REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1022 OF 2021
[Arising out of S.L.P.(Crl.)No.7554 of 2019]

Kanchan Sharma .....Appellant

Versus

State of Uttar Pradesh & Anr. .....Respondents

J U D G M E N T

R. Subhash Reddy, J.

1. Leave granted.

2. This criminal appeal is filed by the applicant in Application No.27662 of 2019, aggrieved by the order dated 18.07.2019 passed by the High Court of Allahabad, dismissing her application filed under Section 482 of Code of Criminal Procedure (Cr.PC).

3. That on 11.05.2018, an FIR bearing Case Crime No.278/2018 was registered at P.S. T.P. Nagar Police Station, District Meerut on the complaint of Vijaydeep (complainant and brother of the deceased)

under Sections 328, 302, IPC and 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act'), alleging that his brother Vikas (deceased) was called by the appellant – Kanchan Sharma on 04.05.2018 at her house. At that point of time his brother was on duty at PVM Logistic Company and on such call, he went to the house of the appellant, wherein the appellant's father, mother and sister met his brother and all of them abused his brother with casteist abuses and forcefully administered poison to him and consequently his brother became unconscious. Complainant further stated that his brother was taken to hospital and due to the negligence of the hospital, he died.

4. Initially FIR was registered for offences punishable under Sections 328, 302 of IPC and Section 3(2)(v) of the Act against the appellant, her brother and sister. After investigation, final report was filed only against the appellant for the offence under Section 306 IPC and Section 3(2)(v) of the Act. On filing such final report, cognizance was taken against the appellant and on 21.02.2019 non-bailable warrants were issued against the appellant. After filing of the final report, case was registered against the appellant in Special Sessions Trial No.23 of 2019 (State v. Kanchan Sharma) under Section 306 IPC and Section 3(2)(v) of the Act, which is pending on the file of the

Additional District & Sessions Judge / Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, Meerut.

5. Appellant herein has approached the High Court for quashing of cognizance order / NBW issued against her as well as the criminal proceedings in Special Trial No.23 of 2019 pending on the file of the Additional District & Sessions Judge / Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, by way of application under Section 482, Cr.PC for quashing the proceedings. It was the case of the appellant before the High Court that no offence is made out against the appellant to proceed for trial for the alleged offence under Section 306, IPC and Section 3(2)(v) of the Act. The High Court, by impugned order, has disposed of the petition mainly on the ground that the disputed questions of fact cannot be adjudicated at this stage under Section 482, Cr.PC.

6. We have heard Sri Sanchit Garga, learned counsel for the appellant and Sri Aviral Saxena, learned counsel for the 1st respondent-State. Though the 2nd respondent-complainant is served, there is no appearance on his behalf before this Court.

7. Sri Garga, learned counsel for the appellant has mainly contended that there is absolutely no basis to proceed against the appellant for alleged offence under Section 306, IPC and Section 3(2)

(v) of the Act. It is submitted that except that the appellant was harassed by the deceased by following her and proposing marriage with him there is absolutely no basis to allege that the appellant has abetted the suicide of the deceased. It is submitted that on the day of incident, i.e., 04.05.2018 deceased came to the house of the appellant and started shouting that he would marry the appellant and if her marriage was not solemnized he would consume poison. Within no time thereafter he consumed poison from a small bottle which he was holding in his hand and fell unconscious and thereafter died in the hospital. It is submitted that in absence of any of the ingredients of Section 306/107, IPC, appellant cannot be subjected to trial for the offence under Section 306, IPC and Section 3(2)(v) of the Act. It is submitted that by considering the material as it is on record even the offence under Section 3(2)(v) of the Act is not made out.

8. On the other hand, learned counsel for respondent no.1-State has submitted that the deceased was maintaining relation with the appellant. As she has refused to marry the deceased, deceased has committed suicide by consuming poison. In view of the relation maintained by her, it amounts to abetment for committing the suicide by the deceased within the meaning of Section 306 of IPC. It is further submitted that the appellant and other members of the family

have abused the deceased by uttering casteist words, as such, appellant is rightly sought to be prosecuted for the offence under Section 3(2)(v) of the Act.

