



2024:KER:21953

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 20TH DAY OF MARCH 2024 / 30TH PHALGUNA, 1945

CRL.MC NO. 3412 OF 2021

CRIME NO.1936/2018 OF ERNAKULAM CENTRAL POLICE STATION
AGAINST CP NO.9 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -II, ERNAKULAM

PETITIONER/ACCUSED:

DR. RADHIKA KAPAHTIA
AGED 34 YEARS,
D/O.DR.NARENDRA KUMAR KAPAHTIA,
SANT EKNATH SOCIETY,
OPPOSITE AKASHAVAANI, JAHRA ROAD,
AURANGABAD, MAHARASTRA.

BY ADVS.

SRI.NIREESH MATHEW
SRI.C.C.THOMAS (SR.)

RESPONDENT/COMPLAINANT-STATE:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-682 031.

*2 PRAGYA BIJALWAN
AGED 40 YEARS, D/O D.P.BIJALWAN
D.302 RAHEJA-VISTA, RAHEJA VIHAR,
POWAI, MUMBAI PIN :400076

*(ADDL.R2 IS IMPEADED AS PER ODER DATED
02/11/2021 IN CRL.M.A No.2/21)

*3 DIRECTOR OF FORENSIC SCIENCE LABORATORY
GX47+J3C, UDARASIROMANI RD,
ALTHARA NAGAR, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA 695003

*(ADDL.R3 IS SUO MOTU IMPEADED AS PER ODER
DATED 28/03/2023 IN CRL.M.C No.3412/21)



2024:KER:21953

Crl.M.C. No.3412/21

-:2:-

BY ADVS.

P.VIJAYA BHANU (SR.)

AASHIQUE AKTHAR HAJJIGOTHI

SRI.JOSEPH KODIANTHARA (SR.)

SRI. ASHI M.C., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
29.02.2024, THE COURT ON 20.03.2024 PASSED THE FOLLOWING:



"C.R."

BECHU KURIAN THOMAS, J.-----
Crl.M.C. No.3412 of 2021
-----Dated this the 20th day of March, 2024**ORDER**

Petitioner is indicted for abetment of suicide of her husband under section 306 of the Indian Penal Code, 1860 (for short 'the IPC'). She seeks to quash the criminal proceedings against her through this petition under section 482 of the Code of Criminal Procedure, 1973.

2. Petitioner and her husband were both specialist doctors working at the Amrita Institute of Medical Sciences Hospital in Kochi. Petitioner's husband committed suicide on 11.09.2018 by injecting poison. Marital discord is alleged to be the reason for the husband taking the extreme step.

3. Initially, a crime was registered under section 174 Cr.P.C. for unnatural death, and subsequently, the provision of law was altered to section 306 IPC and the petitioner was arrayed as the accused for abetment of suicide. In the final report filed on 15.06.2020, it was



alleged that, after their marriage, the wife happened to see certain intimate videos of her husband with his former girlfriend, leading to marital discord between the couple. The bickerings and quarrels had a heavy toll on the emotional balance of the husband, resulting in his suicide after leaving two suicide notes. It is alleged that the accused repeatedly harassed her husband and spoke ill about the family of the deceased, thereby abetting the commission of suicide.

4. Sri. C.C. Thomas, the learned Senior Counsel assisted by Adv. Nireesh Mathew, learned counsel for the petitioner, contended that the prosecution allegations, even if admitted, would not make out the offence under section 306 IPC and hence the proceedings are liable to be quashed. It was contended that the alleged suicide notes recovered do not indicate any act done by the petitioner, falling within the purview of abetment under law. The learned Senior Counsel argued that, merely because one of the parties to a marriage decided to end his life, even if it be on account of quarrel between the couple, the same cannot mulct the spouse with the offence of abetment of suicide.

5. Sri. Joseph Kodianthara, learned Senior Counsel assisted by Adv. Aashique Akthar Hajjigothi on behalf of the second respondent



submitted that the contentions now raised before this Court are matters which require appreciation of evidence and hence the same cannot be interfered with under section 482 Cr.P.C. The learned Senior Counsel referred to the decision in **Mahendra K.C. v. State of Karnataka and Another** (2022) 2 SCC 129 and submitted that the repeated and continued acts of mental cruelty and torture could amount to abetment. It was also submitted that it is too premature a stage for this Court to interfere.

6. While appreciating the contentions advanced by the respective Senior Counsel, it has to be noted that after the filing of the final report, and while this petition under section 482 Cr.P.C was pending, a further investigation was carried out, resulting in a further final report. Though the said further final report has been subsequently produced as an additional exhibit, there is no corresponding challenge raised. Concedely, the further final report has not brought in any change, and the report is practically a verbatim reproduction of the first final report filed in the case. In the decision in **Anand Kumar Mohatta and Another v. State (NCT of Delhi) Department of Home and Another** [(2019) 11 SCC 706] it was held that even after filing the charge sheet, the High Court can



exercise the inherent powers under section 482 to quash the FIR. In the instant case, petitioner has challenged the FIR as well as the final report. As the further final report has not brought out any additional material, the failure to incorporate a challenge against the further final report need not restrain this Court from considering the claim for quashing the FIR and the final report.

