

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

CRIMINAL PETITION No.6915 of 2021

ORDER:-

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is filed seeking quash of F.I.R in Crime No.108 of 2020 of Mandapeta Town Police Station, East Godavari District.

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

The petitioner is the sole accused in Crime No.108 of 2020 of Mandapeta Town Police Station, East Godavari District. A case under Sections 323, 306 r/w 116 IPC was registered against him. The version of the prosecution is that on 15.05.2020 at about 5.30 A.M., when the *de facto* complainant was collecting aaseelu at the High School ground from the vegetable vendors, the petitioner herein questioned the *de facto* complainant as to why he is collecting excess rate of aaseelu and when the *de facto* complainant replied that he is collecting the aaseelu at the rate fixed by the concerned authorities, the petitioner beat the *de facto* complainant in front of the public in the market and insulted him. Therefore, having felt insult, the *de facto* complainant consumed the ant poison by mixing the same in water with an intention to commit suicide and he was rescued by one A. Suresh and admitted him in the Hospital and he subsequently survived after medical treatment was provided to him.

On the basis of the aforesaid facts, police registered a case under Sections 323, 306 r/w 116 IPC.

Learned counsel for the petitioner would submit that the facts of the case do not constitute any offence punishable under Section 306 IPC as there is no allegation that the petitioner has instigated or abetted the *de facto* complainant to commit any suicide. So, he would submit the prosecution of the petitioner under Section 306 r/w 116 IPC is not maintainable and no such offence is constituted in the facts and circumstances of the case. He relied on the judgment of the Apex Court in the case of **Satvir Singh v. State of Panjab**¹ in support of his contention that no offence punishable under Section 306 r/w 116 IPC is constituted in the facts and circumstances of the case. Therefore, he would pray for quash of the F.I.R relating to the offence punishable under Section 306 r/w 116 IPC.

Learned Additional Public Prosecutor opposed the Criminal Petition. He would submit that when the *de facto* complainant has consumed ant poison with an intention to commit suicide on account of the fact the petitioner beat him in front of the public and insulted him and as he survived because of the medical treatment provided to him, an offence punishable under Section 306 r/w 116 IPC is made out from the facts of the case and the petitioner is liable for prosecution for the said offence. Therefore, he would pray for dismissal of the Criminal Petition.

As can be seen from the facts of the case, *prima facie* there is absolutely no allegation that the petitioner has abetted the *de facto* complainant to commit suicide. It is well settled law that in order to constitute an offence punishable under Section 306 IPC, the necessary ingredients contemplated under Section 107 IPC

¹ 2002 (1) ALD (CrI.) 99 (SC)

regarding intentional instigation said to have been given by the petitioner to the *de facto* complainant to commit suicide or intentional aid said to have been given by the petitioner to him to commit suicide shall be established. There is absolutely no allegation as can be seen from the facts of the prosecution case that the petitioner has either instigated or aided him to commit suicide. If the *de facto* complainant feels insulted as he was beaten in front of the public in the market and if he takes any hasty decision to commit suicide, the petitioner cannot be held responsible for any such decision taken by the *de facto* complainant to commit suicide. *Prima facie* no offence punishable under Section 306 IPC itself is made out from the facts of the case. Consequently, no offence punishable under Section 306 r/w 116 IPC is also made out from the facts of the case.

In the judgment relied on by learned counsel for the petitioner in the case of **Satvir Singh v. State of Panjab** (referred *supra*) at para Nos. 7 and 8, the Apex Court held as follows:

“7. At the outset we may point out that on the aforesaid facts no offence linked with Section 306 IPC can be found against any of the appellants. The said section penalises abetment of suicide. It is worded thus: 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. It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.

8. Learned Sessions Judge went wrong in convicting the appellants under section 116 linked with Section 306

IPC. The former is abetment of offence punishable with imprisonment - if offence be not committed. But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under Section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under Section 116 read with Section 306 IPC. Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by Sessions Court.”

Therefore, from the ratio laid in the aforesaid judgment of the Apex Court, it is now manifest that no such offence punishable under Section 306 r/w 116 IPC is constituted from the facts of the case. So, the petitioner is not liable for prosecution for the said offence. Therefore, the very registration of F.I.R on the basis of the aforesaid facts for the offence punishable under Section 306 r/w 116 IPC is clearly unsustainable under law. However, the facts of the case clearly show that the petitioner has beat the *de facto* complainant. So, it *prima facie* constitutes an offence punishable under Section 323 IPC. So, the entire F.I.R cannot be quashed and it can be quashed only in respect of the offence registered under Section 306 r/w 116 IPC.

Resultantly, the Criminal Petition is partly allowed quashing the F.I.R for the offence punishable under Section 306 r/w 116 IPC. As regards the offence punishable under Section 323 is concerned, the F.I.R holds good and the law has to take its own course in respect of the said offence.

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

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date: 01.02.2022

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