

(2007) 09 CAL CK 0053

Calcutta High Court

Case No: C.R.R. No. 4134 of 2006

Sandip Bhattacharjee

APPELLANT

Vs

The State of West Bengal and
Another

RESPONDENT

Date of Decision: Sept. 21, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 482
- Penal Code, 1860 (IPC) - Section 107, 116, 306, 309

Citation: (2008) 1 CALLT 27

Hon'ble Judges: Sadhan Kumar Gupta, J

Bench: Single Bench

Advocate: Milon Mukherjee, Siladitya Sanyal, Bitasok Banerjee and Biswajit Manna, for the Appellant; Kazi Safiullah and Madhuri Dey for Opposite Party No. 2 and Krishna Ghosh, for Opposite Party No. 1, for the Respondent

Final Decision: Allowed

Judgement

Sadhan Kumar Gupta, J.

This revisional application has been preferred u/s 482 of the Cr. P.C. praying for quashing of G.R. Case No. 467 of 2006, as pending before the learned Chief Judicial Magistrate, Suri.

2. Case of the petitioner is that he is working as a headmaster of Kubirpur High School at Hatzanbagar, Suri for the last seven years. One Sukhen Saha was an Assistant Teacher in the said school. On 31/10/2006 said Sukhen Saha committed suicide by consuming poisonous tablets in the school campus. Although, he was taken to the hospital but ultimately he died on the same night. Due to such incident, a written complaint was lodged by one, Saroma Saha, the opposite party No. 2, the wife of Sukhen Saha on 31/10/2006 stating therein that her husband was harassed by the petitioner. It was stated therein that the petitioner being the headmaster of

the school threatened her husband in different ways by way of demanding money and also by threatening him to cause damage to his service career. It was further stated in the written complaint that the deceased, out of fear gave money to the petitioner who did not repay the same. The defacto-complainant further alleged that the petitioner abused her husband in front of other teachers of the school and further threatened him to damage his service career. Said Sukhen Saha disclosed all those facts to the defacto-complainant and other family members. On 30/10/2006 Sukhen Saha returned back from the school and without taking his meal went to bed. On 31/10/2006 Sukhen Saha went to the school and he attempted to commit suicide by consuming poisonous tablets.

3. On the basis of the said complaint, Suri P.S. Case No. 181 of 2006 dated 30/10/2006 was started under Sections 116 and 309 of the Indian Penal Code. Thereafter, as Sukhen died in the hospital, so the Investigating Officer made a prayer before the learned Magistrate for adding Section 306 of the Indian Penal Code and such prayer was allowed and investigation was taken up on the basis of the prosecution claim that the accused/petitioner committed an offence u/s 306 of the Indian Penal Code.

4. According to the petitioner there was no reason whatsoever for involving him in connection with this case for the alleged commission of offence by him u/s 306 of the Indian Penal Code. He has claimed that he did not abet the suicide of the deceased in any way and as such, there could be no reason for the prosecution to start the said case against him. According to the petitioner, the allegations, as made in the written complaint are absurd and improbable in nature and do not disclose any offence of Section 306 of the Indian Penal Code. He has claimed that further continuation of the said criminal proceeding, as pending in the Court of the learned Magistrate, will be an abuse of the process of the Court and as such, it should be immediately quashed.

5. The revisional application is contested by the opposite party/State as well as by the defacto-complainant. Mrs. Krishna Ghosh, learned Advocate for the State submits that investigation of the case has proceeded a long way and during investigation several documents, including the diary written by the deceased, prior to his death, has been seized, wherefrom it will appear that it was clearly mentioned by the deceased that the petitioner was responsible for his death. She has further contended that since the investigation is going on, it will not be proper for this Court to interfere with the matter at this stage by way of allowing the prayer for quashing. She has prayed for dismissal of the revisional application.

6. Mr. Safiullah, learned Advocate for the opposite party/defacto complainant, also supported the contentions of the learned Advocate for the State and according to him, the investigation, as started against the accused/petitioner should be allowed to be continued in order to unearth the truth and as such, at this stage the prayer for quashing should be rejected outright.

