IPC against the present petitioners and other co-accused persons. After the investigation, charge sheet has been filed. Learned trial court after perusal of the entire evidence available on record, came to the conclusion that prima facie charge under Section 306 of IPC is made out against the petitioners. Being aggrieved by the impugned order, the petitioners have preferred these revision petitions.

3. Learned counsel for petitioner Naresh submits that it is the initial case of the prosecution that the deceased had suffered motor accident injuries and the prosecution is unable to prove suicide in the case. The petitioner was a government servant while discharging his official duty. He passed the bill and he was not the person who had to release the fund. Sanction from the competent authority was not obtained. He further submits that if the complete case of the prosecution is accepted, even then the ingredients of Section 107 of IPC are completely missing in this case and no case is made out as mere harassment does not fall within the category of abetment. He submits that the petitioner never abetted the deceased and there is no document on record to prove that he ever harassed the deceased. Petitioner has been falsely implicated in this case, the entire prosecution case is not maintainable in the eyes of law as the accused persons never abetted or instigated the deceased for commission of suicide. In the above circumstances, he prays that charges framed by the lower court be set aside and the petitioner be discharged from the charge under Section 306 of IPC.

4. Learned counsel for the applicant Sanjay submits that the impugned order passed by the court below is against the law. The petitioner never abetted the deceased to commit suicide. Nothing is mentioned in the suicide note that he has abetted the deceased. Only it has been mentioned by

the deceased in the suicide note that responsible for his death is Naresh Jain and he had harassed him, due to which he is committing suicide. Hence, he also prays that impugned order be set aside and the petitioner be discharged from all the charges.

5. Per contra, learned PL for the respondent/State opposes the prayer and submits that prima facie cogent and sufficient evidence is available on record. On the basis of the evidence available on record, prima facie offence under Section 306 IPC is made out against both the petitioners, therefore, it cannot be said that learned trial Court has committed any legal or factual error in framing the charge for the offence under Section 306 of IPC.

6. The suicide note alleged to have been written by the deceased Shubham Khandelwal reads as under:-

“पुज्य पिता जी एवं माता जी शमा करना जो कदम मैंने ऊठाया पर मे बहोत दिनो से इन लोगो से परेशान था जो मुझे मानसिक तनाव दे रहे थे इनमे नरेश जैन, सजय खुजनेरी और इनके अन्य साथी है चिनु की भी इसमें भूमिक है मेरी मौत का जिम्मेदार नरेश जैन का माना जाये, उसने मुझे बहोत परेशान कर दिया था। उसकी वजह से मे आत्महत्या कर रहा हूँ। माफ करना अपना मम्मी और सान्या का ध्यान रखना।”

7. Learned counsel for the petitioners have placed reliance upon the judgment of the Hon'ble Apex Court in the case of **M. Mohan Vs. State [(2011) 2 SCC (Cri.) 1]**. In this judgment the Hon'ble Apex Court has observed that:-

“44. 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.”

8. Learned counsel for the petitioners have further placed reliance on the judgment in the case of **Goutam Singh Karoliya and another Vs. State of M.P. and another [2019(1) MPLJ (Cri.) 265]**. In this case the coordinate bench of this Court has held as under:-

“20. Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

21. Thus, if the allegations made against the applicants are considered in the light of the well settled principle of law, then it can be said that merely by saying the deceased that he should go and die, would not amount to abetment of suicide, because the said words were not

followed by any positive action on the part of the applicants to indicate that the applicants had any intention behind saying that the deceased should go and die. Thus, if those words were uttered in the fit of anger, it would not amount to abetment of suicide.”

9. Learned counsel for the petitioners have also placed reliance upon the judgment of the Hon’ble Supreme Court in the case of **State of West Bengal Vs. Indrajit Kundu and others, (2020) 1 SCC (Cri) 136 = (2019) 10 SCC 188**, wherein it has been observed as under:-

“17. The judgment relied on by the learned counsel for the State in *Chitresh Kumar Chopra Vs. State (NCT of Delhi)*, 2009 (16) SCC 605, this Court has held that where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. To draw the inference of instigation it all depends on facts and circumstances of the case: whether the acts committed by the accused will constitute direct or indirect act of incitement to the commission of suicide is a matter which is required to be considered in the facts and circumstances of each case. As such we are of the view that the judgments relied on by the learned counsel for the State would not assist in supporting his arguments.”

10. It is trite to state that at the time of framing of charge the material and quality of evidence cannot be gone into. This Court is well aware about the limitation of the Court while exercising the revisional jurisdiction, which does not empower to intervene at an interlocutory stage. Moreover, all that has to be looked into at the time of framing of the charge is that whether there was existence of prima facie case. So also it would be profitable to rely on *State of M.P. Vs. S.B. Johari and others reported in 2002 (2) MPLJ 322*, whereby the Court held thus:

“It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed.”

Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau reported in (2000) 1 SCC 138 whereby the Court held thus:

“It is well settled that at the stage of framing charge the Court is not expected to go deep into the probative value of the materials on

record. If on the basis of materials on record that Court could Cr.R.No.660/2014 come to the conclusion that the accused would have committed the offence the Court is obliged to frame the charge and proceed to the trial.”

11. If the facts of the present case are considered, then it is clear that deceased left the suicide note behind him, wherein it is specifically mentioned that he was very badly harassed by the petitioners and they should be responsible for his death. After perusal of the various complaints made by the deceased before the Chief Minister and other ministers of the M.P. Government, it reveals that he has regularly made complaints against the petitioners regarding their corrupt practice and humiliating behaviour but he did not get any relief from the Government’s side. As per the prosecution version, deceased was also financially harassed by the petitioners because they were not passing his bills, due to which the deceased was facing acute financial crisis.

12. Prima facie for the purpose of framing of charge, this Court is of the considered view that there is sufficient material available on record. The Hon’ble Supreme Court in the case of **Soma Chakravarty Vs. State (Th. CBI) reported in 2007 AIR SCW 3683** has held as under:-

“20. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.”

13. As a result of the aforesaid discussion and in view of the law laid down by the Hon’ble Apex Court, in my view clearly the law is that at the time of framing of charges, the meticulous appreciation of evidence is not required and even the strong suspicion is sufficient to frame the charges and at the stage of framing the charges, the Court has to prima facie consider whether there is sufficient ground to proceed against the accused. The Court is not

required to appreciate the evidence to conclude, whether the material produced are sufficient or not for convicting the accused.

14. Considering the above submission, it appears that there is sufficient prima facie evidence available on record by the statements of prosecution witnesses and suicide note written by the deceased for framing the charges against the petitioners/accused under Section 306 of IPC. The order of framing the charge is based on sound appreciation of material available on record and cogent reasons and no infirmity can be found in the impugned order passed by the trial Court in framing the aforesaid charge. Therefore, no infirmity, irregularity or illegality are found in the impugned order passed by the Addl. Sessions Judge, Ujjain.

15. Accordingly, both the revision petitions are devoid of merits and are hereby dismissed at this stage. It is made clear that nothing observed hereinabove shall prejudice the case of the petitioners/accused at the time of trial.

16. Signed order be kept in the file of CRR No.2791/2021 and a copy thereof be placed in the file of connected CRR No.2727/2021.

(Anil Verma)
Judge