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Court : Madhya Pradesh

Decided On : Nov-27-2014

Judge : S.K. Palo

Appeal No. : M.Cr.C. No. 815 of 2014

Appellant : Vivek Kumar Jain and Another

Respondent : State of M.P. and Another

Judgement :

Heard.

The brief facts just necessary for disposal of this case are as follows:-

The petitioners were alleged to have demanding their money from the deceased Mohan Soni. Mohan Soni committed suicide leaving a suicide note. This note was recovered after two months.

In the suicide note, the deceased Mohan Soni mentioned that the petitioners Vivek Kumar Jain and Ashish Kumar Jain were pressurizing him for the money which the deceased lost in playing MCH match. For which he gave Rs.15,00,000/- to petitioner Ashish Kumar Jain and Rs.18,00,000/- was given to petitioner Vivek Kumar Jain. Besides this, the petitioner took gold worth Rs.5,00,000/- and cash Rs.4,00,000/- from the deceased. Because of this, the deceased committed suicide. On the basis of which Crime No.575/2013 under Section 306 IPC has

been registered at Kotwali, District Guna (M.P.). It would be appropriate to understand the provisions of Sections 306 of IPC which reads as under:-

Section 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.

It is also necessary to understand what actually constitutes abetment. Abetment has been defined under Section 107 of IPC which reads as follows:-

Section 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.

Explanation 1 A person who by willful 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.

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

In a similar case this High Court has analyzed the word abetment of suicide. In *Ram Naresh and another Vs. State of M.P. and Others*, reported in 2002 (2) M.P.H.T. 183 in which it is held that,

The accused persons were charge-sheeted under Section 306 read with Section 34 of Indian Penal Code on the basis of a suicide note left by the deceased in which he had blamed all the five accused and held them responsible for his

(suicidal) death. However, it was found that none of the accused had goaded or urged forward, provoked, incited or urged or encouraged the deceased to commit suicide. They merely goaded him to refund/repay the amount of loan advanced by them to him. They never intended that the deceased should commit suicide. Moreover, the deceased could have lodged a report against accused who had allegedly tortured him and threatened him to kill. May be, as it sometimes happens, the police officials might have declined to record the report. In that case, he could have moved higher officials. But instead of taking this legal and legitimate action, the deceased adopted an escapist course of committing suicide in order to take revenge from his alleged tormentors. No case for alleged commission of the offence was made out against the accused persons.

In the case of Radhesyam Vs. State of M.P., 2014 Cr.L.R.(M.P.) 416, it is held that,

Criminal Procedure Code, 1973 Sec. 397/401-Order of framing charge u/s. 306 I.P.C. --No evidence of abetment to commit suicide Money borrowed to the deceased and demanding back of money was not an act of harassment Demand of loan amount is not an abetment u/s 107 I.P.C.-- Words uttered in heat of moment does not amount to abetment Held, Order of framing charge is not sustainable and set

aside.

In Ramchandra Vs. State of M.P., 2009 (2) M.P.L.J.147), the deceased committed suicide on account of playing dishonesty in a transaction of loan by the petitioner The act as alleged against the petitioner does not amount to instigation nor constitutes aid in commission of the suicide by the deceased. Order framing charge against the petitioner for offence under section 306/34 IPC was set aside.

In Babbi @ Jitendra and others V. State of M.P reported as 2008 (III) MPWN 8, this High Court has held that,

(1) Penal Code 1860 - S. 107 - abetment is constituted by instigating a person to commit an offence-- engaging in conspiracy to commit it intentionally aiding a

person to commit it.

(2) Word and Phrases word 'instigate' means to goad or urge forward to to provoke, incite, urge or encourage to do an act.

Keeping in view the above, the petitioners did not in any manner instigate, incite or provoke the deceased to commit suicide. Therefore, they cannot be charged under Section 306 of IPC. In the case of Babbi @ Jitendra (supra), the petitioners borrowed loan of Rs.10,000/- on the land of the deceased. That amount was kept by the petitioner. All the money was kept by Babbi (the petitioner), which the deceased demanded from the petitioner. The petitioner abused and assaulted him. After informing his family, the petitioner went somewhere and never returned back. Later his dead body was found. Police registered offence under Section 306 of IPC. This High Court found that merely the petitioner refused to return the money of the deceased allegedly kept by him, he never intended that deceased should commit suicide.

In another case reported as M. Mohan Vs. State represented by the Deputy Superintendent of Police reported in 2011 Legal Eagle (SC) 205 = (2011) 3 SCC 626, Hon'ble Apex Court has held that,

Indian Penal Code, 1860 Section 306-- Abetment--Abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

Indian Penal Code, 1860 Section 306 Required on 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

Following the principles laid down in State of Haryana Vs. Bajan Singh reported as (1992) Suppl. 1 SCC 335, the Hon'ble Apex Court has made it clear that it may not be possible to laid down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Sections 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spit him due to private and personal grudge .

The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do

not disclose triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not get protracted. The Hon'ble Apex Court has opined so in the case of Sathish Mehra Vs. State of N.C.T. of Delhi, AIR 2013 S.C.506 and another in which it is held that:-

(A) Criminal P.C. (2 of 1974), S.482- Quashing of criminal proceedings Power as to Extra-ordinary in nature- Failure of allegations made to make out offence Core basis on which power is recognized as inherent in High Court usch power is exercisable at threshold as well as at advanced stage of trial.

As a result of the above discussion, this Court is of the opinion that the F.I.R. and proceedings initiated against the petitioners is liable to be quashed. It is made clear that the investigation agency is at liberty to proceed for any other offence if is made out against the petitioners but not under section 306 IPC.

With the aforesaid, this petition stands disposed of.

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