7. The husband of the petitioner committed suicide on 11-09-2018, while the two alleged suicide notes are dated 14.07.2018 and 28.08.2018. The prosecution alleges that the two notes give sufficient indication of abetment. Though the notes were written about 58 days and 14 days, respectively, before the date of suicide, for the purpose of this proceeding, they are assumed to be suicide notes. Petitioner's husband had admittedly taken a room in a hotel at Ernakulam and injected poison into his body and committed suicide. Petitioner was neither present in the room nor anywhere in the vicinity. A reading of the said two suicide notes only indicates that there were repeated quarrels between the couple. There is no reference, at all, to any act done by the petitioner to aid or instigate her husband to commit suicide. The letters indicate that a few incidents prior to their marriage have been haunting them, leading to



bickerings and quarrels between them. There is nothing to indicate any nexus between any act of the accused and the suicide of her husband, to term it as instigation.

8. Quarrels, fights or disputes in a marital relationship is not abnormal or uncommon. Those quarrels cannot be reckoned as conduct amounting to abetment of suicide unless there is something more in the form of instigation or aiding.

9. As per section 306 of the IPC, abetment to commit suicide is an offence. The term abetment is defined in section 107 of the IPC, as follows;

"S.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."

10. For a person to be proceeded against under section 306



IPC, the ingredients of section 107 IPC ought to be satisfied. The allegations in the instant case do not reveal any circumstance coming within the purview of clauses 'Secondly' and 'Thirdly' specified in the above provision. Therefore the issue boils down to whether the petitioner had instigated the deceased to commit suicide, as per clause 'First' in section 107 IPC.

11. In order to attract the offence under Section 306 IPC, the abetment must be for committing suicide and not for doing some other act. Unless the instigation is done with the intention to prod the other person to commit suicide, the offence under section 306 IPC read along with clause 'First' of section 107 IPC will not be attracted. The crucial ingredient of the offence of abetment of suicide is the element of mens rea in prompting the deceased to commit suicide. In other words, the act alleged as instigation must have been done with the intention that the deceased had to commit suicide. Hence the essence of the offence of abetment of suicide is not what the deceased felt, but what the accused intended.

12. In this context, it is appropriate to mention that a straight-jacket formula cannot be adopted while dealing with cases of abetment of suicide. Each case has to be decided on the basis of its



own facts and circumstances. Unlike the wife in a marriage committing suicide, the husband's suicide may stand on a different footing, especially after Section 113A and section 113B of the Indian Evidence Act, 1872 were incorporated, providing for certain presumptions. Therefore the yardstick while considering the case of abetment of suicide of a wife in a marriage can be different from that to be adopted when the husband had committed suicide.

13. In a recent decision in **Mohit Singal and Another v. State of Uttarakhand and Others** (2023 SCC Online SC 1598), the Supreme Court held that to attract the first clause under section 107 IPC, there must be mens rea to instigate the deceased to commit suicide and that the act of instigation must be of such intensity and in close proximity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Further, in the absence of an active or direct act committed by the accused leading the deceased to commit suicide, the offence cannot be attracted as held by the Supreme Court in **S.S.Chheena v. Vijay Kumar Mahajan and Another** [(2010) 12 SCC 190]

14. In this context, it is appropriate to refer to the decision in **Mahendra K.C v. State of Karnataka and Another** [(2022) 2 SCC



129], where the Supreme Court held that in certain circumstances, repeated mental harassment can amount to abetment of suicide. A perusal of the factual narratives of the said case indicates that the facts were totally different. In the said case, the deceased was threatened by the accused before the suicide, and it was in such circumstances the court refused to quash the proceedings.

15. In the instant case, the suicide notes were written weeks before the act of suicide and not in close proximity to the date of suicide. There is no reference to any instigation by the accused to prompt the deceased to commit suicide. A reading of the two suicide notes only indicates that the deceased felt the need to commit suicide. There is a dearth of material in the final report or the further final report, which can indicate any intention on the part of the accused to goad the deceased to commit suicide. Other than ordinary quarrels between the spouses, no overt acts have been allegedly committed by the accused to stimulate or prod the deceased to commit suicide. By no stretch of imagination can the alleged acts of the accused, in the instant case, amount to instigation to commit suicide.

16. Taking into reckoning the above circumstances, this Court



is satisfied that the admitted allegations in the final report and in the further final report do not constitute the ingredients of the offence of section 306 IPC and the prosecution of the petitioner, who is a medical doctor, is an abuse of the process of court.

17. Hence, all further proceedings in C.P. No.9/2021 on the files of Judicial First Class Magistrate's Court-II, Ernakulam arising out of Crime No.1936/2018 of the Ernakulam Central Police Station are hereby quashed.

This criminal miscellaneous case is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX

PETITIONER'S/S' ANNEXURES

- Annexure A** TRUE PHOTOCOPY OF THE FIRST INFORMATION REPORT IN CRIME NO.1936/2018 OF ERNAKULAM CENTRAL POLICE STATION, DATED 12/09/2018.
- Annexure B** TRUE PHOTOCOPY OF THE SUICIDE NOTE PRODUCED BY THE INVESTIGATING OFFICER BEFORE THE COURT BELOW.
- Annexure C** TRUE PHOTOCOPY OF THE ORDER DATED 24/09/2018 IN CMP NO.2090/2018 PASSED BY THE JUDL.FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM.
- Annexure D** TRUE PHOTOCOPY OF THE ORDER DATED 31/10/2018 IN CLR. MC NO.6527/2018 PASSED BY THIS HONOURABLE COURT.
- Annexure E** CERTIFIED COPY OF THE FINAL REPROT DATED 15/6/2020.
- Annexure F** CERTIFIED COPY OF THE FINAL REPORT DATED 30.09.2022
- Annexure-G** CERTIFIED COPY OF THE EXAMINATION REPORT ISSUED BY THE STATE FORENSIC LABORATORY, POLICE DEPARTMENT, GOVT. OF KERALA, THIRUVANANTHAPURAM