

Manoj Kumar vs State Nct Of Delhi on 1 July, 2024

Author: Navin Chawla

Bench: Navin Chawla

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22.05.2024

Pronounced on: 01.07.2024

+ CRL.REV.P. 814/2022 & CRL.M.A. 24925/2022

MANOJ KUMAR

..... Petitioner

Through:

Mr.Pramod Kumar Dubey, Sr.
Adv. with Mr.Satya Prakash,
Ms.Pinky Dubey, Mr.Satyam
Sharma, Ms.Aditi, Mr.Prince
Kumar, Ms.Amrita Vatsa
Ms.Ritvika Poswal, Mr.Ayush
Sachan, Mr.Chatainya Singh,
Mr.Shivam and Mr.Vaibhav
Kapur, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through:

Mr.Aman Usman, APP with SI
Deepak Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA
JUDGMENT

1. This petition has been filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, „Cr.P.C.) challenging the order dated 23.09.2022 passed by the learned Additional Sessions Judge-02, North, Rohini Courts, New Delhi in SC No. 391/2021 titled State v. Manoj Kumar, arising out of FIR No.355/2020 registered with Police Station: Jahangir Puri, Delhi for offence under Section 306 of the Indian Penal Code, 1860 (in short, „IPC), whereby the learned Trial Court has framed charge under Section 306 of the IPC against the petitioner herein.

Case of the prosecution

2. It is the case of the prosecution that on 22.07.2020, a PCR call was received wherein it was reported that a boy had committed suicide by hanging himself. The said information was lodged vide DD No.74A.

3. It is further stated that the mother of the deceased, namely Smt.Beena, had gone out for some work with her younger son and upon returning to her house, found the main gate open. She further saw that her elder son had committed suicide by hanging himself from the hook of the fan by using a chunni. She raised an alarm and, with the help of her neighbours, the deceased was brought down. Thereafter, he was taken to the BJRM Hospital, however, was declared dead.

4. It is stated that from the site of the incident, a suicide note, ledger, and chunni had been recovered. It is stated that in the suicide note, the deceased had alleged that the reason for his suicide is attributable to the petitioner herein. He stated that the deceased had given a loan of Rs.60,000/- to the petitioner herein prior to the Covid- 19 Pandemic Nationwide Lockdown and, during the lockdown, the deceased had suffered losses in his business. In the suicide note, he further stated that he had repeatedly asked the petitioner for the return of the money as he was in dire need. On 20.07.2020, the petitioner called the deceased to his Car on the pretext of returning the money, but thereafter threatened him by saying that if the deceased continued such demands, the petitioner would make his life difficult.

5. On 23.07.2020, the post-mortem of the deceased was conducted vide PM No. 601/2020, which opined that the cause of death was asphyxia due to ante-mortem hanging. Thereafter, FIR No. 355/2020 was registered with Police Station Jahangir Puri for offence under Section 306 of the IPC.

6. It is further alleged that during the course of the investigation, the Bank Account details of deceased from the Union Bank of India were obtained for the handwriting of the deceased by the Forensic Science Laboratory. The said FSL Report opined that the handwriting of the deceased matched with the admitted signatures of the deceased.

7. The learned Trial Court has been pleased to frame charge against the petitioner for offence under Section 306 of the IPC. Aggrieved by the same, the petitioner has filed the present petition.

Submissions by the learned Senior Counsel for the petitioner

8. The learned senior counsel for the petitioner, by placing reliance on the CFSL Result dated 09.03.2022, submits that the alleged Suicide Note has not been written by the deceased. He submits that the CFSL Result has not expressly opined the same to be written by the deceased. He submits that apart from the questioned signature, that is, Q2, that is the English signature of the deceased, matching with the specimen signature of the deceased, there is no evidence which can show that the Suicide Note was written by the deceased.

9. The learned counsel for the petitioner submits that to attract the offence of Section 306 of the IPC, there has to be an active effort/suggestion on behalf of the accused for the victim to commit suicide. He submits that there must be an intent to incite commission of suicide. In support of his submission, he places reliance on the judgement of the Delhi High Court in Dinesh Kumar v. State, 2019 SCC OnLine Del 6452.

