

Damodar Sharma Vs. State of Rajasthan

Damodar Sharma Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/755616

Court : Rajasthan

Decided On : Feb-23-2006

Reported in : RLW2006(2)Raj1588; 2006(3)WLC686

Judge : R.S. Chauhan, J.

Acts : Indian Penal Code (IPC) - Sections 107 and 306

Appeal No. : S.B. Criminal Revision Petition No. 542 of 2005

Appellant : Damodar Sharma

Respondent : State of Rajasthan

Advocate for Def. : Arun Sharma, Public Prosecutor

Advocate for Pet/Ap. : Satyendra Kumar Gupta, Adv.

Disposition : Petition allowed

Judgement :

R.S. Chauhan, J.

1. The petitioner has challenged the order dated 2.6.2005 passed by the Judge Special Court (Sati Nivaran), Rajasthan, Jaipur and Additional Sessions Judge, Jaipur City, Jaipur whereby he has framed the charge for offence under Section 306 IPC against the petitioner.

2. The brief facts of the case are that one Krishan Kumar committed suicide on 23.5.2004. About his death, his father, Lallu Lal Sain submitted a report to the police. On the basis of said report, a Inquest Report bearing No. 9/2004 was chalked out. Fifteen days later during the course of inquiry, the police allegedly recovered a suicide note left by the deceased. According to the said suicide note, the deceased had borrowed Rs. 40,000/- from the petitioner but was unable to pay the same. In order to repay the said loan, he had further borrowed money from one Surendra Kurriar Choudhary. However he was also unable to pay the said loan to Surendra Kumar Choudhary. Caught in a debt trap, the deceased decided to commit suicide. Eventually, the police registered a First Information Report against the petitioner for offence under Section 306 IPC, Vide order dated 2.6.2005 the learned Special Judge framed the charge for offence under Section 306 IPC against the petitioner. Hence, this petition before us.

3. Mr. Satyandra Kumar Gupta, learned Counsel for the petitioner, has argued that the charge for offence under Section 306 IPC can be framed only if the ingredients of Section 107 PC are present. An act to qualify as an abatement has to be done intentionally by the abettor. Merely because the petitioner was asking for the repayment of his loan is not such an act, which could be said to abet the suicide by the deceased. Therefore, the ingredients of Section 107 IPC are conspicuously missing. Hence, no charge could be framed for offence under Section 306 IPC against the petitioner.

4. On the other hand, the learned Public Prosecutor, Mr. Arun Sharma has argued that by harassing the deceased for the repayment of the loan, the petitioner had created sufficient circumstances for the deceased to commit suicide. Therefore, the petitioner had abetted the commission of suicide. Hence, he has supported the impugned order.

5. We have heard the learned Counsels for the parties and have perused the record and the impugned order, which is before us.

Section 107 IPC 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 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 willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempt 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 not anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the the doing of that act.

6. A bare perusal of the Section 107 IPC would reveal that the abetment is constituted by; (1) Instigating a person to do that thing; (ii) Engages with a person in any conspiracy for doing of that thing and (iii) Intentionally aids, a person for doing of that thing. Abetment implies certain activities on the part of the abettor. Therefore, it involves means *rea in* ensuring that the offence is committed. Thus, while framing a charge for offence under Section 306 IPC, the learned Court has to consider whether the abettor intentionally instigated or entered into a criminal conspiracy or aided the commission of the suicide. In case, there is no evidence to show that the abettor Intended that suicide should be committed, then no offence under Section 306 IPC is made out.

7. In the instant case, the petitioner had given a loan of Rs. 40,000/- to the deceased, obviously, at that stage, the money was not given with the intention that the deceased should eventually commit suicide. Even subsequently, when the petitioner asked for the repayment o the loan, his intention was not to instigate or to aid the deceased to commit suicide. His intention was only that the money lent by him should be returned to him. In order to repay the said loan, the deceased took another loan from the Surendra Kumar Choudhary. However, he could not

repay the second loan either. Thus, the deceased was caught in a debt trap. Such a debt trap was not a creation of the petitioner's action but was created by the deceased himself. Unable to repay the two loans, the deceased appears to have taken the line of least resistance and to have committed suicide. Thus, there is no evidence to show that the petitioner instigated or aided the commission of suicide by the deceased. Therefore, the essential ingredients of Section 107 IPC are singularly missing.

8. The framing of charge is not a mere formality but has to be done after a judicious application of mind. Learned trial Court is duty bound to examine the evidence for the limited purpose of seeing whether the essential elements or ingredients of the offence are made out or not. At the time of framing of the charge, the learned trial Court is not expected to act as a mouthpiece or as a mere post-office for the Prosecution. It is expected to sift the evidence to see if the offence has been committed by the alleged offender or not. Only when 'grave suspicion' existence that the offence may have been committed by the offender, should the learned trial Court frame the charge against the alleged accused. In case, two views are possible, the the trial Court should restrain from framing the charge (refer to Union of India v. Prafulla Kumar Samal and Anr. : 1979 CriLJ154).

9. In the present case, there is not an iota of evidence to show that the petitioner had instigated or aided the deceased t(sic) commit the suicide. Hence, the elements of 'grave suspicion' about the involvement of the petitioner in the commission of the suicide is consciously missing, since there is no evidence to indicate abetment by the petitioner, no offence under Section 306 IPC is prima facie made out against the petitioner. Learned trial Court has not discussed the evidence on record. Even the wife of the deceased Smt. Asha Devi does not tell us that the petitioner instigated or aided the suicide by the deceased. In case, the deceased was compelled by the petitioner to commit suicide, one would expect him to share such a compulsion with his wife. However, the statement of Smt. Asha Devi is silent on this point.

10. In this case of Manish Kumar Sharma 1994 (2) WLC 69 : RLW 1995(1) Raj. 84, this Court was also seized of a case where loan had been advanced to the deceased by the accused. When the accused had asked that the loan be repaid, the deceased was not in a position to repay the said loan. In a fit of anger, the accused told the deceased that she should commit suicide. He had even threaten to kill her. Threaten by the action of the accused, the deceased had consumed insecticide and committed suicide. However, this Court was of the opinion that merely asking for a loan to be repaid, does not amount to instigating or aiding the commission of suicide. Therefore, this Court was pleased to quash the charge for offence under Section 306 IPC.

11. In the result, the petition is allowed and the order dated 2.6.2005 is hereby quashed and set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com