

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 10TH DAY OF JUNE 2019 / 20TH JYAISHTA, 1941

Cr1.MC.No. 725 of 2013

CRIME NO.440/2012 OF Kottayam West Police Station, Kottayam

PETITIONERS/ACCUSED 1 & 2:

- 1 HARIKRISHNAN  
AGED 39 YEARS  
S/O.GOPALAKRISHNA WARRIYAR, "SREE PADMAM", EROOR  
KARA, NADAMA VILLAGE, TRIPUNITHURA.
- 2 JOBIN FEN S/O.JACOB,  
AGED 33 YEARS  
THOPPIL HOUSE, NEAR KODUNGOOR JUNCTION, VIZHOOR  
VILLAGE, CHANGANASSERY TALUK.

BY ADVS.

SRI.S.SREEKUMAR (SR.)  
SRI.P.PAULOCHAN ANTONY  
SRI.M.A.MOHAMMED SIRAJ  
SRI.P.MARTIN JOSE  
SRI.P.PRIJITH  
SRI.S.SREEKUMAR (SR.)  
SRI.THOMAS P.KURUVILLA

RESPONDENTS:

- 1 THE STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.
- 2 SREE SHYIL, S/O.SREEKANTH,  
AGED 25 YEARS, GOPIKA VEEDU, NEAR ERAVEESWARAM  
TEMPLE,  
KUDAMALLOOR KARA, AYMANAM VILLAGE,  
KUDAMALLOOR P.O., PIN 686 017.  
*(IS IMPLEADED AS ADDL.R2 AS PER ORDER DATED  
22/07/2014 IN CRL.M.A.NO.6835/2014 IN  
CRL.M.C.NO.725/2013)*

BY ADV.SRI.S.MANU FOR ADDL.R2  
P.P. SMT. M.N.MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28.05.2019,  
THE COURT ON 10.06.2019 PASSED THE FOLLOWING:

**"CR"**

**R.NARAYANA PISHARADI, J**

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Crl.M.C.No.725 of 2013

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Dated this the 10<sup>th</sup> day of June, 2019

**ORDER**

Sruthi was a student who cherished the dream to pursue the profession of a nurse. She belonged to a financially backward family. It is a hard reality that huge amount is needed for pursuing higher education. She approached a bank several times to grant her education loan. The bank rejected her applications. In despair, she committed suicide by consuming pesticide. Two officers of the bank now face prosecution for abetting her suicide.

2. The deceased had consumed pesticide on 17.04.2012. She was admitted in the hospital on the same day. She died at 07.40 hours on 30.04.2012. The autopsy report reveals that her death was due to poisoning.

3. The second respondent, who is the brother of the deceased, gave first information statement to the police in the

matter at 08.30 hours on 30.04.2012. On the basis of that statement, Crime No.440/2012 of Kottayam West Police Station was registered under Section 306 of the Indian Penal Code (for short 'I.P.C'). Initially, the first petitioner was the only accused in the case. Subsequently, the second petitioner was implicated as the second accused in the case. After completing the investigation of the case, the police filed Annexure-A final report (charge sheet) against the petitioners for the offence punishable under Section 306 read with 34 I.P.C.

4. After complying with necessary formalities, the Magistrate concerned committed the case to the Court of Session, Kottayam. The case is now pending before that court as S.C.No.1/2013. The petitioners seek to quash all proceedings in the aforesaid case by invoking the power of this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code').

5. Heard Sri.S.Sreekumar, learned Senior Advocate who appeared for the petitioners and Smt.M.N.Maya, learned Public Prosecutor and also Sri.S.Manu, learned counsel for the second respondent. I have also perused the case diary submitted by

the learned Public Prosecutor.

6. Learned senior counsel who appeared for the petitioners contended that, even if the entire allegations raised against the petitioners in the final report are accepted as true, no offence under Section 306 I.P.C would be made out against them and therefore, continuation of the proceedings against the petitioners would be an abuse of the process of the court. On the other hand, learned Public Prosecutor and also the learned counsel for the second respondent have contended that, the allegations in the final report along with the materials produced by the prosecution would, prima facie, show that the petitioners have abetted commission of suicide by the deceased and therefore, the proceedings against them cannot be quashed at this stage by invoking the power of this Court under Section 482 of the Code.

7. The first petitioner was the Manager of the Kudamaloor branch of the HDFC Bank and the second petitioner was the Deputy Manager (Credit) of that bank at Kottayam during the relevant period.

8. The allegations against the petitioners, as stated in the

final report, are as follows:

(1) As per the norms regarding sanctioning of education loans, no surety is required for granting loan upto an amount of Rs.4,00,000/- but the petitioners insisted that the deceased shall produce surety for availing the loan.

