

Delhi High Court

Atul Kumar vs State Of Nct Of Delhi & Anr on 23 August, 2021

* IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 39/2020 and CRL.M.A. 194/2020 (Stay)

Reserved on : 06.08.2021

Date of Decision : 23.08.2021

IN THE MATTER OF:
ATUL KUMAR

..... Petitioner

Through: Mr. Sarojanand Jha, Mr. Suraj
Malik and Ms. Megha Shawani,
Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Neelam Sharma, APP for
State with SI Sushil Sanwaria,
DIU, Central Distt.
Mr. Amarjeet Singh Sahni,
Advocate for R-2 with R-2 in
person.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 06.09.2019 passed by the learned ASJ-04, West District, Tis Hazari Courts, Delhi in Criminal Revision No. 77/2019, whereby the order dated 21.01.2019 passed by the learned MM-05 (West), Tis Hazari Courts, Delhi accepting the closure report qua only the present petitioner has been set aside. Insofar as the order of learned Magistrate accepting the closure report qua the two police officers is concerned, the same was upheld.

2. Learned counsel for the petitioner submits that the present case arises out of FIR No. 140/2016 registered under Section 306 IPC at P.S. Anand Parbat, Delhi. It was submitted that the aforesaid FIR was registered in pursuance of a complaint dated 22.01.2015 filed by respondent No. 2 (Ms. Paramjit Kaur Grewal) against the petitioner and two police officers namely SI Jagroop Singh and Ct. Vijender, nearly 44 days after the date on which suicide was committed by her husband, Mr. Arvinder Singh Grewal (hereinafter referred to as the deceased.)

3. Learned counsel has submitted that the petitioner is a resident of USA, having interest in antique vintage motorcycles. While doing an online search, the petitioner came to know that one M/s Palli

Motors, belonging to the deceased, was involved in the business of sale/purchase of vintage motorcycles. As the contact details of the deceased along with photographs of the motorcycles were displayed on the website <http://www.flickr.com/photos/pallimotors>, the petitioner contacted the deceased through an e-mail dated 27.05.2011 and expressed his desire to purchase a vintage BSA or Triumph or other British motorcycle from him. The deceased vide his reply e-mail dated 30.05.2011 quoted the price for two different BSA motorcycles i.e., Rs.2,00,000/- for BB31 BSA 350CC and Rs. 2,70,000/- for WM20 BSA 500CC. The petitioner agreed to purchase the latter and as per instructions of the deceased, transferred a sum of USD 4,650 on 02.05.2012 in the account of one Narender Verma through banking channel, who acknowledged the receipt of the said amount through his E-mail dated 03.05.2012.

4. Learned counsel for the petitioner further submitted that despite the receipt of complete payment in the year 2012, the deceased did not handover the possession of the vintage motorcycle. On 11.11.2014, the petitioner came to India and on legal advice, had a legal notice dated 19.11.2014 issued to the deceased and Narender Verma. Later, a criminal complaint dated 27.11.2014 for offences punishable under Sections 420/406 IPC read with Section 120B IPC was also filed by him at Police Station Anand Parbat, Delhi against aforementioned persons. The petitioner, thereafter, left India on the intervening night of 5th and 6th December, 2014. On 09.12.2014, the deceased committed suicide and left behind a suicide note naming the present petitioner as the reason for taking the extreme step.

5. Learned counsel for the petitioner has contended that the petitioner only acted as per the legal advice given to him. It is not the prosecution case that the petitioner had either threatened the deceased or interacted with him during his stay in India. It was further submitted that taking legal recourse to one's remedy, by no stretch of imagination, amounts to abetment. It was also submitted that as the petitioner had left India on the intervening night of 5th and 6th December, 2014 and the suicide was committed by the deceased on 09.12.2014, the same cannot be said to be a direct result of any act of the petitioner. In support of his contentions, learned counsel has placed reliance on the following decisions :-

i) M. Mohan v. State reported as (2011) 3 SCC 626.

ii) Rohit v. The State of Maharashtra and Ors.

reported as MANU/MH/2330/2020.

iii) Rajesh @ Raja Yadav v. State of M.P. reported as 2016 SCC OnLine MP 9892.

iv) Sanju alias Sanjay Singh Sengar v. State of M.P.

reported as (2002) 5 SCC 371.

v) Gulab v. State of Maharashtra and Another reported as 2019 SCC OnLine Bom 147.

6. Lastly, it has been submitted that the closure report was rightly accepted by the learned Metropolitan Magistrate. The Revisional Court ought not to have reversed the acceptance of the closure report by the learned Metropolitan Magistrate as the scope of Section 397 Cr.P.C. is very limited. In support of this submission, learned counsel has placed reliance on the decision in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Others* reported as (2015) 3 SCC 123.

