

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 166 of 2017

Narendra Singh.Revisionist

Versus

State of Uttarakhand & another.Respondents

Mr. K.S. Bora, Advocate for the revisionist.

Mr. Raman Kumar Sah, Deputy Advocate General with Mr. V.S. Pal, Assistant Government Advocate for the State of Uttarakhand.

Dated: March 9, 2018

Hon'ble V.K. Bist, J.

Heard learned counsel for the parties.

2. This Criminal Revision is directed against the judgment and order 09.05.2017 passed by the learned Additional District & Sessions Judge, Tehri Garhwal, in Sessions Trial No. 16 of 2016 "State Vs. Narendra Singh", by which the learned Additional District & Sessions Judge, Tehri Garhwal found that there are sufficient ground for framing charge against the revisionist under Section 306 I.P.C. and framed charge against the revisionist under Section 306 I.P.C.

3. Heard learned counsel for the parties and perused the lower court's record.

4. Facts, in brief, are that, on 18.03.2016, complainant Mastan Singh lodged an F.I.R. in Police Station Kirtinagar, Tehri Garhwal stating therein that, on that day, his brother Dharendra was alone at his

home. The complainant had gone to Srinagar for some work. His mother, his wife and wife of Dhirendra had gone to the forest to fetch the wood. When they came back at around 01:00-02:00 p.m., the wife of Dhirendra went to open the door of her room, which was closed from inside. She knocked the door and asked to open the door. When the door was not opened, she saw from the skylight that her husband Dhirendra was hanging on fan. She started weeping, due to which, her family members and villagers got assembled. The husband of the Village Pradhan, namely, Bhupendra Singh was also there, who informed the Police. After arrival of Police, the door was opened in presence of the villagers and deceased was descended. From the pocket of his *Paizama*, two written papers were found. On those papers, he had written that cause of his suicide is harassment by Narendra Singh S/o Kesar Singh (revisionist). His brother used to say to his wife and to him that Narendra Singh used to harass and threaten him by stating that he will get his entire family behind the bar. Deceased also told him that revisionist also used to say that the papers, which were furnished by the deceased while taking the motorcycle, are fake. Due to all these reasons, his brother was compelled to commit suicide. The suicide note was sent for the Forensic Examination. The Investigating Officer, after investigation, found sufficient evidence against the revisionist and filed chargesheet against the revisionist under Section 306 I.P.C. The learned Magistrate heard the counsel for the parties and after considering the entire record reached to the conclusion that there are sufficient reasons for framing charges against the

revisionist under Section 306 I.P.C. and, thereafter, framed charge against the revisionist under Section 306 I.P.C. Hence, this Criminal Revision.

5. Learned counsel for the revisionist submitted that no case under Section 306 I.P.C. is made out against the revisionist on the basis of evidence on record. Hence, chargesheet dated 09.05.2017 is bad in the eyes of law. He submitted that there is nothing on which basis it can be said that the revisionist had any intention or played any active role in instigating the deceased. Even prosecution also did not come up with the case that there was any *mens rea* on the part of the revisionist, therefore, no charge could be framed under Section 306 I.P.C. against the revisionist. He submitted that wife of the revisionist is Up-Pradhan of Village Mahargaon and the revisionist belongs to the prestigious family of the village. There has been political and election rivalry *inter se* the parties and the rival group belongs to the rival parties. Further, there had been previous litigation between the family of the revisionist and the members of the rival party and many times, the family members and the father of the revisionist made complaint against the father of the deceased and his family members. Due to this reason, false complaint has been lodged. He submitted that witnesses under Section 161 Cr.P.C. are the persons against whom or their family members, there were complaints by the revisionist or his father. They were involved in the disputes with the revisionist or his other family members. They falsely implicated the revisionist. Charge has been framed against the revisionist on the fictitious and highly interested

testimony of those witnesses. He submitted that same persons are witnesses of chargesheet, who have given statements under Section 161 Cr.P.C. against the revisionist. He contended that, in the year 2013, at the time of election, a dispute arose between the parties, where proceedings under Section 107/116 Cr.P.C. were initiated. Learned counsel for the revisionist submitted that the deceased committed suicide on 18.03.2016, 22 months after the purchase of Motorcycle on the basis of fake papers and, in his illegal act, two persons, namely, Narendra Singh Bisht Supana and Ram Prakash Tamta, the agents of Guru Kripay Agency of Motorcycle helped him. The revisionist was nowhere in the scene. Only thing was that between the families of the revisionist and the deceased, there was previous long rivalry and enmity. He submitted that the deceased was guilty, therefore, he committed suicide. For that act of the deceased, the revisionist cannot be held responsible. He further contended that the deceased himself committed forgery and, due to fear, he committed suicide. He also submitted that there is nothing to show that the revisionist instigated the deceased to commit the forgery or to commit the suicide. He submitted that *sine-qua-non* of the abatement to suicide means that for the offence under Section 306 I.P.C. is *mens rea* is to be seen and the active act on the part of accused should be there. He submitted that, in the case in hand, the conduct of the revisionist does not show that there was any *mens rea*. He submitted that requirement of the abatement to suicide is intention; but, same is absent in the present case, therefore, the charge framed by the Additional District & Sessions

