



IN THE HIGH COURT OF KERALA AT ERNAKULAM

2023:KER:53100

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 24TH DAY OF AUGUST 2023 / 2ND BHADRA, 1945

CRL.MC NO. 690 OF 2020

AGAINST CP 3/2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS,

PARAPPANANGADI IN CRIME No.336/2017 OF TANUR POLICE

STATION

PETITIONER/ACCUSED:

SUNIL KUMAR, AGED 21 YEARS,

BY ADVS.SRI.JOHNSON GOMEZ
SRI.M.R.SUDHEENDRAN

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY THE SUB INSPECTOR
OF POLICE, TANUR POLICE STATION, THROUGH PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

*ADDL. PRABHAKARAN, AGED 55 YEARS,
R2

BY ADV.SMT.M.K.PUSHPALATHA, PP
ADV.SRI.R.SREEHARI, ADDL. R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 24.08.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



'C.R'

K.BABU, J.

CrI.M.C No.690 of

2020

Dated this the 24th day of August, 2023

O R D E R

, a student of S.N College, Shornur was found dead in a railway track at Nadakkavu near Tanur in Malappuram district.

2. Tanur Police registered Crime No.336/2017 under the caption 174 Cr.P.C. Later, the Police converted the FIR as provided in Section 154 Cr.P.C alleging offence under Section 306 of IPC against the petitioner based on the First Information Statement given by the father of .

3. The Police completed the investigation and submitted the final report before the jurisdictional Magistrate.

4. Heard Sri.Johnson Gomez, the learned counsel for the petitioner, Sri.R.Sreehari, the learned counsel for respondent No.2 and the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that there



are no ingredients to attract the offence under Section 306 IPC. It is submitted that continuation of the criminal proceedings against the petitioner would be an abuse of the process of the Court.

6. The learned Public Prosecutor contended that the allegations in the final report along with the material produced by the prosecution prima facie show that the petitioner had abetted the commission of suicide by and, therefore, the proceedings against the petitioner cannot be quashed at this stage invoking powers of the High Court under Section 482 Cr.P.C.

7. The crux of the prosecution allegations is as follows: was a second-year degree student of S.N College, Shornur. The petitioner was a final-year degree student in the college. fell in love with the petitioner. After completing the course, the petitioner left the college in March 2017 and joined an Academy for Army training at Palakkad for pursuing a career in the Indian Military. Even after leaving the college, and the petitioner maintained their relationship. They continued contacting each other over the phone. Gradually, the petitioner started keeping away from the relationship. This caused severe mental pain to ,



who had ardent love for the petitioner. Due to the severe mental pain suffered by her, on 04.08.2017 she committed suicide by placing herself under a train on the railway track.

8. The learned counsel for the petitioner submitted that the allegations levelled against the petitioner in the final report do not make out the ingredients of the offence punishable under Section 306 of IPC.

9. Section 306 of IPC reads thus:

“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.”

10. Abetment is defined in Section 107 of IPC, which is extracted below:

“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 wilful 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.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend

C. Here B abets by instigation the apprehension of C.

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.”

11. The Code does not define the word 'suicide'. 'Suicide' reflects a “species of fear”. It implies an act of self-killing. In suicide, one thinks of self-annihilation because of something which is disagreeable or intolerable or unbearable. People behave differently in the same situation. Human sensitivity differs from person to person.

12. In *Chitresh Kumar Chopra v. State* (NCT of Delhi) [(2009) 16 SCC 605], the Apex Court held that suicidal behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide.



13. Instigation is a vital ingredient of abetment. Instigation is also not defined in the Code. In *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618], the Apex Court defined the word 'instigation' as follows:

“Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

14. 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. The intention of the legislature and the precedents on the subject make it 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 {Vide: S.S. Chheena v. Vijay Kumar Mahajan [(2010) 12 SCC 190] and M. Mohan v. State [(2011) 3 SCC 626]}.

15. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC {Vide: M. Arjunan v. State [(2019) 3 SCC 315]}.

16. In Ude Singh v. State of Haryana [(2019) 17 SCC 301], a Two-Judge Bench of the Apex Court on Section 306 IPC observed that in case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. If the accused by his acts and by his



continuous course of conduct create a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306 IPC, the Apex Court added. The principles declared in Ude Singh was reiterated by the Apex Court in Mariano Anto Bruno v. State (2022 SCC OnLine SC 1387).

17. There shall be direct or indirect acts of incitement to the commission of suicide by the accused. The person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain acts to facilitate the commission of suicide. Instigation has to be gathered from the circumstances of the case. It depends upon the intention of the person who abets in order to bring forth the ingredients of the offence under Section 306 of IPC. The prosecution has to establish nexus between the alleged act of the accused and the commission of the suicide by the victim. The act of the accused must have a positive effect to drive the victim to the commission of suicide.