10. He further submits that the alleged Suicide Note relied upon by the prosecution merely indicates that there was a loan transaction between the parties, and that the petitioner was refusing to repay the same. He submits that the Suicide Note does not show that the petitioner, by any act or omission, had intended for the deceased or incited him to commit suicide. He submits that in absence thereof, the charge under Section 306 of the IPC is not made out against the petitioner. He places reliance on the judgement of the Delhi High Court in Ashish Chaudhary v. State, 2009:DHC:169; of the Punjab and Haryana High Court in Amarjit Singh & Ors. v. State of Punjab,

2009 SCC OnLine P&H 1304; and of the Supreme Court in *M. Arjunan v. State*, (2019) 3 SCC 315, in support of his submission.

11. The learned senior counsel for the petitioner, by placing reliance on the judgements on the Supreme Court in *Swamy Prahaladdas v. State of Madhya Pradesh & Anr.*, 1995 Supp (3) SCC 438 and *Sanju @ Sanjay Singh Senger v. State of Madhya Pradesh*, (2005) 5 SCC 371, submits that the altercation/arguments alleged to have taken place in the car of the petitioner, also cannot be the basis for such charge. He submits that the words used in the heat of the moment would not amount to abetment to commit suicide.

12. The learned senior counsel for the petitioner submits that to establish a prima facie offence under Section 306 of the IPC, there has to be positive action proximate to the time of occurrence on the part of the accused person, which propelled the victim to commit suicide. He submits that as per the prosecution and the alleged Suicide Note, the argument between the petitioner and the deceased took place on 20.07.2020, whereas the incident occurred on 22.07.2020, that is, after two days. The altercation, therefore, is not the proximate cause of suicide.

13. He further submits that the Suicide Note itself suggests that the deceased was in large amounts of debt and the alleged denial of the petitioner to repay the sum of Rs.60,000/- alone cannot be the reason for his suicide. He submits that therefore, charge under Section 306 of the IPC is not made out. In support of his submission, he places reliance on the judgement of the Supreme Court in *Geo Varghese v. State of Rajasthan & Anr.*, (2021) 19 SCC 144.

14. He submits that neither there is evidence nor has any witness(s) been examined to show the alleged loan or the manner in which the same was given by the deceased to the petitioner.

15. The learned senior counsel for the petitioner, by placing reliance on the judgement of the Supreme Court in *Union of India v. Prafulla Kumar Samal & Anr.*, (1979) 3 SCC 4, submits that the petitioner is entitled to be discharged as there does not exist a prima facie case or a case of grave suspicion against the petitioner.

Submissions by the learned APP for the State

16. On the other hand, the learned APP for the State submits that at the time of framing of charge or in a revision against an order of charge/discharge, the adjudicating Court has to make a prima facie opinion that a case is made out against the accused, rather than to sift through the evidence which would result in conducting a mini trial at that stage. He places reliance on the order dated 07.08.2023 passed by the Supreme Court in SLP (CRL) 2924/2023, titled *Manik B v. Kadapala Sreyes Reddy*.

17. He submits that the petitioner has been explicitly named in the Suicide Note left by the deceased; and the altercation between the petitioner and the deceased dated 20.07.2020 also shows that the deceased, who was already facing the repercussions of the Covid-19 Pandemic, was left all the more hopeless by the petitioner's action of not repaying the loan amount of Rs.60,000/-. He submits that

the resultant behaviour of a threat has to be seen in the context of the peculiar facts of each case. He submits that the non-repayment of Rs.60,000/- given by the deceased to the petitioner as loan, and petitioner's denial to refund the same, is what propelled the deceased to take such a drastic measure, as he was left with no option especially coming from an economically weak background. He places reliance on the judgement of the Supreme Court in Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129 and in Chitresh Kumar Chopra v. State, (2009) 16 SCC 605, to submit that the Impugned Order, therefore, deserves no interference.

Analysis & Findings:

18. I have considered the submissions made by the learned counsels for the parties.

19. A reading of the Charge-Sheet would show that the only material to implicate the petitioner for an offence under Section 306 of the IPC, is the alleged Suicide Note left by the deceased. As it is a vital and the only piece of evidence alleged against the petitioner, the same is reproduced hereinbelow:

20. A reading of the above Suicide Note would show that apart from the deceased blaming the petitioner for his decision to commit suicide, there is not even a whisper of the petitioner ever instigated him or even hinted at him to commit suicide. Mere refusal to repay the loan, cannot make the petitioner guilty of „abetment of suicide' under Section 306 of the IPC.

