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MCRC-5936-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 4th OF NOVEMBER, 2024MISC. CRIMINAL CASE No. 5936 of 2024*RAMCHANDRA LOHAR AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Harsh Patidar, learned counsel for the petitioners.**Shri Amit Raval, learned Govt. Advocate for the respondent/State.*
.....*Reserved on : 22.10.2024**Pronounced on : 04.11.2024*

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ORDER

This miscellaneous criminal case having been heard and reserved for order, coming on for pronouncement this day, Justice Sanjeev S. Kalgaonkar pronounced the following:

This petition under Section 482 of the Criminal Procedure Code is filed for quashment of FIR bearing Crime No.362 of 2022 dated 10.11.2022 registered at PS Shujalpur City for offence punishable under Section 306 read with Section 34 of IPC, Final Report/Charge-sheet 266 of 2023 dated 21.11.2023, Order of Cognizance dated 21.11.2023 alongwith consequential proceedings.

The exposition of the facts, giving rise to the present petition, is as under :-

As per the case of prosecution, the informant Ramchandra informed the Police Station Shujalpur City that on 14.09.2020 around 06.00 a.m., in the morning, he



saw his brother Surendra was hanging by neck on a tree in front of the house of Makhanlal Patidar behind the Govt. School. He further informed that deceased had to take Rs.2,500/-, from Kantaprasad @ Kantu, Satyanarayan Patidar, Ramswaroop @ Rameshwar, Manohar, Omprakash and Ram Singh sons of Gopal Singh. These persons had an altercation with Surendra. They had abused and manhandled his brother Surendra some 8-10 days before his death. On the basis of information, unnatural death No.15/2020 was registered by the PS Shujalpur City on 14.09.2020. During inquest, dead body of Sunil Vishwakarma was forwarded for postmortem examination. The Medical Officer opined that Surendra had died due to asphyxia caused by antemortem hanging. The statement of relatives were recorded. The hand written notes were recovered from the dead body of the deceased which was marked as Q-1. The other handwritten notes of Sunil were seized and marked as N-1 to N-3. These notes were forwarded to the handwriting expert. The hand writing expert opined that both the set of notes have been written by the same person. It was revealed from the statements of relatives of the deceased that the petitioners/accused Makhansingh Patidar, Bhagwansingh Patidar, Kantaprasad Patidar, Satyanarayan Patidar, Ramchandra Lohar, Om Patel and others were harassing Sunil Vishwakarma(deceased) for repayment of outstanding amount. Sunil Vishwakarma had committed suicide by hanging due to harassment of these persons. Another suspicion, revealed by statements of witnesses, relates to dispute between Sunil and Ramachandra. Sunil had made some loose comments about wife of Makhan Patidar. Makhan had confronted and slapped Sunil. Sunil was suspecting that Ramchandra had instigated Makhan. Sunil was fearing retaliation from Makhan, Ramchandra, Bhagwansingh and



Satya over this incident. On such allegations, PS Shujalpur City, District Shujalpur registered FIR at Crime No.362/2022 for offence punishable under Section 306 read with Section 34 of IPC, against the petitioners. On completion of investigation, final report was submitted.

Feeling aggrieved by the registration of FIR and consequential proceedings, this petition is filed on the following grounds :-

- (1) The allegation made against the petitioners, even if it accepted in its entirety, does not make out offence punishable under Section 306 of IPC. There was no instigation, provocation, incitement, suggestion, persuasion or goading to commit suicide by the petitioners.
- (2) The petitioners have no direct or indirect involvement in the commission of suicide by the deceased.

On these grounds it is requested that the impugned FIR and consequential proceedings be quashed with reference to the petitioners.

Learned counsel for the petitioners referring to the order-sheets of proceedings before the trial Court submits that none of the proposed prosecution witnesses has been examined till date. Learned counsel further relying on the order dated 14.11.2022, passed by the Coordinate Bench of this Court in Criminal Revision No.1381 of 2021 and the order dated 23.05.2024 passed in CRM-M-25915 of 2024 by the High Court of Punjab And Haryana at Chandigarh contends that the alleged offence has not been made out against the petitioner, therefore, the proceedings before the trial Court deserve to be quashed.

Per Contra, learned counsel for the State submits that the alleged offence is *prima facie* made out against the petitioners, therefore, the trial Court framed



charges against the petitioner for offence punishable under Section 306/34 of IPC.

The petition is merit-less, therefore, it deserves to be dismissed.

Heard learned counsel for both the parties and perused the record.

Section 306 of IPC provides for punishment for abetment to commit suicide.

Section 107 of IPC defines abetment 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.

The explanation to Section 107 IPC which defines instigation provides, thus:-

Explanation 1.— A person who, by willful misrepresentation, or by willful 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.

In the case of *Mohit Singhal v. State of Uttarakhand*, (2024) 1 SCC 417, while interpreting aforesaid provision, the Hon'ble Apex Court held as under :

10. In the facts of the case, Secondly and Thirdly in Section 107, will have no application. Hence, the question is whether the petitioner instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice, but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the



appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

In the case of ***M. Arjunan v. State***, represented by its Inspector of Police (2019) 3 SCC 315, Hon'ble the Apex Court held as follows :-

6. As pointed out by the High Court, of course PW 1 to PW 5 have spoken about the borrowing of money by the deceased and also the execution of the promissory note. The sheet anchor of the prosecution's case to prove the guilt of the accused is the suicide note (MO 1) written by the deceased. On perusal of suicide note (MO 1), it is seen that in MO 1 the deceased has written about the financial difficulties faced by him and his inability to meet the financial crunch and also his inability to repay the same. The tenor of MO 1 only shows that the deceased was subjected to pressure for payment and was facing the financial difficulty. In MO 1 (letter) there is nothing to indicate that there was instigation by the appellant-accused which had driven the deceased to take the extreme step of committing suicide.

