

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 03.08.2021

Pronounced on: 13.08.2021

CRMC No. 92/2013

IA No. 114/2013

Gauri Devi

.....Appellant(s)/Petitioner(s)

Through: Mr. Basit M. Keng, Advocate

Vs

State of J&K

..... Respondent(s)

Through: Mr. Aseem Sawhney, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

01. The present petition has been filed by the petitioner under Section 561-A, now 482 Cr. P.C. for quashing the challan in case titled "State of Jammu & Kashmir (now) UT Vs Gauri Devi," arising out of FIR No.152/2010 dated 14.08.2010 registered with Police Station Nowabad, Jammu for offences under Section 306 of the RPC, pending before the Court of learned 2nd Additional Sessions Judge, Jammu (hereinafter referred to as the "trial Court") and also the order dated 12.03.2011, by virtue of which the charge for commission of offence under Section 306 has been framed against the petitioner.

02. It is stated that on 07.12.2009 at 01.30 p.m., the Police Post, Canal Road, received information from some reliable sources that one

person, namely, Ghan Shyam, S/o Ajay Kumar, R/o Krishna Nagar, Jammu has seriously injured himself by stabbing himself in the chest and was taken to GMC, Jammu, who died en route. Since the matter pertained to the death of a human and cause was unknown, so the police after recording the said information as report No. 13 in the Roznamcha dated 07.12.2009 started inquest proceedings under Section 174 Cr. P.C. The dead body was recovered and the post-mortem was also conducted and thereafter the body of the deceased was handed over to the relatives of the deceased. The statements of the witnesses were recorded under Section 175 Cr. P.C. and it was found that the deceased Ghan Shyam, aged 35-36 years was a street vendor and his mother-in-law i.e the petitioner herein, was also in the same business. The deceased had allegedly given Rs. 73,000/- as loan to his mother-in-law for the sake of her business and was himself indebted to many people, as he had also borrowed money from them for his business. The deceased used to be harassed by his lenders to clear his debts. Due to this reason, on 07.12.2009, the deceased demanded from the petitioner the money, which he had given to given to her as a loan and it led to verbal altercation between the deceased and his mother-in-law/petitioner and the deceased said that if the petitioner did not clear her dues towards him, he would kill himself, as he is being harassed by the debtors. On this, the petitioner told that at that point of time she had no money to return to the deceased and this prompted the deceased to take the extreme step by inflicting injury with knife in the chest.

03. After the conclusion of the inquest proceedings, FIR bearing No. 152/2010 dated 14.08.2010 was registered against the petitioner for commission of offence under Section 306 of the RPC. After the completion of the investigation, challan was filed and the same is pending before the Court of learned 2nd Additional Sessions Judge, Jammu. It is further stated that the learned trial Court vide order dated 12.03.2011 framed the charges for commission of offences under Section 306 RPC against the petitioner. The petitioner has challenged the challan as well as the order dated 12.03.2011 on the following grounds:-

- a. That the FIR impugned has been registered after the delay of almost a year from the date of death of the deceased and deserves to be quashed.*
- b. That the offence under Section 306 is not made out at all in light of the various judgements of the Hon'ble Supreme Court and the Hon'ble High Courts.*

04. Learned counsel for the petitioner submits that there is not even an iota of evidence on record that the petitioner at any point of time abetted the commission of suicide by the deceased, as such, the proceedings pending before the learned trial Court are nothing but an abuse of process of law.

05. Per contra, Mr. Sawhney, learned AAG submits that the learned trial Court has passed the order of framing the charges on the basis of evidence before the Court and the instant petition deserved to be dismissed.

06. Heard learned counsel for the parties.

07. The perusal of the charges framed by the learned trial Court on 12.11.2011 reads as under:-

“That on 07.12.2009, you were called by your son-in-law Ghan Shyam at his home and you were told by him to return loan of Rs.73,000/- to him as he had to return his loan to his lenders. On this you started quarrelling with him and abused him. Thereafter, you refused to return the amount, as a result of which, he committed suicide and you forced him to do so.”

08. The bare perusal of the allegations in the challan as well as the charges framed against the petitioner, it is evident that the deceased committed suicide when the petitioner refused to return the amount of Rs. 73,000/- to the deceased, which she had taken from Ghan Shyam, who happens to be her son-in-law.

09. Now it is to be seen whether the allegations against the petitioner constitutes an offence under Section 306 RPC. In order to charge a person for commission of offences under Section 306 RPC, there must be evidence on record that the accused abetted the commission of suicide by the deceased. The abetment has been defined by Section 107 of the RPC, which reads 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.”

10. One can be charged for the offence of abetment only when he instigates any person to do that thing or intentionally or engages with one or more other person in conspiracy for the doing of that thing or intentionally aids, by any act or illegal omission, the doing of that thing.

11. The allegation against the petitioner is that she refused to return the money to the deceased, as a result of which he committed suicide. In order to constitute an offence of abetment, the act committed by the accused must be of such nature so that the deceased must be left with no other option but to take extreme step of ending his life. Though the different persons may react or respond to a particular situation differently but this court is of the considered opinion that mere refusal to repay the loan cannot in any way can be considered to be an act of abetment to drive the deceased to commit suicide.

12. In **Madan Mohan Singh v. State of Gujarat and another, (2010) 8 SCC 628** the deceased was a driver who had undergone a bypass surgery and was advised against performing any stressful duties. The accused was a superior officer who had rebuked the deceased harshly and threatened to suspend him when the deceased had failed to comply with his directions. The deceased thereafter committed suicide and left behind a suicide note stating that the accused was solely responsible for his death. In these facts, Apex Court held that there must be allegations to the effect that the accused had either instigated the deceased in some way to commit

suicide or had engaged with some other person in conspiracy to do so or that the accused had in some way aided any act or illegal omission to bring about the suicide. The prayer for quashing preferred by the accused was accepted by Apex Court and the proceedings were quashed.

13. In **Swamy Prahaladdas v. State of M.P. & Anr. 1995 Supp. (3) SCC 438**, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased to go and die. Apex Court was of the view that mere words uttered by the accused to the deceased to go and die were not even prima facie enough to instigate the deceased to commit suicide.

14. Further in **Vaijnath Kondiba Khandke Vs State of Maharashtra and another, 2018 5 Supreme 345**, the accused therein assigned some work to his employee and further the said employee was called at odd hours and even on holidays to get the work done and the said accused had stopped his salary for one month and also threatening that his increment would be stopped. Apex Court held that the same cannot be held to be an offence under Section 306 of the IPC and the FIR for commission of the offences under Section 306 of the IPC was quashed by the Hon'ble Supreme Court.

15. Viewed thus, this Court is of the considered opinion that the ingredients of offence under Section 306 of the RPC are absolutely lacking in the instant case and the learned trial Court has not considered this vital

aspect of the case and as such the order impugned is *set aside*. The petitioner is discharged for commission of offences under Section 306 RPC and the challan stands *dismissed*.

Disposed of accordingly.

(Rajnish Oswal)
Judge

Jammu
13.08.2021
Rakesh

Whether the order is speaking : Yes
Whether the order is reportable : Yes

