

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 22.05.2024

Pronounced on: 31.05.2024

CRM(M) No.430/2023

CrIM No.1030/2023

NAZIR AHMAD DAR & ORS.

... PETITIONER(S)

*Through: - Ms. Asifa Padroo, Advocate, with
Ms. Saima Ghulam, Advocate.*

Vs.

UT OF J&K & OTHERS

...RESPONDENT(S)

*Through: - Mr. Zahid Qais Noor, GA,
Ms. Rehana, Advocate.
Younis Ahmad, S.I. P/S Pulwama.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged FIR No.144/2023 for offences under Section 306 and 120-B IPC registered with Police Station, Pulwama.

2) As per the impugned FIR, a written report was lodged by respondent No.3, who happens to be the daughter of deceased Mohammad Amin Dar, alleging therein that the complainant happens to be the only daughter of the deceased who was having four brothers. It was alleged that these four brothers have sold their shares in the ancestral property whereas her deceased father has not sold any

portion of his ancestral property. It was alleged that the petitioners, who happen to be the brothers of the deceased, wanted to grab the property belonging to the deceased and in this regard, they would harass him. It was further alleged that due to the harassment caused by the petitioners to the deceased, he consumed some poisonous substance and breathed his last on 21st June, 2023.

3) On the basis of the aforesaid report, FIR No.144/2023 for offence under Section 306 of IPC was registered and the investigation was set into motion.

4) The petitioners have challenged the impugned FIR on the grounds that the deceased has consumed poisonous substance on 24th May, 2023 and he remained alive till 21st June, 2023 but during this period no FIR was lodged by respondent No.3, which clearly establishes that the allegations made in the impugned FIR are false. It has been further contended that even if the contents of the impugned FIR are assumed to be correct, still then no offence of abetment to suicide within the meaning of Section 306 of IPC is made out against the petitioners.

5) The respondent-State has filed the status report with regard to investigation of the case in which it has been submitted that during the investigation of the case, it came

to the fore that the petitioners along with Patwari Halqa had hatched a conspiracy to create hindrances in the transfer of the property of deceased Mohammad Amin Dar in favour of his daughter Rubina Akhter, respondent No.3 herein, and due to continuous hindrances and harassments faced by the deceased, he ended his life by consuming some poisonous substance. It has been further stated that the father of the petitioners and the deceased had died in the year 2005 and mutation of inheritance in favour of his sons was attested in the year 2019 but when the deceased intended to transfer his share in the property in question to his daughter, the petitioners caused hurdles in the same which compelled him to end his life.

6) I have heard learned counsel for the parties and perused the material on record as well as the Case Diary.

7) As already noted, the allegations against the petitioners are that they caused harassment to the deceased by creating hurdles in his intention to transfer his property in favour of his daughter, respondent No.3 herein, and this drove the deceased to commit suicide. The question that arises for determination is as to whether the alleged actions of the petitioners, prima facie, constitute an offence under Section 306 of IPC.

8) In order to find an answer to the aforesaid question, the provisions contained in Section 306 of IPC are required to be notice. It as under:

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.*

From a perusal of the aforesaid provision, it is clear that in order to convict a person of the offence of abetment to suicide, it has to be shown that such person has abetted the commission of suicide.

9) Section 107 of the IPC defines ‘abetment’. It 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.

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 facilitates the commission thereof, is said to aid the doing of that act

From a reading of above provision, it appears that abetment would mean instigation of a person to do a

particular thing or to engage with one or more persons in a conspiracy for doing that thing or intentionally aiding, by any act or illegal omission, the doing of that thing.

10) The provisions contained in Section 306 and 107 of IPC have been interpreted and construed by the Supreme Court and the other High Courts of the Country in several judgments. It would be apt to refer to some of these judgments so as to understand the ingredients that constitute an offence under Section 306 of IPC.

11) In **M Arjunan vs. State (represented by its Inspector of Police)**, (2019) 3 SCC 315, the Supreme Court, while explaining the necessary ingredients of Section 306 IPC observed as under:

“7. The essential ingredients of the offence under Section 306 I.P.C. 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, accused cannot be convicted under Section 306 I.P.C.”

12) Again, in **Ude Singh & Ors vs. State of Haryana**, (2019) 17 SCC 301, the Supreme Court, while explaining the ingredients of Section 306 IPC, observed as under:

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement

to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses /reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

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."

13) In the case of **Mariano Anto Bruno and another vs. Inspector of Police**, 2022 SCC Online SC 1387, the Supreme Court explained the culpability under Section 306 of IPC in the following manner:

".....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 their 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."

14) From the foregoing analysis of law on the subject, it can be deduced that in order to constitute an offence under Section 306 of IPC, there must be *mens rea* and *actus reus*, meaning thereby that there must be a positive act to instigate in aiding suicide. It must be shown that the accused had intentionally acted in a particular manner or had omitted to do an act which should be proximate to the occurrence of death. It should also be shown that the act or omission of the accused was of such a kind as would drive a person to commit suicide. If these ingredients are present in a given case, exercise of jurisdiction under Section 482

of the Cr. P. C would not be available but if these

ingredients do not find place in a given case, it would be open to High Court to quash the proceedings by exercising powers under Section 482 of the Cr. P. C.

