

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 19.04.2010**
Judgment delivered on: 01.07.2010

+ **CRL MC NO.5553-54/2006**

SATYENDRA KUMAR JAIN & ANR. Petitioners

Through: Mr. Deepak Dhingra, Ms. Kiran
Singh, Mr. Naveen Kapoor,
Advocates

versus

STATE & ANR. Respondents

Through: Mr. M.P. Singh, APP
Mr. S.B. Sharma, Adv. for R2 to R4,
SI Narendra Kumar, PS Hauz Khas

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

- | | | | |
|----|---|---|----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | : | No |
| 2. | To be referred to Reporter or not? | : | No |
| 3. | Whether the judgment should be reported in the Digest? | : | No |

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioners have preferred the present petition under section 482 of Cr PC to seek the quashing of FIR No.296/2005 dated 30.05.2005 registered at police station Hauz Khas, New Delhi under section 306/34 IPC against them. The petitioners were the parents of the deceased Sh. Sushil Jain. The aforesaid FIR was lodged by Smt. Kavita Jain, wife of the deceased.

2. According to the petitioners, they along with their deceased son Sushil Jain and his family, consisting of his wife and two children (one son and one daughter), who have been impleaded as respondent nos.2 to 4, resided on the first floor of property no.F-92, Green Park Main, New Delhi, which petitioner no.1 claims is in his ownership. On the ground floor, the eldest son of the petitioners Sh. Sudhir Jain was residing with his family, while the second floor was occupied by Sh. Ashish Jain, the third son of the petitioners. It is also the petitioners' submission that the said property has always been owned by, and is in the possession of petitioner no.1 herein. He had purchased it out of his own exclusive funds and he along with his younger brother co-owned the said residential property. Copy of the conveyance deed of the said property has been placed on record.

3. The petitioners submit that petitioner no.1 had no commercial dealings with his deceased son and there was no occasion for any dispute or difference with respect to any money or commercial transaction either between the petitioners or their deceased son or between the three sons of the petitioners inter se.

4. On 30.05.2005, Sh. Sushil Jain committed suicide by hanging himself from the ceiling fan.

5. As per the case of the prosecution, an information was received at Hauz Khas Police Station on 30.05.2005 about an incident of suicide by deceased Shri Sushil Jain which was recorded vide D.D.No.16-A. The deceased was engaged in the business of corrugated boxes at

Nangloi. In the year 1984, the property no.F-92, Green Park Main, New Delhi was mortgaged with Canara Bank, Hauz Khas, Delhi to obtain a loan of Rs.35 lakhs from the Bank, which by the year 1998 had accumulated to Rs.90 lakhs. To pay off the debt of the bank, the joint family had agreed to dispose of the property and to use the balance proceeds to purchase another house and settle elsewhere.

6. The house was sold to one Mr. P.P. Singh on 15.03.2005, but possession was not handed over to him immediately. The FIR further narrates the factum of purchase of a house by the deceased son of petitioner no.1 at Punjabi Bagh for which he had also given an advance of Rs.17 lakhs. To pay the balance amount, he had requested his father, i.e. the petitioner no.1 and brother Sh. Ashish Kumar Jain to dispose off the Green Park property and to give him requisite amount so that he could make payment of the balance for purchase of the said house at Punjabi Bagh. However, petitioner no.1 and his son Ashish Jain did not listen to the request of the deceased and kept delaying the payment of the requisite amount. The complainant even alleged in the FIR that petitioner no.1 was more concerned about the needs of his younger son, namely, Ashish Kumar Jain, than those of the deceased. According to the FIR, the petitioners did not give any financial assistance to the husband of complainant. The remaining balance towards Punjabi Bagh house became due on 15.06.2005.