Judge is not correct. In order to buttress his argument, he relied on the judgments of the Hon'ble Apex Court in the matter of Sanju Alias Sanjay Singh Sengar Vs. State of M.P., reported in (2002) 5 SCC 371; Swamy Prahaladdas Vs. State of M.P. and another, reported in 1995 Supp (3) SCC 438.

6. On the other hand, Mr. Raman Kumar Shah, Deputy Advocate General submitted that there was sufficient material before the Magistrate to reach to the conclusion that there is sufficient ground to frame charge and charge has rightly been framed. He submitted that the order impugned needs no interference of this Court and the revision filed by the revisionist deserves to be dismissed.

7. I have considered the submission advanced by the learned counsel for the parties and have perused the papers available on record.

8. The deceased had purchased the Motorcycle. It is the case of the revisionist that the Motorcycle was purchased in the name and address of deceased on the basis of forged document. Since he was guilty conscious, he committed suicide. But, in suicide note, he has written that he is committing suicide due to harassment by the revisionist. Revisionist used to say to the deceased that the papers, which were furnished by him while taking the motorcycle, are fake and he will implicate the deceased. It is the case of the prosecution that revisionist used to harass the deceased by threatening him that he will get the entire

family of the deceased behind the bar and, due to this threat, deceased committed suicide.

9. In *Swamy Prahaladdas Vs. State of M.P. and another*, reported in 1995 Supp (3) SCC 438, during quarrel, the appellant told the deceased to go and die. The Hon'ble Supreme Court held that the act does not reflect the requisite *mens rea* on the assumption that these words would be carried out in all events and it cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. In the matter of *Madan Mohan Singh Vs. State of Gujarat and another*, reported in (2010) 8 SCC 628, it was found that suicide note of the deceased implicating the accused was more in the nature of departmental complaint, suggesting some mental imbalance on the part of deceased, which he himself described as depression.

10. The Hon'ble Supreme Court in the matter of *Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh and another*, reported in (2013) 11 SCC 476, has dealt the issue of framing of charge. Few paragraphs are referred below:

“15. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if

the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

20. To the same effect is the decision of this Court in *Union of India v. Prafulla Kumar Samal and Anr. v.* (1979) 3 SCC 4, where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:

“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 Judge cannot act merely as a Post Office or a mouth-piece 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.”

11. Framing of charge does not mean that allegations are proved. When trial begins, full opportunity is given to the prosecution as well as to the accused to place their case before the Court. Therefore, charge framed by the trial Court cannot be set aside in normal circumstances. At the stage of framing of charge, the Court is required to see prima facie evidence in the matter and, on that basis, whether charge can be framed. Court has to see whether prima facie case against the accused is made

out or not. The material placed before the Court should be sufficient to disclose grave suspicion. In the present case, allegation against the revisionist is that he used to threaten the deceased by pointing out his forgery at the time of purchase of motorcycle. Revisionist used to remind the deceased about the fraud committed by him. Further, threatening was given to the deceased for implicating him for his illegal act. Whether, at the time of giving such threat, accused/revisionist had an intention to compel the deceased to commit suicide? It cannot be said that any such *mens rea* was there. Pointing out one's illegal act cannot be said an act of abetting to commit suicide. At the most his intention could be to blackmail the deceased. No doubt, the deceased was under the stress. Reason was fake documents used by him while purchasing the motorcycle. His guilty consciousness was also the reason of his suicide. The trial Court has not exercised its jurisdiction in the manner it should have decided. Consequently, the Criminal Revision is allowed. Impugned orders dated 09.05.2017 passed by the learned Additional District & Sessions Judge, Tehri Garhwal as well as framing of charge dated 09.05.2017 under Section 306 I.P.C. in Special Sessions Trial No. 16 of 2016 are set aside.

(V.K. Bist, J.)

09.03.2018

Arpan