18. Coming to the facts of the case. Admittedly, the petitioner and were in love. The petitioner was a final-year student of



the college where the victim was studying. Even after the petitioner left the college they continued their relationship. With the running of time, the petitioner started keeping away from the relationship.

19. The father of the victim stated that the classmates of the deceased had been trying to keep her away from the relationship with the petitioner. When the petitioner attempted to keep away from her, the impact of the mental worries it caused had driven her to commit suicide, the victim's father stated. The other witnesses, including her close relatives and the classmates of the victim, stated that committed suicide due to the fact that the petitioner was trying to keep away from her.

20. From the materials placed before the Court, this Court finds no positive act on the part of the petitioner that instigated or abetted to commit suicide. The prosecution also failed to place on record anything that points to the existence of any positive act on the part of the accused proximate to the time of occurrence.

21. Therefore, I am of the considered view that the prosecution has not made out any prima facie case against the



petitioner to implicate him in a crime alleging offence punishable under Section 306 IPC.

22. On the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 Cr.P.C., the Apex Court in *State of Haryana and Others v. Bhajan Lal and Others* (1992 Supp. (1) 335) held thus:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of 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 Section 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, no 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 ground 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 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.

(7) 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."

23. The present case is fully covered by categories (1) and (3) as enumerated in Bhajan Lal case. I am of the view that, in the present case, the criminal proceedings consequent to the final report in C.P.No.3 of 2018 are liable to be quashed.

Resultantly, the CrI.M.C is allowed. All further proceedings



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against the petitioner in Crime No.336/2017 of Tanur Police Station and C.P.No.3/2018 on the file of the Judicial First Class Magistrate Court, Parappanangadi stand hereby quashed.

Sd/-
K.BABU,
JUDGE

KAS

**APPENDIX OF CRL.MC 690/2020**

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE CERTIFICATE DATED 26.12.2017
ISSUED FROM SS ACADEMY
- ANNEXURE A2 CERTIFIED COPY OF THE FIR 336/2017 OF TANUR
POLICE STATION
- ANNEXURE A3 CERTIFIED COPY OF THE FINAL REPORT IN CRIME
336/2017 OF TANUR POLICE STATION
- ANNEXURE A4 TRUE COPY OF THE ORDER DATED 2.7.2018 IN BA
NO.286/29018 OF THIS HONORABLE COURT
- ANNEXURE A5 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO.336/2017 OF TANUR
POLICE STATION, CW1 IN CRIME NO.336/2017- MR
BABURAJ
- ANNEXURE A6 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO.366/2017 OF TANUR
POLICE STATION, CW7 IN CRIME NIO.336/2017- MR
SHAJAHAN
- ANNEXURE A7 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO.366/2017 - MRS SIJI
- ANNEXURE A8 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO. OF TANUR POLICE
STATION. CW9 IN CRIME NO. MR RAMESH
- ANNEXURE A9 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO.336/2017 OF TANUR
POLICE STATION. CW11 IN CRIME NO.336/2017 -
MR. PRABHAKARAN
- ANNEXURE A10 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO.336/2017 OF TANUR
POLICE STATION. CW12 IN CRIME NO.336/2017- MR
RAMANI
- ANNEXURE A11 TRUE COPY OF THE STATEMENTS OF CHARGE
WITNESSES IN CRIME NO.336/2017 OF TANUR
POLICE STATION. CW13 IN CRIME NO.336/2017 -
MR S.Y.GANGA



- ANNEXURE A12 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW14 IN CRIME NO.336/2017 - MR RANJITH P.K.
- ANNEXURE A13 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/20107 OF TANUR POLICE STATION. CW15 IN CRIME NO.336/2017 - MS NAYANA
- ANNEXURE A14 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW16 IN CRIME NO.336/2017- MR MOHAMMED NASAR
- ANNEXURE A15 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW17 IN CRIME NO.336/2017 - MR SUBAIR
- ANNEXURE A16 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 - MR.NISHA
- ANNEXURE A17 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW19 IN CRIME NO.:336/2017 - MR SALESH
- ANNEXURE A18 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW20 IN CRIME NO.336/2017 - MR PRASHOD
- ANNEXURE A19 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW21 IN CRIME NO.336/2017 - MR NISHA.
- ANNEXURE A20 TRUE COPY OF THE STATEMENTS OF CHARGE WITNESSES IN CRIME NO.336/2017 OF TANUR POLICE STATION. CW22 IN CRIME NO.336/2017 - MR RAKHIL.