7. On the other hand, learned counsel for the respondent No. 2 has vehemently opposed the present petition. He has laid emphasis on the suicide note to submit that the deceased was harassed by the petitioner despite having taken possession of the motorcycle in the year 2012. After coming to India, the petitioner had sent a legal notice and also lodged a false police complaint against the deceased as he wanted his other motorcycles to be serviced by the deceased free of cost. Learned counsel for respondent No. 2 also challenged the filing of closure report and submitted that besides the petitioner, two police officials had also been implicated in the complaint. Even though the investigation was done by DIU, Rohini, the petitioner was let off despite his not having joined investigation only in order to give clean chit to the two police officials.

8. I have heard learned counsels for the parties and gone through the case records.

9. As noted above, the genesis of the case lies in the transaction entered into between the petitioner and the deceased with respect to purchase of a vintage motorcycle; and in relation to which the petitioner on instructions of the deceased transferred a sum of USD 4,650 in the account of one Narender Verma, who acknowledged the receipt of the amount vide his e-mail dated 03.05.2012 stating that he would be sending the bank transfer receipt.

10. On one hand, it is the case of the petitioner that the entire consideration having been paid in the year 2012, the vintage motorcycle was never delivered. On the other hand, the complainant's case is that delivery of the subject motorcycle having been made in the year 2012 itself, the petitioner had lodged a false complaint against the deceased for harassment, solely for the purpose of getting his other motorcycles serviced by him free of cost. It is claimed that the delivery of the vintage motorcycle was made in the year 2012 to the petitioner's authorized person but the requisite transfer documents were promised to be executed once he came to India.

11. The issue involved when narrowed down is whether issuance of a legal notice and filing of a complaint case by the petitioner would amount to 'abetment' punishable under Section 306 IPC, which reads as under:

"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."

12. A person abets the doing of a thing if he firstly, 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. It is relevant to quote Section 107 IPC which defines "abetment" as-

"Section 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.

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."

13. To appreciate the contentions made by learned counsels for the parties, this Court deems it apposite to reproduce the suicide note, which reads as follows:

"28.11.2014 (My Declaration) This copy of letter is posted to Prime Minister, Delhi Police Commissioner and 5 other Ministries. I'm innocent. ATUL R/o Punjabi Bagh in America, has been black mailing me against his money I have given him BSA 1952 350 CC Regd No DLQ 2524. It is standing in his rented place 23 Madan Park, where all his motorcycles are standing as he is threatening me to restore his motorcycles one he gave me on 1st/12/14 we loaded his bike. It's mostly done Completed Know as he told me he will take back his Complaint on completing his motorcycle Maticular 350 as I am completing it he said he will not pay me if I will not complete his motorcycle he will file a case and neelam (auction) this building which does not belong to me its my late father S.B.S Grewal property. I am the only one to earn the living for my family. For being a NRI Atul is taking benefit his cousin with his friend took BSA DLQ 2524 with papers and told me Atul will come to India and sign delivery papers but he did not gave me. Instead he started threatening me as I am mentally disturb don't know what to do. Kindly insaaf kiya jaye mere sath (kindly do justice with me). He is responsible for my DEATH. His Matchulass UPI other three digit no I have forget. I have done that one BSA I repaired for him (BSA 500 1942 Red Color). Standing in same Atul's place and police from police station also harassing me.

(copies) send, To, Prime Minister To, Commissioner of Police To, Home Ministry To, High Court To, Supreme Court Respect and Regards Arvinder And let IQBAL SINGH to work here for his living at my place as I will I not be in this world to bear the

tortures from Atul and my life.

Arvinder As I have dropped messages on his phone and called him he is not responding.

ATUL no- USA +16127353911

-IND 987... (not legible) Arvinder"

14. At this juncture, I deem it necessary to recapitulate the law on the subject. Learned counsel for the petitioner has placed reliance on the decision of M. Mohan (Supra), which was related to an incident where the deceased was denied use of the family car for coming to Theme Park Festival on the occasion of Pongal. While the entire family travelled in the family car belonging to the brother-in-law, the deceased and her husband were told to reach the destination by public bus and the deceased was told that if she wants to travel by car, she has to bring a car from her family. Being hurt by the taunting statement regarding denial of use of family car, the deceased demanded a car from her father and committed suicide after four days. The Supreme Court came to the conclusion that there was no proximate link between the incident dated 14.01.2005 and the factum of suicide which had taken place on 18.01.2005. It was noted that the deceased was hyper-sensitive to ordinary petulance, discord and differences which happen in day-to-day life, especially in a joint family. After masquerading through the entire law, the criminal proceedings were quashed.