(2) The petitioners rejected the application for education loan submitted by the deceased in the year 2010 on the ground that her mother, who was not even shown as a surety in that application, had liability outstanding to the Lord Krishna Bank.

(3) The first petitioner told the mother of the deceased that if the arrears of loan were paid in the bank, the education loan would be sanctioned. The mother of the deceased remitted the amount of arrears of loan in the bank. Even then, the first accused rejected the application for education loan submitted by the deceased.

(4) When the deceased submitted fresh application for education loan in the year 2011, the

first petitioner told her that the loan cannot be sanctioned as she had initially failed in the Higher Secondary Examination and that she passed the examination only subsequently. The second petitioner sent a letter to the deceased rejecting the application for loan showing the aforesaid reason.

(5) The petitioners rejected the application for education loan submitted by the deceased on 16.03.2012 stating that the surety produced by her then had liability outstanding to the Indian Overseas Bank.

(6) The deceased submitted a fresh application for education loan on 14.04.2012 with a new surety but the accused did not take any steps on that application.

(7) The deceased had successfully completed the first year B.Sc Nursing course in a college in Andhra Pradesh. But she was not in a position to continue her studies for want of money and she would not have got back the certificates from the college without paying

the arrears of fees. Therefore, on 16.04.2012, she approached the first petitioner and told him that her studies would have to be discontinued if loan was not granted and then there would be no other option for her but to die. The first petitioner then told her to go and commit suicide.

9. The crucial question to be decided is, whether the aforesaid allegations raised against the petitioners in the final report, prima facie, make out the ingredients of an offence punishable under Section 306 I.P.C against them.

10. Section 306 I.P.C provides that 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.

11. Section 107 I.P.C defines abetment to mean that a person abets the doing of a thing if he 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 to Section 107 I.P.C states that 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. Explanation- 2 to Section 107 I.P.C states that 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.

12. 'Sui' means 'self' and 'cide' means 'killing'. Suicide thus implies an act of self-killing. Each person has his own idea of self-esteem and self-respect. Human sensitivity of each individual differs from person to person. Different people behave differently in the same situation. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances (See **Mohan v. State : AIR 2011 SC 1238**). Suicidal ideation and 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. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors is crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self (See **Chitresh Kumar Chopra v. State : AIR 2010 SC 1446**).

13. In the instant case, the second limb of abetment defined under Section 107 I.P.C, that is, engagement of the accused in a conspiracy, and also Explanation-1 provided to that section, have no application. The prosecution has also no case that the accused did anything to aid or facilitate the act of suicide by the deceased. Non-sanctioning of education loan by the petitioners to the deceased cannot be considered as illegal omission on their part which had aided or facilitated commission of suicide by the deceased. Therefore, the third limb of abetment defined under Section 107 I.P.C and Explanation-2

provided to that section, have also no application. Then, the question to be considered is whether the acts allegedly committed by the petitioners amount to instigation to commit suicide by the deceased.

14. What is instigation? In **Ramesh Kumar v. State of Chhattisgarh: AIR 2001 SC 3837**, the Supreme Court has held 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."*

15. To constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage doing of an

act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action, provoke to action or reaction, 'to keep irritating or annoying somebody until he reacts'. Similarly, 'urge' means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to 'goad' or 'urge forward' the latter with intention to provoke, incite or encourage the doing of an act by the latter. Where the accused, by his acts or by a continued course of conduct, creates such circumstances that the deceased was left with no other option except to commit suicide, an 'instigation' may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted; or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward

direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Presence of mens rea is the necessary concomitant of instigation (See **Chitresh Kumar Chopra v. State : AIR 2010 SC 1446**).

16. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. A positive act on the part of the accused to instigate or aid in committing suicide is required. It also requires 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. The accused should have committed direct or indirect acts of incitement to the commission of suicide. 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 act to facilitate the commission of suicide (See **Mohan v. State : AIR 2011 SC 1238**, **Gangula Mohan Reddy v. State of A.P : AIR 2010 SC 327** and **Amalendu Pal @ Jhantu v. State of W.B : AIR 2010 SC 512**).

17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who was abetted. In fact, instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced a person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide (See **Praveen Pradhan v. State of Uttaranchal: (2012) 9 SCC 734**).

18. It is well settled that in a prosecution brought under Section 306 I.P.C, there shall be nexus between the alleged act of the accused and the commission of suicide by the victim. Suicide must be the proximate result of the alleged acts of the accused constituting abetment. The acts or words of the accused

constituting abetment must have the force and effect, in ordinary circumstances, to drive the victim to the commission of suicide.