7. To arrange the funds, the deceased brought one builder, namely, Mr. P.P. Singh to petitioner no.1. The builder was insisting on a power of attorney being executed by petitioner no.1, before releasing any

amount. However, petitioner no.1 refused to sign the said power of attorney. The FIR alleges that the deceased, at that stage, had made known his intention to commit suicide, in the event petitioner no.1 did not sign the said power of attorney. To the said threat, the petitioner no.1 had responded by saying that the deceased may do whatever he wants to do, but he would not sign the power of attorney. Petitioner no.2 was also present when the said conversation took place. This position continued for 6-7 days and whenever the deceased would ask for the money, the petitioner no.1 denied the same. The deceased remained disturbed because of the stress of arranging the purchase amount and eventually hanged himself to death on 30.05.2005 in the morning around 7 a.m. His body was discovered by the complainant and his other family members, who brought it down and took him to Mahindra hospital, where he was declared dead. Subsequent to this, a suicide note was recovered from the bedroom of the deceased in which he had stated that he was driven to commit suicide since he did not have the means to arrange the remaining purchase amount.

8. After his death, his wife lodged the aforesaid FIR No.296/2005 with P.S. Hauz Khas, New Delhi dated 30.05.2005 against the petitioners and their other son, namely Ashish Kumar Jain u/s 306/34 IPC alleging that her father-in-law, mother-in-law and brothers-in-law were responsible for driving her husband to the point of committing suicide.

9. The prosecution further claims that since the father allegedly delayed execution of power of attorney, consequently the sale

consideration payable to the father by Shri P.P. Singh too got delayed which resulted in delay in distribution of amounts to the deceased to enable him to pay to buy the property at Punjabi Bagh. This led to the deceased threatening the petitioner that he shall commit suicide in case the father did not sign the power of attorney in favour of Shri P.P. Singh. The prosecution alleges that the petitioner ignored the said threats which ultimately compelled the deceased to commit suicide.

10. Shri Ashish Jain, son of petitioner no.1- one of the co-petitioner, filed an anticipatory bail petition which was granted to him by the learned ASJ vide order dated 02.06.2005. Similarly, petitioner no.2, the wife of petitioner no.1 and the mother of the deceased was granted anticipatory bail vide order of Additional Sessions Judge dated 13.10.2005. But the anticipatory bail petition of petitioner No. 1 was rejected vide order dated 06.02.2006 by the learned ASJ. Thereafter the petitioner No.1 filed a petition u/s 438 Cr.P.C before this Court which came up on 15.02.2006. This Court directed that the petitioner no.1 be not arrested till the next date of hearing, subject to his participating in the investigation as and when required. Vide order dated 12.07.2006, this Court confirmed the anticipatory bail granted in favour of petitioner No.1.

11. The petitioners submit that petitioner no.1 and their deceased son had separate businesses and there was no occasion for any dispute or differences with respect to money or any financial transactions amongst either the brothers (sons) or between the petitioners and their sons. The petitioners submit that the loan of

Rs.35 lakhs taken by the deceased son from the bank against the mortgage of the property no.F-92, Green Park, New Delhi had accumulated to Rs.90 lakhs approximately in the year 1990, which had been fully repaid. The entire loan amount stands already repaid. Petitioners further say that the relations between the deceased and them had always been cordial and the story of the prosecution is baseless, false, unreliable and concocted by the complainant, only to make the petitioners succumb to her demand of a separate share in the said property which is claimed by the petitioner to be his self acquired and exclusively owned property.

12. It is also the petitioners' allegation that there has never been a memorandum of understanding entered into by them with the deceased's wife as alleged by her. They came to know about this alleged MOU only during the course of hearing of their anticipatory bail applications before the Court of Additional Sessions Judge, Delhi.

13. The delay in investigation by the police is also one of the grievances of the petitioners. They submit that the FIR against them was registered on 30.05.2005. It was more than 16 months thereafter, that the charge sheet was filed by the police in the Court of the learned MM.

14. Respondent Nos.2 to 4 have opposed the petition. They have filed their written submissions in reply to the said petition. The respondents submit that the petitioners have absented from the proceedings before the trial Court, despite service of summons on

them. Consequently the learned MM had issued NBW against them on two consecutive dates. On 28.01.2009 the counsel for the petitioners stated before the trial Court that proceedings had been stayed by this Court, when, as a matter of fact there was no stay of proceedings granted by this Court and all that this Court had directed vide order dated 15.11.2006 was that no coercive steps be taken against the petitioners.