7. As against this, Mr. Mukherjee, learned Advocate for the petitioner submits that undoubtedly investigation of a case should be allowed to be done. But if from the written complaint, as well as from the materials collected during investigation, it reveals that the allegations, as made against the petitioner are absurd and improbable in nature, then a person should not be harassed to face the hazards of criminal trial for no fault of his own. According to him, there is nothing on record to show that the petitioner abetted the commission of suicide by Sukhen Saha, the assistant teacher of the school in any way whatsoever. Under such circumstances, he argued that it is a fit case where this Court should interfere with the matter by exercising its power u/s 482 of the Cr. PC and quash the said criminal proceeding, as pending against the petitioner in order to prevent the abuse of the process of the Court.

8. I have taken into consideration the submissions, as made by the learned Advocates for all the sides. Admittedly, initially a case u/s 116 / 309 of the Indian Penal Code was started against the petitioner. Subsequently, after the death of the deceased, on the prayer of the I.O., Section 306 of the Indian Penal Code was added. Section 306 of the Indian Penal Code runs as follows:

if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term shall may extend to ten years, and shall also be liable to fine.

9. It necessarily means that in order to prove the charge under this section, prosecution is duty bound to prove that the accused/petitioner actually abetted the commission of the suicide, of the deceased. In Section 107 of the Indian Penal, Code the meaning of abetment of a thing has been indicated to the effect:

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;

Thirdly - intentionally aids, by may act or illegal omission, the doing of that thing.

10. A plain reading of the said section will reveal that for constituting the offence of abetment, the accused should either instigate any person to do the thing or engages with one or more other person or persons in any conspiracy for dong of that thing or intentionally aid by any act or omission the doing of that thing. The word "instigate", as it appears in Section 107 is very vital for proving a case u/s 306 of the Indian Penal Code against an accused. According to Oxford Dictionary "instigation" means "to goad or urge forward" to incite, urge, encourage to do act. Black defines "instigation" as to goad or incite someone to take some action or course.

11. In the decision reported in [Ramesh Kumar Vs. State of Chhattisgarh](#), the Apex Court defined instigation as to goad, urge forward, provoke, incite or encourage to do act. In this respect, learned Advocate for the petitioner also cited decisions reported in 2002 SCC 1141 (Sanju @ Sanjoy Singh Sengar v. State of M.R); 2005 SCC (Cri) 543 (Netai Dutta v. State of West Bengal); 1990(2) CHN 38 (Annakali Datta v. State) and [Cyriac Vs. S.I. of Police](#),

12. I have taken into consideration all those decisions. It has been clearly laid down in those decisions that to constitute instigation, a person must instigate another to provoke, incite, urge or encourage the doing of an act by the other, by goading or urging forward. In the decision reported in 2005 Cri. IJ 4322 (supra) it was observed that the accused, cannot be said to have abetted the deceased to commit suicide by merely telling him in public "why are you remaining as a burden to earth, why can't you go and die etc.". Almost same principle was laid down in the decision reported in 2002 SCC 1141 (supra), wherein the Apex Court observed that the words uttered for a quarrel on the spur of moment, such as "to go and die", cannot be taken to be uttered with mens rea. In the decision reported in 1990(2) CHN 38 (supra), it was observed that from mere fact that the deceased committed suicide after he was badly treated by the petitioner, a case of strong suspicion regarding commission of offence u/s 306 IPC cannot be said to have been made out against, the petitioners.

13. So, from those decisions, as discussed above, it is clear that the legal position is that in order to establish a case u/s 306 Indian Penal Code, it must be established by the prosecution that it was the accused, who directly instigated and abetted the commission of suicide by the deceased. Unless and until that is proved, no case u/s 306 Indian Penal Code lies against any person. Keeping in mind the legal position, as indicated above, let us now see how far the prosecution has been able to make out a prima facie case u/s 306 of the Indian Penal Code against the accused/petitioner.