19. The facts of the present case require consideration in the light of the principles mentioned above. The case diary contains a copy of the norms regarding sanctioning of education loans issued by the Indian Banks Association which is produced by the prosecution in the lower court. It shows that, for granting education loan upto Rs.4,00,000/-, co-obligation of parents of the student has to be ensured. It is also stated that loan documents should be executed by both the student and the parent/guardian as joint borrowers. The norms also provide that 'no due certificate' need not be insisted as a pre-condition for considering education loan but banks may obtain declaration/affidavit confirming that no loan is availed from other banks.

20. Rejection of the applications for education loan submitted by the deceased in the years 2010 and 2011 and on 16.03.2012, whatever be the reason for such rejection, cannot be found to be an act of instigation made by the petitioners to

the suicide committed by the deceased in April, 2012. There is no direct nexus between the rejection of the applications for loan submitted by the deceased in the years 2010 and 2011 and on 16.03.2012 by the petitioners and the commission of suicide by the deceased after a long period. There was no proximity of time between the acts allegedly committed by the petitioners and the suicide by the victim.

21. In **Madan Mohan Singh v. State of Gujarat : (2010) 8 SCC 628**, the alleged acts of abetment were committed by the accused between the dates 15.10.2007 and 19.10.2007. The victim in that case had committed suicide during the period between 21.02.2008 and 23.02.2008. The Apex Court held that there was no proximity of time between the suicide and the alleged act of abetment.

22. In **Amalendu Pal** (supra), it has been held that there should be positive action proximate to the time of occurrence on the part of the accused which led to the commission of suicide.

23. In **Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh : AIR 2002 SC 1998**, proximity of time between the alleged act of abetment and the act of suicide by

the victim was given emphasis by stating as follows:

*"Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below".*

24. Proximity of time between the alleged act of abetment by the accused and the act of the victim is absolutely necessary. If the victim has committed suicide long after the alleged act of abetment by the accused, it cannot be found that there is nexus between the act of the accused and the act of the victim. Duration of a long time between the act of the accused

and the commission of suicide by the victim negatives an inference that it was under circumstances that the deceased had no option other than to end his/her life that he/she committed suicide.

25. In view of the discussion above, it cannot be found that rejection of the applications for loan submitted by the deceased in the years 2010 and 2011 and on 16.03.2012 by the petitioners amounted to an act of abetment which led the victim to commit suicide in the month of April, 2012.

26. The second petitioner was working as Deputy Manager (Credit) in the bank at Kottayam during the relevant period. There is no specific role attributed to the second petitioner in the rejection of the application for education loan submitted by the deceased on 16.03.2012 and also in processing the application for loan submitted by the deceased on 14.04.2012.

27. There is allegation against the first petitioner that he did not take any decision on the application for education loan submitted by the deceased on 14.04.2012. The prosecution has produced before the lower court a copy of the norms regarding

granting of education loans by the banks. Even as per this norms, the loan application has to be disposed of only within fifteen days. The deceased had consumed pesticide on 17.04.2012, without waiting for the fate of the application for education loan submitted by her on 14.04.2012. In such circumstances, it cannot be found that there was any culpable omission or negligence on the part of the first petitioner in not processing the application for loan by the date 17.04.2012, which was submitted by the deceased on 14.04.2012 and that such omission or negligence had led the deceased to commit an act which ultimately resulted in her death on 30.04.2012.

28. The most serious allegation raised against the first petitioner is in relation to the incident that allegedly occurred on 16.04.2012. It is alleged that, on 16.04.2012, the deceased had met the first petitioner and told him that if the loan was not sanctioned, she had no option other than to die. It is alleged that the first petitioner then told her to go and commit suicide.

29. Learned senior counsel who appeared for the petitioners would contend that there is no material produced by the prosecution to prove that the first petitioner had told the

deceased to go and commit suicide. There is no merit in this contention. The father of the deceased has given statement to the police that, on 28.04.2012, his daughter was brought to the hospital ward from the intensive care unit and then she told him about the incident that took place when she met the first petitioner on 16.04.2012. According to the statement given by the father of the deceased, the deceased told him that she had met the first petitioner on 16.04.2012 and told the first petitioner that if the loan was not sanctioned she had no option other than to die and then the first petitioner told her to go and commit suicide.

30. A dying declaration can be oral and it can be made to a relative or a private person (See **Parbin Ali v. State of Assam : AIR 2013 SC 542**, **Srinivasulu v. State of Andhra Pradesh : AIR 2002 SC 2780**, **Prakash v. State of Madhya Pradesh :(1992) 4 SCC 225**, and **Abhilash v. State of Kerala : ILR 2015 (3) Ker 826**).

31. It was on 30.04.2012 that Sruthi died. According to the statement given to the police by her father, on 28.04.2012, she had told him about the incident that occurred on 16.04.2012

when she met the first petitioner in connection with the application for loan given by her. Whether the statement allegedly made by the deceased to her father on 28.04.2012 amounts to a dying declaration or not and if so, whether it is reliable etc are not questions to be decided by this Court in this petition. Suffice it to state that, there is material produced by the prosecution, to prove that the deceased had met the first petitioner on 16.04.2012 and then he had told her to go and commit suicide.