15. The respondents draw force from the suicide note said to have been written by the deceased Late Sh. Sushil Jain before he committed suicide by hanging himself from a fan. The suicide note is also a part of the LCR produced before me. Amongst other things, the said note states:

- a) That the deceased was constrained to commit suicide because his father and mother had never treated him as their son.
- b) That not a single penny had been paid by the father to Late Sushil Jain, rather the money taken from Late Sushil Jain was also not returned to him and on asking was refused.
- c) That he was frustrated and had to take his life because this was the only thing acceptable to his mother, father and younger brother.

16. This suicide note names the petitioners and the younger brother of the deceased as the ones because of whom the deceased was constrained to commit suicide. It is submitted the said note has been written by the deceased in a fit state of mind and refers to the

background in which the extreme step of committing suicide was taken by the deceased. In this regard, reliance is placed by the respondents on the Apex Court decision in ***Didigam Bikshapathi & Anr. v. State of Andhra Pradesh*** (2008) 2 SCC 403, wherein the Court found the suicide note left by the deceased to be clearly referring to the reason for taking such an extreme step and the roles played, therein, by the petitioners. The Supreme Court held that the High Court was right in rejecting the prayer for exercise of power under section 482 of the Code for quashing the FIR. Reliance was also placed on ***Netai Dutta v. State of West Bengal, 2005 Cri LJ 1737***.

17. The respondents also submit that once a charge sheet has been filed, the FIR cannot be quashed. A charge sheet is the culmination of the investigation by the police and is accompanied by necessary documents, statements of witnesses etc. Thus a petition praying for simplicitor quashing of FIR becomes infructuous on filing of the charge sheet. The only resort with the accused in such a situation is either to challenge the charge sheet as not making out any offence or argue before the trial Court at the stage of framing of charge.

18. Respondents further allege that petitioners have concealed some important facts from this Court. For instance, petitioners were well aware of the fact that they had been summoned by the trial court pursuant to taking of cognizance of the offence by the trial court, and were duly represented by their counsel on all dates. Yet they chose not to tell this Court about this fact and the same is clear after perusing the orders of this Court wherein it is reflected that this Court

was never informed of taking of cognizance by the trial Court. Respondents allege that such concealment amounts to fraud and also violates the fundamental principle that one who comes to the Court must come with clean hands.

19. Mr. M.P. Singh, the learned APP has opposed the petition by submitting that no case is made out for this Court to exercise its jurisdiction under section 482 Cr PC to quash the FIR or even the charge sheet, which already stands filed, in the facts of the present case.

20. Having considered the rival submissions, and perused the record, I am also of the view that at this stage in the trial, when charge sheet has been filed under Section 173 Cr.P.C. and cognizance has been taken by the learned trial Judge, FIR cannot be now quashed.

21. Moreover, there is absolutely no substance brought on record in respect of allegations of malafides against the complainant widow of the deceased and her two children by the petitioners. It is well settled that such allegations have to be specific and should be sufficiently substantiated, which the petitioners herein have failed to do. These are matters which would have to be established at the stage of trial.

22. The petitioners herein have failed to make out a case to justify the quashing of FIR at this stage, when charge sheet has been filed and cognizance has been taken by the trial Court. Even on a plain reading of the FIR and the suicide note, it cannot be said that no prima facie case of abetment to suicide is made out against the petitioners.

23. In the light of the aforesaid, the petition is without any merit, in my view, and is, therefore, dismissed.

24. Crl. M.A. No.9444/2006 for stay of proceedings and Crl. M.A. No.12504/2006 also for stay of proceedings in trial Court are, accordingly, dismissed.

25. Parties are left to bear their own costs.

**(VIPIN SANGHI)
JUDGE**

JULY 01, 2010

sr/rsk