15. In Sanju alias Sanjay Singh Sengar (Supra), the deceased had committed suicide after a quarrel took place between him and his wife's brother. He had gone to the house of the parents of his wife where he was reportedly humiliated during a quarrel. Upon coming back, the deceased had informed his family members that his brother-in-law threatened and abused him by using filthy language. On the next day, he committed suicide and left behind a suicide note, wherein it was stated that his brother-in-law had threatened to make a report of dowry demand against his family members. He blamed his brother-in-law. During the investigation, it came on record that the deceased was without any work and used to consume liquor. It was observed that the suicide note could not be said to be a handiwork of a man with sound mind and sense.

16. In Rohit (Supra), the deceased had taken a loan from a financial institution, which was partially repaid but the accused started harassing him for the remaining amount. Eventually, the deceased committed suicide and left behind a suicide note stating the factum of harassment given by the accused. The Division Bench of the Bombay High Court came to the conclusion that demand of pending loan by the accused was part of his duty being an employee of the finance company and by no stretch of imagination it could constitute intention or aid or instigation in committing suicide.

17. In Gulab (Supra), the deceased had entered into a partnership with the accused and started a hotel business on his ancestral agricultural land. However, the same was shut down after six months of opening due to losses and subsequently, the deceased committed suicide leaving behind a suicide note wherein the accused was blamed. Allegations against the accused were that he had threatened the deceased to transfer his agricultural land in exchange for the expenses incurred by him towards

construction of the hotel. Further, he had instituted proceedings before the Court against the deceased. It was held that it was not a case of persistent torture and harassment of the deceased and it could not be said that the accused had tortured the deceased with an intention to guide him to commit suicide.

18. In *Gurcharan Singh v. State of Punjab* reported as (2017) 1 SCC 433, the Supreme Court observed as under:

"21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalizes the sustained incitement for suicide."

19. To attribute the acts of the petitioner as abetment, there has to be some causal link and proximity of the acts of the petitioner with the deceased committing suicide. It has to be shown that the petitioner did an active act or direct act which led the deceased to commit suicide seeing no option. Also, it has to be shown that the petitioner's act must have been intended to push the deceased into such a position that they committed suicide. Further, the prosecution has to show that the petitioner had the mens rea to commit the offence.

20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. The Supreme Court's observation in *Ramesh Kumar v. State of Chhattisgarh* reported as (2001) 9 SCC 618 informs the law on this issue, wherein it was explicated that:

"20. 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."

21. In *Ude Singh and Others v. State of Haryana* reported as (2019) 17 SCC 301, the Supreme Court while taking account of the different ways in which different people react to similar actions, observed as under:

"16.1. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates 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. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

22. Again, in *M. Arjunan v. State (Represented by Its Inspector of Police)* reported as (2019) 3 SCC 315, the Supreme Court elucidated the essential ingredients of the offence under Section 306 IPC in the following manner:

"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."

23. Recently, the Supreme Court in *Gurcharan Singh v. State of Punjab* reported as (2020) 10 SCC 200, reiterated the exposition of law relating to the offence of abetment with the following observations:

"15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased...."

24. In the present case, the complainant (wife of the deceased) filed a criminal complaint under Section 156(3) Cr.P.C., which, on the direction given by the learned Magistrate, was investigated by the DIU Cell. As per the suicide note, the deceased had sold one motorcycle BSA 1952 350 CC bearing registration number DL2Q 2524 to the petitioner. However, during investigation from the transport authority it came on record that the aforesaid registration number was allotted to an LML scooter in the name of one Sushil Abbot, son of Late Sh. Krishna Lal Abbott. A notice was issued to Sushil Abbott, whose son replied that Sushil Abbott had expired on 23.12.1996 and he never owned any motorcycle. Further, the scooter owned by them bearing registration No. DLQ 2524 had been sold long back to a scrap dealer.

25. During investigation, the Call Detail Record (CDR) of both the petitioner as well as the deceased were obtained. As per CDRs, while the deceased had called twice on the number of the petitioner on 08.12.2014 and 09.12.2014, the petitioner had not given even a single call to the deceased. A call was received by the deceased from one of the two police officials implicated, Ct. Vijender on 06.12.2014 who had stated that the deceased was called on that day to the Police Station for the purpose of inquiry on petitioner's complaint. No other calls were received by the deceased.