32. But the crucial question is whether the act of the first petitioner telling the deceased to go and commit suicide, if accepted as true, amounts to an act of instigation and consequently, abetment made by him to commit suicide.

33. In **Ramesh Kumar** (supra), the Supreme Court has held that a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

34. In **Swamy Prahaladdas v. State of M.P: 1995 Supp SCC (3) 438**, the appellant was charged for an offence under Section 306 I.P.C on the ground that during a quarrel, he had

told the deceased 'to go and die'. The Apex Court held that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide. It was held as follows:

*"In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the Appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the Appellant".*

35. In **Sanjay Singh Sengar** (supra), it has been held as follows:

*"Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. ..... It is common knowledge that*

*the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional”.*

36. In **Pawan Kumar v. State of Himachal Pradesh : AIR 2017 SC 2459**, the Apex Court has held as follows:

*“Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life”.*

37. If the allegation against the first petitioner, that he told the deceased to go and commit suicide, is tested on the touchstone of the law declared by the Apex Court in the aforesaid decisions, it can only be found that utterance of such words by him does not amount to an act of instigation to commit suicide. 38. It is to be noted that, even according to the prosecution case, it was when the deceased told the first petitioner that in case the loan was not sanctioned she would

have no option other than to die that the first petitioner told her to go and do so. Even according to the prosecution case, the remark regarding death was initially made not by the first petitioner but by the deceased. The fact that the first petitioner had retorted to the deceased in such a manner in such a situation, in a fit of anger or emotion or at the spur of the moment, does not lead to an inference that he had instigated the deceased to commit suicide.

39. In this context, certain other circumstances are also to be taken note of. The prosecution relies upon the statement of one Parameswaran (CW19) to prove the case against the petitioners. The statement of this witness has been got recorded under Section 164 of the Code. In that statement, this witness has mentioned that sanctioning of education loan is being done from the head office of the bank at Mumbai and that it is the practice to forward the applications for loan to Mumbai after verifying them. If that be so, it cannot be found that the petitioners had any role or authority in sanctioning or rejecting an application for education loan.

40. The materials produced by the prosecution along with

the final report show that the deceased had secured admission in a college in Andhra Pradesh and that she had successfully completed the first year of B.Sc Nursing course by April, 2012 and she had returned to Kerala. The total fee for the course for a period of four years was Rs.3,60,000/-, each year it being Rs.90,000/-. The statement given to the police by the father of the deceased reveals that an amount of Rs.50,000/- had been paid in the college towards the fee and Rs.40,000/- was outstanding. The deceased could not have continued her studies in the college without payment of the arrears of fees. She would have also got back the certificates entrusted with the college at the time of admission only on payment of the balance amount of fees outstanding. These circumstances would indicate that the deceased was in a state of despair. She was in dire need of money. But, on this ground, it cannot be found that the petitioners had instigated her to commit suicide by not sanctioning the education loan within two days of submitting the loan application by her.

41. Suicide reflects a "species of fear". It is a sense of defeat that corrodes the inner soul and destroys the will power

and forces one to abandon one's own responsibility. To think of self-annihilation because of something which is disagreeable or intolerable or unbearable has to be regarded as a non-valiant attitude that is scared of the immediate calamity or self-perceived consequence (See **State of Kerala v. Unnikrishnan : AIR 2015 SC 3351**).

42. In the light of the discussion above, I am of the considered opinion that the prosecution has not made out any prima facie case against the petitioners for committing an offence punishable under Section 306 I.P.C. Continuation of the proceedings against the petitioners would be an abuse of process of the court.

43. Consequently, the petition is allowed. All proceedings against the petitioners in the case S.C.No.1/2013 pending on the file of the Court of Session, Kottayam, which are based on Annexure-A final report, are hereby quashed.

(sd/-)

**R.NARAYANA PISHARADI, JUDGE**

jsr/06/06/2019

**APPENDIX**

**PETITIONERS' EXHIBITS:**

ANNEXURE-A: TRUE COPY OF FINAL REPORT IN CRIME NO.440 OF 2012 OF KOTTAYAM WEST POLICE STATION

ANNEXURE-B: TRUE COPY OF GUIDANCE NOTES ON MODEL EDUCATIONAL LOAN SCHEME PUBLISHED BY INDIAN BANK'S ASSOCIATION.

ANNEXURE-C: TRUE COPY OF MODEL EDUCATIONAL LOAN SCHEME ISSUED BY THE INDIAN BANK'S ASSOCIATION

**RESPONDENTS' EXHIBITS:**

NIL

*TRUE COPY*

*PS TO JUDGE*