



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE A V SESA SAI
CRIMINAL PETITION NO: 12707 OF 2013

Between:

1. PADI VENKATESWARLU, GUNTUR DT & 3 OTHRS., S/o. Brahmaiah,
R/o. Balijapalli, Rajupalem Mandal, Guntur District.
2. Padi Nagaraju S/o. Venkateswarlu,
R/o. Balijapalli, Rajupalem Mandal, Guntur District.
3. Padi Nagamalleswara Rao S/o. Venkateswarlu,
R/o. Balijapalli, Rajupalem Mandal, Guntur District.
4. Kalahasthi Adam S/o. Mukkanti,
R/o. Balijapalli, Rajupalem Mandal, Guntur District.

...PETITIONER(S)

AND:

1. STATE OF AP., REP. PP AND ANR., rept. by the Public Prosecutor,
High Court of A.P., Hyderabad.
5. Goriga Naga Lakshmi W/o. Late Anka Rao,
Balijapalli Village, Rajupalem Mandal, Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): SREEKANTH REDDY AMBATI

Counsel for the Respondents: PUBLIC PROSECUTOR

The Court made the following: ORDER



***THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+CRIMINAL PETITION NO.12707 OF 2013

%17.02.2021

Between:

Padi Venkateswarlu,
S/o Brahmaiah, aged 55 years,
R/o Balijapalli, Rajupalem Mandal,
Guntur District & 3 others.

....Petitioners-Accused.

And

\$ The State of A.P.
Rep.by its Public Prosecutor,
High Court of A.P.,
Hyderabad and another.

....Respondents.

! COUNSEL FOR THE PETITIONERS: Sri Sreekanth Reddy Ambati.

^COUNSEL FOR THE RESPONDENT No.1: Sri S.V.Sainath, Spl.Asst.Public
Prosecutor.

^COUNSEL FOR THE RESPONDENT No.2 : Sri Venkateswarlu Posani.

< Gist:

> Head Note

? Cases referred

- 1) 2002 (1) ALD (Cri) 812
- 2) (2010) 1 SCC 750
- 3) (2010) 8 SCC 628
- 4) (2010) 12 SCC 190
- 5) (1992) AIR SC 604
- 6) (2019) 13 SCC 598

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

A.V.SESHA SAI, J

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL PETITION No.12707 of 2013

ORDER :

In the present Criminal Petition, filed under Section 482 Cr.P.C., petitioners, who are the accused in Cr.No.140 of 2013 of Rajupalem Police Station, Guntur, are praying for quashment of the First Information Report registered against them for the alleged offences under Section 306 r/w 34 IPC.

2. Heard both sides and perused the entire material available on record.

3. Though, initially, the First Information Report came to be registered under Section 174 Cr.P.C., subsequently, the same had been altered by incorporating Sections 306 r/w 34 IPC.

4. According to the learned counsel for the petitioners, the very registration of the crime under the said provisions of law is a patent abuse of process of law. In elaboration, it is further contended that there are absolutely no ingredients of the above Sections of law in the entire complaint, as such, continuation of proceedings against the petitioners herein is impermissible.

5. In support of his submissions and contentions, learned counsel for the petitioners places reliance on the following judgments:

- 1) 2002 (1) ALD (CrI) 812
- 2) (2010) 1 SCC 750
- 3) (2010) 8 SCC 628

4) (2010) 12 SCC 190

5) (1992) AIR SC 604

6. On the contrary, vehemently opposing the present Criminal Petition, learned Special Assistant Public Prosecutor, Sri S.Venkata Sainath, contends that, in the absence of any one of the contingencies of Section 482 Cr.P.C., the present Criminal Petition deserves no consideration. It is further contended that, in view of the *prima facie* allegations contained in the complaint, petitioners herein cannot invoke the provisions of Section 482 Cr.P.C. and need to undergo the process of trial before the learned Magistrate. It is further submitted that the aspect of *mens rea* cannot be gone into in the present Criminal Petition and, eventually, the learned Special Assistant Public Prosecutor prays this Court to dismiss the Criminal Petition.