9. Having heard learned counsel on both sides, we have perused the impugned order and other material placed on record. Except the self-serving statements of the complainant and other witnesses stating that deceased was in love with the appellant, there is no other material to show that appellant was maintaining any relation with the deceased. From the material placed on record it is clear that on the date of incident on 04.05.2018 deceased went to the house of the appellant and consumed poison by taking out from a small bottle which he has carried in his pocket. Merely because he consumed poison in front of the house of the appellant, that itself will not indicate any relation of the appellant with the deceased. 'Abetment' involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it requires an active act or direct act which led the deceased to commit suicide, seeing no

option and that act must have been intended to push the deceased into such a position that he committed suicide. There is nothing on record to show that appellant was maintaining relation with the deceased and further there is absolutely no material to allege that appellant abetted for suicide of the deceased within the meaning of Section 306, IPC. Even with regard to offence alleged under Section 3(2)(v) of the Act it is to be noticed that except vague and bald statement that the appellant and other family members abused deceased by uttering casteist words but there is nothing on record to show to attract any of the ingredients for the alleged offence also. This Court in the case of **Chitresh Kumar Chopra** v. **State (Govt. of NCT of Delhi)**[1] had an occasion to deal with the aspect of abetment. In the said case this Court has opined that there should be an intention to provoke, incite or encourage the doing of an act by the accused. Besides, the judgment also observed that each person's suicidability pattern is different from the other and each person has his own idea of self-esteem and self-respect. In the said judgment it is held that it is impossible to lay down any straightjacket formula dealing with the cases of suicide and each case has to be decided on the basis of its own facts and circumstances. In the case of

1 (2009) 16 SCC 605

Amalendu Pal @ Jhantu v. **State of West Bengal**[2] in order to bring a case within the purview of Section 306, IPC this Court has held as under :

> **"12.** Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.
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> **13.** In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

In the judgment in the case of **S.S. Chheena** v. **Vijay Kumar Mahajan & Anr.**[3] this Court reiterated the ingredients of offence of Section 306 IPC. Paragraph 25 of the judgment reads as under :

> **"25.** Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive

2 (2010) 1 SCC 707
3 (2010) 12 SCC 190

> act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

In the judgment in the case of **Rajiv Thapar & Ors.** v. **Madan Lal Kapur**[4] this Court has considered the scope of the provision under Section 482, Cr.PC and has laid down the steps which should be followed by the High Court to determine the veracity of a prayer for quashing of proceedings in exercise of power under Section 482, Cr.PC. Paragraph 30 containing the four steps read as under :

> "**30.** Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:
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> **30.1.***Step one*: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?
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> **30.2.***Step two*: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?
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> **30.3.***Step three*: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the

4 (2013) 3 SCC 330

material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.*Step four*: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

10. By applying the aforesaid ratio decided by this Court, we have carefully scrutinized the material on record and examined the facts of the case on hand. Except the statement that the deceased was in relation with the appellant, there is no material at all to show that appellant was maintaining any relation with the deceased. In fact, at earlier point of time when the deceased was stalking the appellant, the appellant along with her father went to the police station complained about the calls which were being made by the deceased to the appellant. Same is evident from the statement of S.I. Manoj Kumar recorded on 05.07.2018. In his statement recorded he has clearly deposed that the father along with the appellant went to the police post and complained against the deceased who was continuously

calling the appellant and proposing that she should marry him with a threat that he will die otherwise. Having regard to such material placed on record and in absence of any material within the meaning of Section 107 of IPC, there is absolutely no basis to proceed against the appellant for the alleged offence under Section 306 IPC and Section 3(2)(v) of the Act. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever.

11. In view of the same, we are of the view that the High Court has committed error in rejecting the application filed by the appellant by merely recording a finding that in view of the factual disputes same cannot be decided in a petition under Section 482, Cr.PC.

12. For the aforesaid reasons, this appeal is allowed and Order dated 18.07.2019 passed by the High Court of Allahabad in Application No.27662 of 2019 is set aside. Consequently, the said application stands allowed by quashing the order/NBW dated 21.02.2019 as well as proceedings of Special Trial No.23 of 2019 (State v. Kanchan Sharma) arising out of Crime No.0278 of 2018 under Section 306, IPC and 3(2)(v) of The Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending in the court of Additional District & Sessions Judge / Special Judge (SC & ST Act), Meerut.

.....J.
[R. Subhash Reddy]

.....J.
[Hrishikesh Roy]

New Delhi.
September 17, 2021.