14. It is the admitted position that the accused/petitioner is the headmaster of the school where the deceased used to work as an assistant teacher. From the written complaint, it appears that it was mentioned therein that the headmaster allegedly insulted and tortured the deceased in various ways and also used to collect money from him. From the case diary it reveals that several pages of a diary, allegedly written by the deceased, was seized in connection with this case. If we look into those writings, then it will appear from the contents that the deceased was suffering from depression due to various reasons. From those writings, it appears that the deceased apprehended that the headmaster would damage his career as an assistant teacher. He also put blame upon the headmaster regarding the grant of leave in his favour and also for taking action against him over this sanction of the leave. That apart, it appears from those writings that the deceased mentioned therein that the headmaster took step against him in respect of some financial irregularities of the school in connection with a cheque and also in connection with a leave application. All those things, which were mentioned by the deceased, allegedly

in his diary, are nothing but his grievances against the headmaster. As a headmaster of the institution, the headmaster is within his jurisdiction to take appropriate step in case of any irregularity. How far those steps are correct or not that is different thing. If the assistant teacher i.e. the deceased of this case, was aggrieved by the attitude on the part of the headmaster, then he could have taken appropriate action against him by way of filing complaint and also by reporting the matter to the Managing Committee. But so far as this case is concerned, it appears that no such step was taken by the deceased in order to ventilate his grievances. On the contrary, if we look into the statement, made u/s 161 Cr. PC by one Trishul Hari Sarkar, assistant headmaster of the school, then it will appear that he did not support the allegations of the deceased, as allegedly made in his diary. He simply stated that he heard that in the hospital Sukhen Saha made a statement that due to the accused/petitioner he consumed poison. But this statement does not reveal any allegation that headmaster abetted and instigated the commission of suicide by Sukhen Saha.

15. Another witness, namely, Manirul Islam, who is the member of the Managing Committee, clearly stated that no incident, as alleged in the diary was reported to the Managing Committee by and on behalf of Sukhen Saha.

16. Other teachers whose statements have been recorded by the I.O. also did not say that the headmaster abetted and instigated the deceased to commit suicide. A close scrutiny of the letter, which was seized by the I.O. further reveals that an allegation of financial irregularity was made against the deceased by the headmaster. If we look into the statements of Dr. Amal Kumar Roy, then it will appear that he has claimed that the deceased before his death stated before him that the headmaster accused him of defalcation of the fund of the school. All these allegations, as made before the doctor and as made in the diary, certainly show that the deceased and the headmaster i.e. the present accused were not in good terms. I have already pointed out that the accused being the headmaster of the school got every right to take appropriate action against his subordinate. In case any such action is taken against any person by the headmaster, which leads that person to commit suicide, then it cannot be said that the headmaster abetted and instigated said assistant teacher to commit suicide. Undoubtedly the manner in which the deceased ended his life by committing suicide is unfortunate. But that does not mean that simply for that reason the headmaster of the school should be prosecuted for aiding and abetting and instigating said Sukhen Saha for committing suicide. There is no prima facie material available to that effect from the petition of complaint as well as from the statements, as recorded by the I.O. and from the documents seized by him during investigation. The allegations, as made against the accused/petitioner, who is the headmaster of the school, I have got no hesitation to hold that those are absurd and improbable in nature for holding that the Headmaster abetted and instigated the commission of suicide by Sukhen Saha. As such, I think that if the said criminal proceeding is allowed to be continued against

the accused/petitioner, then it will cause immense harassment to the said accused/petitioner, who is the headmaster of a recognised school. Considering all these things, I am of opinion that further continuation of the said criminal proceeding against the accused/petitioner will be an abuse of the process of the Court and as such, I have got no hesitation to hold that it is a fit case where the prayer for quashing should be allowed.

17. In the result, the revisional application is allowed on contest. The criminal proceeding being G.R. Case No. 467 of 2006, as pending in the Court of the learned Chief Judicial Magistrate, Suri, against the accused/petitioner is quashed and he be discharged.

18. Send the copy of this Judgment to the Court below at once for information and necessary action.

Xerox certified copy of this Judgment be supplied to the parties on urgent basis, if applied for.