

CASE NO.:
Appeal (crl.) 359 of 2005

PETITIONER:
Netai Dutta

RESPONDENT:
State of West Bengal

DATE OF JUDGMENT: 28/02/2005

BENCH:
K.G. Balakrishnan & Tarun Chatterjee

JUDGMENT:
JUDGMENT
O R D E R
[Arising out of S.L.P. (Criminal) No. 3254 of 2004]

Leave granted.

Heard appellant's counsel and counsel for the respondent.

Appellant herein is an accused in a crime registered for the offence under Section 306 of the Indian Penal Code. The appellant filed a petition under Section 482 of the Criminal Procedure Code to quash the criminal proceedings initiated against him. The learned Single Judge declined to quash the proceedings and hence this appeal.

One Pranab Kumar Nag was an employee of M/s M.L. Dalmiya & Co. Ltd. During the course of his employment, he had been posted at various work sites of the company and on 11.9.1999 he was transferred to the work site of the company's stores located at 160, B.L. Saha Road, Kolkata. It seems that pursuant to the transfer order, Pranab Kumar Nag did not join duty and after a period of about two years he sent in a letter of resignation written in his own hand wherein he expressed his grievance of stagnancy of salary and also alleged that he was a victim of unfortunate circumstances. The company accepted his resignation with immediate effect. On 16.2.2001, a dead body was found at the railway tracks near Ballygunge railway station and it was revealed that it was the body of Pranab Kumar Nag. His brother went to the office where Pranab Kumar Nag had worked and made enquires. The dead body of Pranab Kumar Nag was released to his brother after the post-mortem examination on 19.2.2001. After a period of two months, a complaint was lodged before the police post on the basis of a suicide note allegedly recovered from the dead body of Pranab Kumar Nag. Based on the complaint, a case was registered against the appellant and some others. A translated copy of the suicide note is produced before us by the appellant. We have carefully read the alleged suicide note. The substance of this suicide note is that deceased Pranab Kumar Nag alleged that appellant Netai Dutta and one Paramesh Chatterjee engaged him in several wrong-doings (he has shown as a type of torture) and at the end of the letter, a reference is also made to Paramesh Chatterjee and Netai Dutta alleging that he reported certain incidents to them. A reading of the letter would show that deceased Pranab Kumar Nag was not very much satisfied with the working conditions in the office. In the letter he has stated that he had to be at the work place sometimes throughout the day and night and he had to remain in the company of some drivers who had been sometimes in drunken condition at about one o'clock or two o'clock

in the night. It is also alleged that the drivers who had been present at the work place had been having non-vegetarian food. He also complained that he had to work even on Sundays. He further stated that one day he could leave the work place at 8 o' clock in the evening and all the restaurants were closed and that he reported the matter to the present appellant.

There is absolutely no averment in the alleged suicide note that the present appellant had caused any harm to him or was in any way responsible for delay in paying salary to deceased Pranab Kumar Nag. It seems that the deceased was very much dissatisfied with the working conditions at the work place. But, it may also be noticed that the deceased after his transfer in 1999 had never joined the office at 160 B.L. Saha Road, Kolkata and had absented himself for a period of two years and that the suicide took place on 16.2.2001. It cannot be said that the present appellant had in any way instigated the deceased to commit suicide or he was responsible for the suicide of Pranab Kumar Nag. An offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of the "abetment" have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or 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, or the person should have intentionally aided any act or illegal omission. The explanation to Section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".

In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag.

Apart from the suicide note, there is no allegation made by the complainant that the appellant herein in any way was harassing his brother, Pranab Kumar Nag. The case registered against the appellant is without any factual foundation. The contents of the alleged suicide note do not in any way make out the offence against the appellant. The prosecution initiated against the appellant would only result in sheer harassment to the appellant without any fruitful result. In our opinion, the learned Single Judge seriously erred in holding that the First Information Report against the appellant disclosed the elements of a cognizable offence. There was absolutely no ground to proceed against the appellant herein. We find that this is a fit case where the extraordinary power under Section 482 of the Code of Criminal Procedure is to be invoked. We quash the criminal proceedings initiated against the appellant and accordingly allow the appeal.