7. In the above backdrop, now the issue that emerges for consideration of this Court is:

“Whether the petitioners herein are entitled for any relief from this Court under Section 482 Cr.P.C.?”

8. The provisions of law, which are germane and relevant for the purpose of adjudication of the issue, in the present Criminal Petition, are Sections 107, 108 and 306 IPC. Section 107 IPC, which deals with the abetment of a thing, stipulates as follows:

*Abetment of a thing.—A person abets the doing of a thing, who—
(Firstly)—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.

Section 108 IPC defines the term ‘Abettor’, which reads thus:

108. Abettor—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Section 306 IPC deals with the punishment for abetment of suicide and the same stipulates as follows:

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.

9. It is very much obvious and evident from a reading of Section 107 IPC that, undoubtedly, the present case does not fall under the first and second contingencies of the said provision of law. In order to decide as to whether the case of the prosecution falls under the third contingency, it may be appropriate and apposite to refer to the judgments cited by the learned counsel for the petitioners.

10. In the case of **V.Shankaraiah v. State of A.P.** (first supra), the composite High Court, at paragraph Nos.4 and 5, held as under:

"4. 'Abetment' in Section 306 IPC has to be understood with reference to its definition given in Section 107 I.P.C. While considering the scope of Section 107 IPC the Supreme Court in C.B.I. K VS. V.C.SHUKLAL, observed, in Para 50 at Page 1423 as follows:

"...a person abets the doing of a thing when he does any of the acts mentioned in the following three clauses.

(i) instigates that person to do that thing.

(ii) engages with one or more other person or persons in any conspiracy for the doing of that things.

(iii) Intentionally aids, by any act or illegal omission, the doing of that thing.

So far as the first two clauses are concerned it is not necessary that the offence instigated should have been committed. For understanding the word 'aid' in the third clause it would be advantageous to see Explanation 2 in Section 107 IPC, which reads thus:

"Whoever, either prior to or at the time of the commission of the act, does anything in order to facilitate the commission thereof, is said to aid the doing of that act"

It is thus clear that under the third clause when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence....."

Clauses (i) and (ii) extracted above do not apply to this case because no 'instigation' by or 'conspiracy' between the petitioner and the other accused is alleged by the prosecution. The third clause also is not attracted because no 'aid' was given by the petitioner to the deceased when she committed suicide. Aiding



suicide by a person can only be by positive acts of assisting in procuring the material required for suicide, like a person supplying rope or other material for hanging, when a person expresses his desires to commit suicide by hanging, or supplying weapon or material like drugs, poison, etc., when the person intending to commit suicide asks such aid, or if a person suggest the modes in which suicide can be committed like jumping into a river, lake or well, etc., to a person who intends to commit suicide.

5. In SIA RAM VS. STATE OF U.P.2, the Supreme Court held that in order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. It is clearly held that mere proof that the crime could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirement of Section 107 IPC. Various High Courts have taken a view that merely because a person committed suicide by feeling insulted or humiliated, due to the comments or utterances made by the accused, the accused cannot be said to be guilty of an offence under Section 306 IPC. In DEVRAJ VS. STATE OF H.P.3, a partner in a firm committed suicide due to the other partners [accused] taking away large sums of money out of partnership fund for various purposes and their not rendering an account to the deceased, and for not permitting the deceased utilizing the profits. The other partners in the firm, who are accused of an offence under Section 306 IPC for the suicide of the deceased, were held to be not guilty of such offence. In ALKA GREWAL VS. STATE OF M.P.4, the woman was held to be not guilty of an offence under Section 306 IPC, for her husband committing suicide, after feeling insulted and humiliated due to her immoral

conduct. The Court specifically held that though she may be the cause for suicide of her husband, she cannot be said to have abetted his suicide. In STATE OF GUJARAT VS. PRADYUMAN RAMANLAL MEHTA⁵, the publishers and others responsible for publication of a defamatory article are held to be not guilty an offence under Section 306 IPC, for the defamed persons suicide on feeling humiliated due to the defamatory publication. V.ADINARAYANA VS. STATE OF A.P.⁶, is a case where a woman committed suicide when the accused threatened her that he would reveal her illicit connection to her husband. The accused was held to have not committed an offence under Section 306 of IPC. The Supreme Court in MAHENDRA SINGH VS. STATE OF M.P.⁷, held that merely because the deceased woman stated in her dying declaration that she was harassed by the accused, the accused cannot be held guilty of an offence under Section 306 IPC”.