7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.

8. In our considered view, in the case at hand, MO 1 letter and the oral evidence of PW 1 to PW 5, would not be sufficient to establish that the suicide by the deceased was directly linked to the instigation or abetment by the appellant-deceased. Having advanced the money to the deceased, the appellant-accused might have uttered some abusive words; but that by itself is not sufficient to constitute the offence under Section 306 IPC. From the evidence brought on record and in the facts and circumstances of the case, in our view the ingredients of Section 306 IPC are not established and the conviction of the appellant-accused under Section 306 IPC cannot be sustained.

In case of ***Gangula Mohan Reddy V/s. State of Andhra Pradesh*** (2010) 1 SCC 750, the Apex Court opined as under :-

17. 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 and the ratio of the cases decided by this Court 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 committed suicide.

This Court in **Hukum Singh Yadav V/s. State of M.P.** reported in ILR (2011) MP 1089 considered the judgment of the Supreme Court in case of **Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh** reported in AIR 2002 SC 1998 and held as under :-

10. Considering these legal aspect this is to be observed that whether applicants have had same knowledge that deceased would commit suicide. As per the prosecution case when deceased was going with his father. Applicants restrained deceased and his father Jagdish and abused and threatened both of them, hence, it cannot be assumed that applicants had knowledge that one of them particularly deceased will commit suicide. When act of abusing and threatening was alleged to be done with deceased as well as his father, so it cannot be said that applicants had knowledge or intention that deceased should commit suicide. There is no evidence that they provoked, incited or encouraged deceased to commit suicide. It is also not alleged that when applicants threatened to kill the deceased and his father Jagdish they were armed with some weapons. So it cannot be presumed that deceased was so frightened that he had no option left except committing suicide and was compelled to do so.

The principle flowing from these judgments is that the overt act of accused must be of such a nature that the victim had no option but to commit suicide. As per the case of prosecution, petitioners instigated Sunil Vishwakarma to commit suicide. Instigation means “to goad, urge, provoke, incite or encourage to do act”. There is no positive or direct allegation that the petitioners intended death of Sunil Vishwakarma or they had goaded, urged, provoked, incited or encouraged Sunil Vishwakarma to commit suicide.

The hand written notes allegedly written by the deceased Sunil Vishwakarma



which are marked as Q-1 and N-1, N-2 and N-3, states as under :

The alleged handwritten note marked as Q-1 is as under :-

भगवानसिंह पाटिदार भानेज

सतिश पाटिदार बारिआना

कमलेश बारिआना

रामस्वरूप बारिआना

कान्तु बारिआना

मखन बारिआना

नन्दु बारिआना

पवन पाटिदार जोडा

अरविन्द पाटिदार जोडा

पंकज पाटिदार जोडा

मनोहर बारिआना

रामेशरम बारिआना

रामचन्द्र लुहार

इन सभी लोगों ने मारे और धमकी भी दी थी मेरे को अलग और इन्होंने आना गांव में आना भी मारा था

As per prosecution, the aforesaid note is in the hand-writing of the deceased. The deceased Sunil Vishwakarma had mentioned the names of the petitioners in the said note, who manhandled and threatened him, but the note nowhere states that he was asked, provoked, goaded, instigated to commit suicide by the accused. The material on record reflects that allegedly, the petitioners insisted the deceased to repay the money borrowed from them. The intention of the accused to drive the deceased to commit suicide cannot be inferred, as their primary interest appears to be in retrieving the money lent to the deceased. The reported altercations and quarrels occurred a considerable time ago, making it difficult to infer any live link to Sunil's death. The alleged conduct does not fall within the



ambit of "incitement" or "instigation". If the deceased was aggrieved by the conduct of accused, he could have taken legal action against them and lodged complaint to police and other authorities. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such an action on the part of the accused which compels the person to commit suicide and such an offending action ought to be proximate to the time of occurrence.

(Sanju @ Sanjay Singh Sengar Vs. State of M.P. reported in AIR 2002 SC 199 ; Amalendu Pal @ Jhantu Vs. State of West Bengal, reported in (2010) 1 SCC 707 and Arnab Manoranjan Goswami Vs. State of Maharashtra and Others reported in 2020 (SCC Online) SC 964 relied).

In the case of *Dinesh V. State of M.P. [(2016) 3 MPWN 103]* , while dealing with similar facts, it has been held as follows:

8 - If the deceased was being unduly pressurized 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 above discussion, this Court is of the considered opinion that the offence punishable under Section 306 read with Section 34 of IPC was not *prima facie* made out against the petitioners/accused. The Impugned FIR and the Final report implicating the petitioners for offence punishable under Section 306 of IPC was an abuse of process of law. The learned trial Court committed patent error of law in framing charge against the petitioner for offence punishable under Section 306/34 of IPC. Thus, interference in exercise of inherent jurisdiction



under Section 482 of Cr. P.C. is needed to prevent the abuse of process of court.

Consequently, the impugned FIR bearing Crime No.362/2022 dated 10.11.2022 registered at PS Shujalpur City, District Shajapur and all consequential proceedings against the petitioners are hereby quashed.

The petition is, accordingly, allowed.

(SANJEEV S KALGAONKAR)
JUDGE

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