15) In the light of the aforesaid legal position, let us now advert to the facts of the instant case. As per the allegations levelled by respondent No.3 in her report lodged with the police, the petitioners, who happen to be the brothers of the deceased, were harassing him and causing hindrances in his intention of transferring his property in favour of the complainant who happens to be the daughter of the deceased.

16) A perusal of the Case Diary shows that the complainant in her statement recorded under Section 164 of Cr.P.C during the course of investigation, has stated that the ancestral property of the petitioners and the deceased was the bone of contention. The petitioners wanted to grab the portion of the property that had come to the share of the deceased because the petitioners had sold their own shares in the ancestral property. She has stated that for about one year the petitioners were harassing her father and the Patwari was in league with the petitioners as he was not providing the documents to the deceased regarding which they had even lodged a complaint with the Deputy

Commissioner. This according to her compelled the deceased to end his life, as a consequence whereof, he consumed poison on 24.05.2023 which led to his death on 21.06.2023. Similar allegations have been levelled by other witnesses whose statements have been recorded by the Investigating Agency during the course of investigation.

17) It is also discernible from the Case Diary that during the investigation of the case report of the revenue authorities was called. In the report dated 10.07.2023, it has been stated that the land belonging to Mohammad Akram Dar, the father of the petitioners and the deceased, was mutated in favour of petitioners and the deceased after his death. It has also been stated in the report that prior to the year 1992, the ancestral property had been subjected to partition. The particulars of the property that had come to the share of the deceased are also given in the report, which as per the report, was under his occupation. Another report submitted by the revenue authorities, which is on record of the Case Diary, reveals that the petitioners have not sold any portion of the property which came to their share.

18) The Investigating Agency has also recorded statement of Girdawar concerned under Section 161 of Cr. P. C, who,

in his statement, has stated that on 09.08.2022, the revenue extracts of the land were issued in favour of the deceased and thereafter on 11.10.2022, the revenue extracts in respect of certain other land belonging to the deceased were also issued to him for the purpose of transfer of land in favour of his daughter.

19) The aforesaid material collected by the Investigating Agency during the investigation of the case shows that the allegation of the complainant and other prosecution witnesses whose statements have been recorded during the investigation of the case to the effect that the petitioners had sold their land and, therefore, they wanted to grab the land of the deceased, is not factually correct. The material further suggests that the revenue authorities have issued the revenue extracts in favour of the deceased for the purpose of transfer of land in favour of the complainant during his lifetime and, as such, the allegation that the revenue authorities were in league with the petitioners so as to cause hindrance in transfer of property by deceased in favour of the complainant, has also not been found established. In the face of this material on record which has been collected by the Investigating during investigation of the case, the allegations made in the impugned FIR as

reiterated by the complainant in her statement under Section 164 of the Cr.P.C appear to be unfounded.

20) Apart from the above, even if the allegations made in the impugned FIR and the statement made by the complainant during investigation of the case are taken at their face value, still it cannot be stated that the petitioners have abetted the commission of suicide by the deceased. The mere fact that the petitioners were harassing the deceased with a view to grab his property without there being any positive action on the part of the petitioners proximate to the time of occurrence which led or compelled the deceased to commit suicide, it cannot be stated that the petitioners have instigated the deceased to commit suicide. As already stated, in order to fulfil the ingredients of Section 306 of IPC, it has to be shown that the accused has played an active role by an act of instigation or by doing an act to facilitate suicide. Mere omnibus allegations of harassment of the deceased by the petitioners without there being any specific instances and without specifying the nature of harassment alleged to have been caused by the petitioners to the deceased, it cannot be stated that they have played an active role in instigating the deceased to commit suicide. Just because there was a property dispute between the

petitioners and the deceased due to which there may have been some enmity between the parties which may have led to deterioration of their relations, the same cannot be made basis for implicating the petitioners for having abetted the commission of suicide by the deceased.

21) In order to show that a person has abetted the commission of an offence, his intention must be visible. There must be something on record to establish or to show that the accused had a guilty mind and in furtherance of that state of mind, he abetted the suicide of the deceased. In the present case, neither in the impugned FIR nor in the material collected by the Investigating Agency during investigation of the case there is anything to show that the petitioners intended to abet suicide of the deceased. In fact, a perusal of the Case Diary shows that even the Supervisory Officer has raised doubts about the merits of the case. The only thing that can be deduced from the allegations made in the impugned FIR and the material collected by the Investigating Agency during investigation of the case is that there was some property dispute between the petitioners and the deceased which is not enough to implicate the petitioners in the offence pertaining to abetment of suicide of the deceased.