11. In the case on hand also, it is not the version of the prosecution that the petitioners herein aided the deceased when he committed suicide.

12. In the case of **Gangula Mohan Reddy v. State of A.P.** (second supra), the Hon’ble Apex Court, at paragraph Nos.12, 13 and 17, ruled as follows:

12. Explanation 2 which has been inserted along with Section 107 reads as under:

"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."

13. *Learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh & Another v. State of M.P. 1995 Supp. (3) SCC 731. In the case of Mahendra Singh, the allegations levelled are as under:-*

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

17. The Court in the instant case came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema may necessarily be drawn".

13. In **Madan Mohan Singh v. State of Gujarat & Another** (third supra), the Hon'ble Apex Court, at paragraph Nos.8 and 12, held as under:

"8. We have gone through the suicide note though it is not yet on record. Shri Tulsi pointed out that even if this suicide note is accepted as it is, along with the FIR, no ingredients of Sections 306 and 294 (b), IPC could be spelt out from the same. We have gone through the whole FIR as well as the so-called suicide note which seems to have been signed on 4.2.2008 wherein he had complained about the stale incidents dated 15.10.2007 to 19.10.2007. It seems that it is 17 days after that, that he was found dead 23.2.2008. It is claimed by his wife Harshida Ben that she got a call from the Gujarat High Court informing her that a suicide note was found and that she should search for

such note in her house subsequent to which she claimed to have found the suicide note bearing the signature of the deceased, thus bringing the origin of alleged suicide note under the cloud of suspicion.

12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note”.

14. In **S.S.Chheena v. Vijay Kumar Mahajan and another** (fourth supra), the Hon’ble Apex Court, at paragraph No.25, held thus:

“25. 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 that act must have been intended to push the deceased into such a position that he committed suicide”.

15. It is significant to note that, in the present case, the alleged altercation took place on 25.09.2013 and the deceased

died on 09.10.2013 i.e. after twelve days. On this aspect, the judgment of the Hon'ble Apex Court in **Madan Mohan Singh's** case (referred supra) is squarely applicable to the present case. The judgment cited by the learned Public Prosecutor, in **Narayan Malhari Thorat v. Vinayak Deorao Bhagat**¹, would not render any assistance to the case of the prosecution in view of the factual and circumstantial situation of the said case.

16. In this context, it may also be appropriate to refer to the judgment of the Hon'ble Apex Court in **State of Haryana and others v. Ch. Bhajan Lal and others** (fifth supra). In the said judgment, the Hon'ble Apex Court had an occasion to deal with the power and jurisdiction of the Courts under Section 482 Cr.P.C., and laid down the following guidelines:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) 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;

¹ (2019) 13 SCC 598



(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) 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 ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding 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;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justifi- i7 on and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished”.

17. In the considered opinion of this Court, the case on hand squarely falls under the guidelines ‘a’ and ‘e’ and, in the absence of necessary ingredients of Section 306 r/w 107 IPC, the instant criminal proceedings initiated against the petitioners herein cannot be permitted to be continued.



18. For the aforesaid reasons, and having regard to the law laid down by the Hon'ble Apex Court and this Court in the above referred judgments, Criminal Petition is allowed, quashing F.I.R.No.140 of 2013 on the file of the Rajupalem Police Station, Guntur District.

Miscellaneous Petitions pending, if any, in this Criminal Petition, shall stand closed.

17th February, 2021.

Note:

LR copy to be marked.

B/o

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A.V.SESHA SAI, J