

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 141 OF 2024

BETWEEN:

1. SRI. ONKARAPPA G H
S/O SRI G HANUMANTHAPPA
AGRD ABOUT 66 YEARS
2. SMT. ANUSUYAMMA
W/O SRI. ONKARAPPA G H
AGED ABOUT 61 YEARS

BOTH ARE RESIDING AT SWAMY
VIVEKANANDA EXTENSION
'B' BLOCK, H.NO. 83
NANSU NILAYA
SHIVAMOGGA CITY – 577 201.

...PETITIONERS

(BY SRI. ARUN SHYAM S, ADVOCATE FOR
SRI. SUYOG HERELE E, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH TUNGANAGARA P S
SHIVAMOGGA RURAL CIRCLE
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU – 560 001.

...RESPONDENT

(BY SRI RAHUL RAI K, HCGP)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C
PRAYING TO SET ASIDE THE ORDER DATED 18.12.2023
PASSED BY THE PRINCIPAL DISTICT AND SESSIONS JUDGE,
SHIVAMOGGA IN S.C. NO.126/2022, THEREBY REJECTING THE

APPLICATION FILED BY THE PETITIONERS SEEKING THEIR DISCHARGE UNDER SECTION 227 OF CR.P.C. AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 01.03.2024, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner being aggrieved by the order dated 18.12.2023 in S.C No.126/2022 passed by the Prl. District and Sessions Judge, Shivamogga, wherein the Trial Court rejected the application filed by the petitioners/accused Nos.1 and 2 under Section 227 of the Code of Criminal Procedure (for short "Cr.P.C."), has preferred this revision petition.

Brief facts of the case :

2. The case of the prosecution is that the deceased Shruthi was working as a maid in the house of Sri. G.H. Omkarappa and Smt. Anusuyamma at Shivamogga. The deceased was staying with them since two years. The complainant being a mother of the deceased-Shruthi used to visit the house where Shruthi was working often and she was enquiring about the welfare of her daughter. Such being the fact, she has received a message from the reliable source that

her daughter committed suicide in the house of the accused around 2.00 pm.

3. Immediately after receiving the said information, the complainant and others went to Shivamogga and learnt that the deceased Shruthi committed suicide inside the room and it was bolted from inside. It is further stated in the complaint that, the door was opened with the help of the localites in the presence of police. On opening the said room, the complainant found that her daughter was hanging from the ceiling fan and also noticed a chit said to have written by the deceased. Hence, she lodged a complaint.

4. Upon the complaint, the jurisdictional police registered a case in Cr.No.207/2015 for the offence under Section 306 read with Section 34 of IPC. After conducting investigation submitted charge sheet. Being aggrieved by filing of the charge sheet, the petitioner herein filed an application under Section 227 of Code of Criminal Procedure Act (for short, 'Cr.P.C.'). The said application came to be rejected by the Trial Court. Hence, this revision.

5. Heard Sri. Arun Shyam, learned Senior Counsel for Sri. Suyog Herele, learned counsel for the petitioner and

Sri. Rahul Rai, learned High Court Government Pleader for the State.

6. It is the submission of learned Senior Counsel that the findings of the Trial Court in rejecting the application for discharge is erroneous and against to the facts of the case. Hence, the same is liable to be set aside.

7. It is further submitted that the contents of the charge sheet do not disclose the ingredients of Section 306 of IPC. In fact, the complainant in her complaint stated that she was visiting the house of the accused and she was enquiring about the welfare of her daughter. The averments of the complaint did not disclose either instigation or harassment to commit suicide.

8. It is further submitted that a letter said to have been found in the room where the deceased committed suicide clearly discloses that, the deceased was loving a boy and she mentioned the phone numbers and narrated certain facts in it. However, the deceased mentioned in the end of the said letter, that accused are responsible for her suicide. That itself is not sufficient to attract the ingredients of instigation or abetment to commit suicide. Such being the fact, asking the petitioner to face the trial, certainly, amounts to an abuse of process of law.

Therefore, the petition deserves to be allowed. Making such submissions, the learned Senior Counsel prays to allow the petition.

9. Per contra, learned High Court Government Pleader vehemently justified the order of rejection passed by the Trial Court and submitted that as per the averments of the complaint, the deceased Shruthi was working in the house of the accused as a maid and she committed suicide in their house by leaving death note. The said death note contains some facts and the same are required to be proved during full-fledged trial. In case, if the petition is allowed, the facts remain unchallenged. Therefore, the petition deserves to be dismissed. Making such submission, the learned High Court Government Pleader prays to dismiss the petition.

10. Having heard learned counsel for the respective parties and also after having perused the findings of the Trial Court, the Trial Court while rejecting the application opined that at the stage of framing of charges, the Court has to see only *prima-facie* material and further opined that the contents of the death note are required to be proved during trial.

11. Regard being had to be findings and also the facts of the case, it is relevant to refer Section 306 of IPC which reads thus:

"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."

12. On careful reading of the ingredients of the provisions, it makes clear that if any person commits suicide and whoever abets the commission of such suicide, of course, such persons shall be punished under said provisions.

13. It is settled principles of law that in order to convict a person under Section 306 of IPC, there has to be a clear *mensrea* to commit the offence. Further, it also requires an active act or direct act which lead 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.

14. Now, it is also relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **MOHIT SINGHAL**

AND ANOTHER VS. STATE OF UTTARAKHAND AND

OTHERS¹ paragraphs numbers 9 and 10 which read thus:

"9. Section 306 IPC makes abetment to commit suicide as an offence. Section 107 IPC, which defines the "abetment of a thing", reads thus:

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 aides, by any act or illegal omission the doing of that thing;

Explanation 1. A person who, by willful misrepresentation, or by willful 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. In the facts of the case, Secondly and Thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens-rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased such a position under which he or she has no choice but commit suicide. Such instigation must be in close proximity to the act of committing suicide."

15. On careful reading of the dictum of the Hon'ble Supreme Court, it makes clear that to attract the ingredients of abetment, there must be an instigation in some form on the part of the accused to cause the deceased to commit suicide.

¹ (2024) 1 SCC 417

16. In the present case, either the averments of the complaint or averments of the charge sheet do not disclose neither *mens-rea* nor instigation. Even assuming that the contents of the death note are true, it can be inferred from the averments that the deceased was loving a boy and she mentioned the phone numbers and expressed her willingness to meet him and at the same time, she mentioned the reason for committing suicide. "Mere mentioning that the accused are responsible for committing suicide", is not sufficient to attract the ingredients of abetment. Such being the facts, asking accused to face the trial, certainly would be considered as an abuse of process of law. Therefore, the petition deserves to be allowed.

17. It is needless to say that the Trial Court while considering the application for discharge must satisfy as to whether the material placed in the charge sheet are sufficient to record the conviction. The Hon'ble Supreme Court time and again reiterated that the Trial Court shall not act as a post office between prosecution and investigating agency. Of course, the Trial Court while framing the charge must *prima facie* satisfy that the materials are sufficient to frame the charge. However, the said word "*prima facie*" would mean that,

even if no other material is placed by the investigating agency, the conviction can be recorded based on the charge sheet materials.

18. In the light of the observation made above, I proceed to pass the following :

ORDER

- (i) The Criminal Revision Petition is *allowed*.
- (ii) The order dated 18.12.2023 in S.C No.126/2023 passed by the Prl. District and Sessions Judge, Shivamogga, is hereby set aside.
- (iii) The petitioners are discharged for the offence punishable under Sections 306 read with Section 34 of IPC.

**Sd/-
JUDGE**

JS/-