26. On the basis of above investigation, a closure report was filed on 22.09.2016 which was accepted by learned Metropolitan Magistrate vide order dated 21.01.2019.

27. In the complaint filed by wife of the deceased, it has been alleged that the petitioner with a view to harass the deceased had issued the legal notice and filed the criminal complaint so that the deceased would repair his other two motorcycles free of cost. It is stated that the deceased was harassed and mentally tortured by the police officers on the complaint lodged by the petitioner. The deceased had told the complainant that he was called at the Police Station on 06.12.2014 where he was made to sit on his knees for a long period and was tortured/harassed. Due to the said act, he could not sleep the whole night and was disturbed. It is also stated that the deceased repeatedly tried to contact the petitioner on his phone but he avoided the phone calls.

28. From the sequence of events as apparent from a combined reading of the suicide note, criminal complaint and the investigation conducted it is seen that the criminal complaint filed by the petitioner against the deceased was pending inquiry and no FIR was registered. The deceased was called only once to the Police Station. The stand of the deceased, that the possession of the motorcycle purchased by the petitioner was already handed over, was yet to be looked into. In the complaint filed by the wife of the deceased, it was stated on one hand that the petitioner was harassing the deceased to repair his other motorcycles free of cost, but on the other, it was stated that the petitioner did not take back his motorcycle after it was repaired.

29. It is also noteworthy that on the day the deceased was called to the Police Station, the petitioner had already left India a night earlier. As per CDR details, no calls were made by the petitioner to the deceased and the only calls made by the deceased to the petitioner after he had left India remained unanswered. The deceased was mentally upset as the petitioner had issued a legal notice and filed a criminal complaint against him. The only time when the deceased was called to the Police Station to join inquiry was on 06.12.2014 and the suicide was committed on 09.12.2014.

30. The suicide note runs into three pages. On each page, the deceased had put date of 28.11.2014 and also appended his signatures. It records that on 01.12.2014, the petitioner had given a motorcycle for restoration. From a perusal of the suicide note, it seems probable that a portion of it was written on 28.11.2014 and the note was completed on a later date. In this note, the deceased also mentions that he was mentally disturbed.

31. The deceased had felt harassed but, in these facts, the act of petitioner could not be held to have abetted the deceased in committing suicide. The filing of a criminal complaint by the petitioner was his legal recourse, as advised to him. As noted above, the transaction between the petitioner and the deceased relating to purchase of a vintage motorcycle is an admitted fact. Whether the motorcycle was delivered to the petitioner or not, would have been established after inquiry. It cannot be said that by filing a criminal complaint against the deceased, the petitioner had the mens rea to instigate or goad the deceased to commit suicide; and further, that the deceased was left with no other option but to commit suicide. Even as per investigation, the deceased was called to the Police Station only once on 06.12.2014 i.e., three days before he committed suicide. Also, the acceptance of closure report qua the two police officers by the learned Metropolitan Magistrate and its affirmation by learned ASJ, has not been challenged by the complainant and has attained finality.

32. In *State of Haryana and Others v. Bhajan Lal and Others* reported as 1992 Supp (1) SCC 335, the Supreme Court while summarizing the principles of law governing the exercise of the inherent powers under Section 482 Cr.P.C. to prevent abuse of the process of court or otherwise to secure the ends of justice held that such power could be invoked to bring an end to the criminal prosecution in cases 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".

33. The Supreme Court has cautioned that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course [Refer: *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others* reported as (1998) 5 SCC 749]. Also, Article 21 of the Constitution of India assures every person right to life and personal liberty. The word personal liberty is of the widest amplitude covering a variety of rights which constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the supreme law, i.e., the Constitution. [Refer: *State of Bihar and Another v. P.P. Sharma, IAS and Another* reported as 1992 Supp (1) SCC 222]

34. When the facts of the present case are analyzed in light of the legal principles extracted hereinabove, neither any live link nor any proximity between the acts of the petitioner and the act of

committing suicide by the deceased is discernible. The requisite mens rea on part of the petitioner is also lacking. It cannot be said that the petitioner had abetted or instigated the deceased to commit suicide and that the deceased was left with no option but to commit suicide. This Court is of the opinion that necessary ingredients of the offence punishable under Section 306 IPC are not made out against the petitioner with the result that the petition is allowed and the impugned order passed by the learned ASJ directing the Trial Court to proceed with the matter, is set aside.

35. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

36. A copy of this order be communicated electronically to the concerned Trial Court and also uploaded on the website.

(MANOJ KUMAR OHRI) JUDGE AUGUST 23, 2021/ga [Click here to check corrigendum, if any](#)