



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JUNE, 2018

BEFORE

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

CRIMINAL PETITION NO.5490 OF 2017

BETWEEN:

KAVIRAJ.S
S/O.SHANKARNAIK
AGED ABOUT 27 YEARS
R/AT.VANIVILASAPURA
HIRIYUR TALUK
CHITRADURGA DISTRICT - 577 599.

... PETITIONER

(BY SRI M.SHASHIDHARA, ADV.)

AND:

STATE OF KARNATAKA
BY HIRIYUR P.S.,
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING PREMISES
BANGALORE - 560 001.

...RESPONDENT

(BY SRI CHETAN DESAI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.105/2017 REGISTERED IN CRIME NO.350/2016 OF RESPONDENT HIRIYUR RURAL POLICE STATION, FOR THE OFFENCES P/U/S/ 309, 504

R/W.120-B OF IPC WHICH IS PENDING ON THE FILE OF CIVIL JUDGE (SR.DN.) AND J.M.F.C., HIRIYURU, CHITRADURGA.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT PASSED THE FOLLOWING:-

ORDER

Heard the learned counsel for the petitioner and learned HCGP. Perused the records.

2. The petitioner was charge sheeted for the offences under Sections 309, 504 and 120-B of IPC. Charge sheet discloses that on 24.10.2016 in the night hours, this petitioner who is arraigned as accused No.1 in C.C.No.105/2017 arising out of Crime No.350/2016 on the file of the Civil Judge(Sr.Dvn.,) and JMFC Court, Hiriyyuru, Chitradurga, has left the house with an intention to commit suicide and thereafter, he went to Gayathri Lodge in Tumkur and on 25.10.2016, in the morning at 9.15 a.m. accused No.2-father of accused No.1 has taken the death note alleged to had been left by accused No.1 in the house, and went to the Rural

Police Station and made allegations against the District Superintendent of Police – Arun Ranga Rajan and he threatened the police with dire consequence etc., On these allegations, charge sheet came to be filed.

3. The only allegation against this petitioner is that he has made attempt to commit suicide. But on perusal of the entire charge sheet there is no allegation that in what manner the petitioner has made attempt to commit suicide. Though he intended to commit suicide, but there is no material to show that he actually committed suicide and survived. It is relevant to note that, any preparation for commission of suicide or mere intention to commit suicide are not at all punishable under Section 309 of IPC.

4. Section 309 of IPC postulates that:

“Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple

imprisonment for a term which may extend to one year (or with fine, or with both)”.

5. Therefore, it is clear that the act done must be in the course of attempt, otherwise no offence is committed. Section 309 of IPC renders the persons liable who has actually committed suicide but survived. The condition precedent is that, suicide necessarily has been committed, but he was unsuccessful. It is worth to refer an illustration in this context as quoted by the authors RATAN LAI, & DHIRAJ LAL, Indian Penal Code, 34th Edition that:-

“where a women with the intention of committing suicide by throwing herself into a well, actually ran towards it, when she was seized by a person, she did not further made any attempt, it was held that she might have changed her mind, and she was caught before she did anything which might have been regarded as the commencement of the offence”.

6. Therefore, there was actually no attempt to commit suicide. In this context, it is also worth to refer to a decision rendered by the Apex Court in **(2001) 8 SCC 633** between **SATVIR SINGH AND OTHERS v. STATE OF PUNJAB AND ANOTHER** wherein, the Apex court has observed that attempt to commit an offence is an essential condition to attract the provisions of Section 309 or Section 511 of IPC.

7. Looking to the above facts and circumstances of the case and on perusal of the statement of one Manjunath whose statement was recorded by the police and who is none other than the close friend of the petitioner herein, has stated that, on 20.10.2016, the petitioner told the said Manjunath that, he was frustrated with the attitude of Superintendent of Police, Chitradurga. Therefore, he wanted to die. Then the said Manjunath consoled this petitioner and thereafter, the petitioner went to Tumkur with an intention to stay for some days with his friends and

thereafter, it appears that he went to his friend's house. But nowhere it is stated that he has made any attempts to commit suicide.

8. Even the statement of one Shri.Suresh clears out the doubt that on 26.10.2016, the petitioner was in the Gayathri lodge situated at Ashoka Nagar, Tumkur. The Police on 26.10.2016 came to the said lodge and shown the photographs of the petitioner and he identified the person as petitioner herein and police approached and enquired this witness. This witness has stated that the petitioner had been to their lodge for the purpose of committing suicide. But the accused was caught on 26.10.2016. Though the petitioner was there in the lodge room on 25.10.2016 and he went away locking the said room on the next day. This clears out doubt that though the petitioner is said to have stated that he would like to commit suicide, but he has not made any attempt, though he had sufficient opportunity in the lodge on 25.10.2016. Therefore,

nothing is on the record to show that any attempt actually was made by the accused-petitioner to commit suicide at any time. Therefore, absolutely no ingredients of Section 309 of IPC is available. Hence, the constitution of the offence under Section 309 of IPC itself is not made out, as such, proceedings against the petitioner cannot be continued for the above said offences. Hence, the following:-

ORDER

The petition is allowed. Consequently, C.C.No.105/2017 pending on the file of the Civil Judge(Sr.Dvn.,) and JMFC Court, Hiriyyuru, Chitradurga, for the offences punishable under Sections 309, 504 read with Section 120-B of IPC is hereby quashed insofar as this petitioner is concerned.

**Sd/-
JUDGE**

VMB