21. Section 306 of the IPC reads as under:

"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."

22. "Abetment" is defined in Section 107 of the IPC, as under:-

"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 facilitates the commission thereof,

is said to aid the doing of that act."

23. In Mahendra K.C. (supra), the Supreme Court considering the provisions of Section 306 of the IPC read with Section 107 of the IPC, has held that the essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. It placed reliance on the earlier judgment in Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, wherein it was held that „instigation is to goad, urge forward, provoke, incite or encourage to an act. It was held that though to satisfy the requirement of instigation, 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. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

24. The Supreme Court also relied upon Chitresh Kumar Chopra (supra), wherein it was held as under:-

"19. As observed in Ramesh Kumar v. State of Chhattisgarh [2002 SCC (Cri) 1088] , 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. Undoubtedly, presence of mens rea is the necessary concomitant of instigation."

25. In M. Arjunan (supra), the Supreme Court re-emphasised that:

"7. 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. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of 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."

26. In *Geo Varghese* (supra), the Supreme Court held that for attracting Section 306 of the IPC, there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegation of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. It was held as under:-

"22. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused are otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased."

27. In the background of the above principles of law, let us now examine the facts of the present case and the accusation against the petitioner.

28. As has been stated hereinabove, the case against the petitioner is based on the alleged Suicide Note left behind by the deceased. The Suicide Note, at best, indicates that the deceased had lent a sum of Rs.60,000/- to the petitioner, and when he asked for the return of the same, the petitioner refused to return the same, and instead, called him in his car and asked him to forget about the loan and if he keeps asking for the same, the petitioner would make it difficult for him to live in and work at G-Block. The deceased further stated that if the petitioner had returned the money, he could have bought material to supply it further, however, as the petitioner has refused to return the money, he cannot think of anything else but dying as he was extremely disturbed due to the lack of money and he had not informed his family about it.

29. Further, there is no allegation in the Suicide Note or otherwise that the petitioner ever instigated the deceased to commit suicide, leave alone had any intention to aid or instigate or abet the deceased to commit suicide. As has been held in the above referred judgments, mere allegations of harassment of the deceased or using abusive language will not, by itself, constitute the abetment of suicide.

30. I may herein also refer to the FSL Report, which has reported that it is not possible to express any opinion on the handwritten part or the signature in Hindi on the alleged Suicide Note. Therefore, there is also a doubt on the author of the alleged Suicide Note.

31. Section 227 of the Cr.P.C. reads as under:-

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

32. In Prafulla Kumar Samal (supra), the Supreme Court observed that at the stage of framing charge, the Court cannot be a mere post office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case and the total effect of the evidence and the documents produced before the Court. Of course, the Court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial, the Court has an undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The Supreme Court culled out the following principles that are applicable at the stage of considering the framing of charges/discharge of the accused:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

33. Reference may also be had to the judgment of the Supreme Court in Kanchan Kumar v. State of Bihar, (2022) 9 SCC 577.

34. This Court is also cognizant of the limited power it exercises under Section 397 read with Section 401 of the Cr.P.C.

35. Applying the above principles to the facts of the present case, as have been discussed hereinabove, in my opinion, however, the Impugned Order cannot be sustained. There is insufficient material to frame charge under Section 306 of the IPC against the petitioner. Howsoever reprehensible, immoral and even unlawful, may have been the action attributed to the petitioner, the same cannot suffice to frame charge under Section 306 of the IPC against him.

36. Accordingly, the Impugned Order dated 23.09.2022 passed by the learned Additional Sessions Judge-02, North, Rohini Courts, New Delhi in SC No. 391/2021 titled State v. Manoj Kumar, is hereby set aside. The petitioner is discharged in the above criminal case arising out of FIR No. 355/2020 registered with Police Station: Jahangir Puri for offence under Section 306 of the IPC.

37. The petition is allowed. There shall be no order as to costs.

38. The pending application also stands disposed of.

NAVIN CHAWLA, J JULY 01, 2024/RP [Click here to check corrigendum, if any](#)