

IN THE COURT OF SESSIONS, KOTTAYAM DIVISION

Present: Sri. Johnson John, Addl. Sessions Judge – II (Spl.)

Tuesday, the 5th day of April, 2022

15th day of Chaithra, 1944

Crl. M.P. No.695/2022 in S.C. No.360/2020

(Crime No.2099/2019 of Vaikom Police Station)

(C.P. No.15/2020 of J.F.C.M.-I, Vaikom)

Petitioner/Accused:-

Babu M.C., Aged 55 years,
S/o. Chandrasekharan Nair,
Chandralayam,
Kizhakkumcheri Naduvilemuri Kara,
Naduvile Village, Vaikom P.O.,
Kottayam District.

By Advocates Sri. N.Retheesh,
Smt.Suma Retheesh & Sri. Shankar Retheesh

Respondent/State & Complainant:-

The State of Kerala,
Represented by the Station House Officer,
Vaikom Police Station, Kottayam – 686 141.

By Addl. Public Prosecutor Adv. Sri. K.Jithesh

Petition filed under Section 227 of the Code of Criminal
Procedure.

This Crl.M.P. having been finally heard on 01.04.2022
and the Court on 05.04.2022 passed the following :

ORDER

This is an application seeking discharge under Section 227 of the Code of Criminal Procedure.

2. The petitioner is the sole accused in the above case, which arises from crime No.2099/2019 of Vaikom Police Station committed from the Court of the JFCM-I, Vaikom as per Order in C.P. No.15/2020 dated 13.11.2020.

3. As per the prosecution case, the deceased borrowed money from the accused and on 14.11.2019 at 9.15 A.M., the accused came to the textile shop of the deceased and abused and threatened him in filthy language while demanding back the money and subsequently, the deceased committed suicide by setting him ablaze in the courtyard of the house of the accused and the accused is alleged to have abetted the deceased to commit suicide and thereby committed the offence punishable under Section 306 of I.P.C.

4. In the petition, it is stated that CW2 and CW3 are the material witnesses and their statements only shows that the accused demanded back the money from the deceased and

that the accused used some bad words against the deceased and there is nothing in their statements to the Investigating Officer to show that the accused abetted the deceased to commit suicide. It is stated that the petitioner only demanded back the money from the deceased and the allegation of using filthy language by itself is not sufficient to attract a prima facie case under Section 306 of I.P.C. It is also stated that the petitioner had only demanded the borrowed amount from the deceased and he has not intimidated or abetted the deceased to commit suicide and therefore, the allegations in the final report against the petitioner is not sufficient to attract a prima facie case and hence he is entitled for a discharge.

5. Heard both sides and perused the records.

6. The learned counsel for the petitioner argued that the only allegation against the accused is that he used abusive language against the deceased while demanding back the money and that by itself is not sufficient to constitute the ingredients of instigation as defined under Section 107 of I.P.C. In this connection, the learned counsel for the petitioner also cited the decision of the Hon'ble Supreme

Court in **Sanju @ Sanjay Singh Sengar v. State of M.P. {2002 (5) SCC 371}** wherein it was held that even the words uttered in a quarrel or on the spur of the moment without intending the consequences to actually follow cannot be said to be an instigation. The learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in **Gurcharan Singh v. State of Punjab {2016 KHC 6808}** and **Geo Varghese v. State of Rajasthan {2021 KHC 6593}** to point out that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option.

7. The learned Additional Public Prosecutor invited my attention to the statements of CW2 and CW3 recorded by the Investigating Officer to point out that the materials on record will clearly show that the accused intimidated the deceased in a sexually coloured and filthy language in the presence of his staff members on the date of occurrence and that the statements of CW2 and CW3 would further show that on previous occasions also the accused used threatening and

filthy language against the deceased while demanding back the money. The obscene and threatening language used by the accused against the deceased on the date of occurrence is seen reiterated in the statements of CW2 and CW3 recorded by the Investigating Officer. The learned Additional Public Prosecutor argued that the continuous harassment and threats from the side of the accused has created such circumstances that the deceased was left with no other option except to commit suicide and therefore this is a case, in which, the court has to infer an instigation from the side of the accused.

8. As per the first clause in Section 107 IPC, a person can be said to have abetted in doing of a thing if he instigates any person to do that thing. The meaning of the word 'instigate' was considered by the Hon'ble Supreme Court in **Ramesh Kumar Vs. State of Chhattisgarh 2001 Cri.LJ 4724** and it was held as follows :- "instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. As per another decision cited, **Vedprakash Vs. State of M.P., 1995 Cri. LJ 893** the word 'instigate' means "to goad or urge forward to provoke, incite, urge encourage to do an act".

9. In **Ramesh Kumar Vs. State of Chhattisgarh 2001 Cri LJ 4724**, the Hon'ble Supreme Court held as follows: "To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence.

10. It is true that the ingredients for abetment for suicide would be satisfied only if the suicide is committed by the deceased due to direct and alarming encouragement or incitement by the accused, leaving no option, except to commit suicide.

11. It is well settled that at the stage of framing charge, the Court cannot examine and assess in detail the materials on record produced by the prosecution to record a finding regarding the sufficiency of the materials to establish the offence alleged against the accused and that at this stage the Court is required only to consider whether there are sufficient grounds to proceed against the accused. In **State of Bihar v. Ramesh Singh 1977 (4) S.C.C. 39**, the Hon'ble Supreme Court held that at the stage of framing charge, it is

not obligatory for the Judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not and at that stage, the Court is not to see whether there is sufficient grounds for conviction of the accused or whether the trial is sure to end in his conviction. It was also held in the said case that strong suspicion at the initial stage of framing of charge is sufficient to frame the charge and in that event, it is not open to say that there is no sufficient ground for proceeding against the accused.

12. The learned Additional Public Prosecutor also brought to my notice that the accused uttered obscene and threatening words against the deceased in front of his staff members and neighbouring shop owners and immediately after the said incident, the deceased reached the courtyard of the house of the accused and committed suicide by setting him ablaze and therefore at this stage of the case, the only inference possible is that the continuous harassment from the side of the accused has created the circumstances that led to the suicide of the deceased and therefore on a careful consideration of the entire records, I am satisfied that the

materials on record make out a prima facie case against the accused for proceeding against the accused and that this petition is liable to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court, on this the 5th day of April, 2022.

Sd/-
Johnson John,
Addl. Sessions Judge-II (Spl.)
Kottayam.

Copied by:
Compared by:

**Copy of Order in
Crl. M.P. No.695/2022 in
S.C. No.360/2020
Dated : 05.04.2022**