

(2018) 3 MPWN 107

Madhya Pradesh High Court (Jabalpur Bench)

Case No: Miscellaneous Criminal Case No. 20164 Of 2018

Nitin Sharma
Devmurari

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: Aug. 24, 2018

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 397, 401, 482#Indian Penal Code, 1860 " Section 34, 107, 306#Madhya Pradesh Riniyon Ka Sanrakshan Adhiniyam, 1937 " Section 4#Negotiable Instruments Act, 1881 " Section 138

Citation: (2018) 3 MPWN 107

Hon'ble Judges: Sushil Kumar Palo, J

Bench: Single Bench

Advocate: Indu Pande, Saurabh Shrivastava

Final Decision: Allowed

Judgement

1. This petition under Section 482 of Cr.P.C has been filed to invoke the extraordinary jurisdiction of this Court and to quash the FIR No.208/2017

dated 27.3.2017, registered at Police Station- Itarsi Hoshangabad, wherein the offence under Section 306 read with Section 34 of IPC and Section 4

of the MP Riniyon Ka Sanrakshan Adhiniyam, 1937 have been registered against the petitioner/accused.

2. Brief fact of the prosecution story, which are necessary for disposal of the petition are that, the deceased Santosh had borrowed certain loan from

the petitioner/Nitin Sharma and another person Vijay Bhangele. Allegedly, the accused persons were harassing the deceased to recover their interest

amount. The deceased was called several times by the petitioner and was being threatened. Feeling harassed by the actions of the accused persons, in

the intervening night of 13-14th of February, 2017, he leaving a ""suicide note"" hanged himself and committing suicide. The statements of Santosh,

Preetam Yadav & Arif Khan have been recorded, in which they have averred that, the accused persons harassed the deceased because of which, he

has taken such a drastic step by committed suicide. Charge-sheet has been filed for offence as mentioned above.

3. On behalf of the petitioner, it is submitted that the petitioner is innocent. There has been certain money transaction due to which Nitin Sharma had

filed a case under Section 138 of the Negotiable Instruments Act on 4.5.2016. In which a compromise has been arrived at on 11.2.2017. A receipt has

been given by the deceased, executed in favour of the accused person Nitin Sharma and acknowledged receiving of Rs.1 Lac from him. It is also

contended that, the petitioner has by lawful means received the money advanced to the deceased along with the interest. The accused persons has

never abated the commission of the offence.

4. Learned Govt. Adv. appearing on behalf of the State opposed the above arguments vehemently and submitted that, the deceased was constantly

harassed and demanded money by repeatedly calling him and threatening him. Therefore, the deceased had no other alternative except to commit

suicide. The brother of the deceased Santosh and the witnesses Preetam Yadav and Arif Khan have narrated the harassment caused to the

deceased.

5. Perused the police diary. The postmortem report dated 14.2.2017 reveal that, deceased died due to asphyxia as the cause of Cardio Pulmonary

Arrest due to hanging, which is suicidal in nature. The deceased had obtained loan from the petitioner and one Vijay Bhangele. The deceased has left

a suicide note which read as under:-

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13/02/17

6. This suicide note was signed by the deceased.

7. At the outset, it would be appropriate to understand the provision of Section 306 of IPC, which reads as under:

Section 306 of IPC :- 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 extent to ten years, and shall also be liable to fine.

8. It is also necessary to understand what actual constitute abetment. Abetment has been defined under Section 107 of I.P.C, which reads as follows:-

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 n 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 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"".

9. The matter came up for hearing before the Hon'ble Supreme Court to analyze abetment in the case of M.Mohan Vs. State represented by Dy.

Superintendent of Police reported in 2011 (3) SCC 626, wherein it has been 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 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/she committed suicide.

10. In the case of Babbi @ Jitendra and Others Vs. State of M.P., 2008 (2) M.P.H.T. 160 = 2008 (III) MPWN 8, it is held that -

(1) Penal Code, 1860, Section 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 provoke, incite, urge or encourage to do an act.

11. In the case of Babbi @ Jitendra (supra) this Court has held that, 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 deceased went to somewhere and never returned back. Later his dead body was found.

Police registered offence under Section 306 of I.P.C. It was held that merely the petitioner refused to return the money of the deceased allegedly kept

by him, he never intended that that the deceased should commit suicide.

12. In the present case, the accused persons have been alleged to have advanced money and the deceased committed suicide for the accused persons

were harassing him for recovery of the same.

13. In the case of Radheshyam Vs. State of M.P., 2014 (3) M.P.H.T 103= 2014 Cr.LR (MP) 416, it is held that:-

Criminal Procedure Code, 1973, Section 397/401-Order of framing charge under Section 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 under Section 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.

14. In the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh 2010 (1) SCC 75,0 the Apex Court has held that, in the case under Section

306 of IPC for offence of abetment to commit suicide mens rea and active act of the accused is essential to constitute the offence. When allegations

against the appellant-accused for harassing his deceased servant by accusing him of committing theft of gold ornaments, two days prior to servant's

death-Appellant allegedly, also demanded the money from deceased, given in advance to him at the time he was kept in employment- Deceased

committing suicide by consuming poison and bears to be higher sensitive man and the accused was not held liable for offence under Section 306 of

IPC. The offence does not show how the petitioner has instigated or goaded the deceased for committing suicide.

15. In the case of Pramod Kumar Vs. State of MP reported in 2007 (II) MPWN 26, the Court had clearly held that, merely demand of advance

money or pressurizing by the accused persons to the deceased for repayment does not amount to instigation for commission of the offence.

16. In the present case, there is no evidence to show that, the petitioner acted in such a manner that the deceased had no other alternative except to

commit suicide. The deceased left a suicide note. In the suicide note also, he did not refer alleged harassment caused to him nor he referred the name

of the petitioner.

17. In the case of Vivek Kumar Jain & Another Vs. State of MP & Another 2015 (1) MPHT 75 t, his Court has earlier held that, it was alleged

that the petitioners were demanding the money from the deceased to commit suicide by leaving a suicide note. In the suicide note, deceased

mentioned the name of the petitioner, who pressurized him for the money. Criminal Case was registered. Petitioners, therefore, prayed to

quash the FIR. It was held that 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. Hence, both the proceedings initiated against the petitioners held liable to be quashed.

18. Keeping in view the above and the circumstances prevailed in the case, the petition is allowed. The FIR so far as the offence under Section 306 of

IPC is concerned is liable to be quashed.

19. Before parting with the order, it is made clear that the learned Trial Court is at liberty to proceed against the petitioner for offence under Section 4

of MP Riniyon Ka Sanrakshan Adhiyam, in accordance with law.

20. The petition is allowed.