

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

+ **Crl. L.P. No. 393/2010**

% **Date of Decision: 25.11.2010**

State Petitioner

Through Ms. Richa Kapoor, APP

Versus

Deepak & Ors. Respondents

Through Nemo

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE S.L. BHAYANA

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

Crl. M.A. No. 16685/2010

Allowed subject to just exceptions.

Crl. M.A. No. 16684/2010

This is an application by the petitioner under Section 5 of the Limitation Act seeking condonation of delay of 123 days in filing the petition for leave to appeal.

The applicant/petitioner has contended that this judgment was pronounced on 26th February, 2010, however, the copy was applied on 3rd August, 2010 and the copy was prepared on 6th August, 2010. The

applicant has also given the details as to when the file was sent to different officials for seeking approval for filing the petition for leave to appeal which ultimately led to a delay of 123 days.

The applicant has relied on Collector of Land Acquisition vs. Katiji, (1987) 2 SCC 107 and State of Nagaland vs. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical defection of sufficient causes for explaining every day's delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants, hence it cannot be put on the same footing as an individual.

In the circumstances, the petitioner/applicant has been able to make out sufficient cause for condonation of delay of 123 days in filing the petition seeking leave to appeal.

The application is, therefore, allowed and delay of 123 days in filing the petition seeking leave to appeal is condoned.

Crl. L.P. 393/2010

The petitioner has sought leave to appeal against the order dated 26th February, 2010 holding that the prosecution has failed to establish the charge under Section 304-B, 498-A and 34 of IPC in Sessions Case No. 14/2008 arising out of FIR No. 172/2007, PS RMD acquitting all the accused persons.

The brief facts as propounded by the prosecution are that respondent No. 1 Mr. Deepak is the husband of the deceased Poonam, whereas Mr. Naresh Kumar and Mrs. Santosh are the father-in-law and mother-in-law of the deceased and respondent Ms. Jaishree and Ms. Pooja are the sisters-in-law of the deceased, who committed suicide on Railway Track between Railway Station Samay Pur Badli and Holambi Kalan, Delhi and died in other than normal circumstances within seven years of her marriage and soon before her death she was subjected to cruelty and harassment on account of demand for dowry by all the accused persons.

The charges under Section 498-A, 304-B and 34 of IPC were framed against all the accused. However, they pleaded not guilty and claimed trial. The prosecution had examined 15 witnesses including brothers of the deceased and her sister Ms. Sunita, PW-13. The statements under Section 313 of Cr.P.C. of all the accused persons were recorded, where they controverted the entire evidence against them and

contended that they have been falsely implicated in the case. The accused also led the evidence in their defence and examined Mr. Ramesh Yadav, DW-1 and Mr. Dharamraj, DW-2, their neighbours and Mr. Nitin Kumar, DW-3, nephew of the accused Naresh Kumar.

From the evidence on record, the Trial Court noted that PW-1 had been informed on 6th October, 2007 that a woman had been run over by train No. 2HNN, (Kurukshetra to Hazrat Nizamuddin) at about 9:20 AM at kilometer 14/16 between Holambi Kalan to Badli, near Down Home Signal and her dead body was lying between the tracks. The driver of the train, PW-2, had also deposed that at about 9:15 AM a woman aged about 25-30 years came all of a sudden in front of the train and lay on the track. Seeing her he blew the horn and applied the break but he could not succeed in stopping the train and she was run over.

From the statement of PW-5, elder brother of the deceased Poonam and PW-6 Pravin Kumar, who is also brother of the deceased, the Trial Court inferred that there is no evidence regarding the demand of dowry prior to marriage and subsequent to marriage. The improvements made by the said two witnesses from their statements before the police and SDM were noted and it has been inferred that the prosecution has failed to establish the demand on the part of the accused/respondent.

The Trial Court also relied on the fact that after the suicide by the deceased by coming in front of the train, accused, i.e., the husband of deceased had performed the last rites of the deceased at her native village in presence of her parents. On the basis of the testimony of the witnesses, it has also been inferred that the prosecution has not been able to establish that the deceased was treated with cruelty or was harassed on account of demand for dowry and disbelieved the testimony of PW-13 Smt. Sunita and PW-11 Mr. Shish Pal and held that they are planted witnesses. Though, PW-13 had deposed that three days before the suicide, on 3rd October, 2007, she had visited her sister when she observed that her sister was beaten up by her family. It has been noticed from her testimony that before her visit on 3rd October, 2007, she had never visited her sister earlier and she did not even know the name of the father-in-law and mother-in-law of her deceased sister. According to her, the amount of Rs.50,000/- as dowry was demanded, however, strangely neither she informed her brother on coming to know that her sister was allegedly beaten on 3rd October, 2007, nor on the fateful day was this fact raised when the deceased's family was intimated about the deceased missing from the matrimonial home and efforts were made to locate her. The sister did not intimate the mediator, Mr. Ramphal, who had not even been examined by the prosecution.

The Trial Court also relied on the facts that PW-5 and PW-6 also did not depose that PW-13, Sister Sunita had intimated them that she had visited the deceased and that she was told that her husband had beaten her on account of demand of Rs. 50,000/-. Except the solitary statement of PW-13 based on her alleged visit three days prior to suicide, there is no specific averment about the harassment or cruelty by any of the witnesses and the allegations are omnibus and generic in nature. The Trial Court has noticed that no complaints were made either by the deceased or her family regarding the demands of dowry and found it unbelievable that from the date of marriage up until the birth of the child to the deceased, admittedly, there was no demand for dowry and thereafter the alleged demands started.

The inconsistencies between the statements of elder brother Arun Kumar, PW-5 and another brother Pravin Kumar, PW-6 have also been considered to infer that there had not been any demand for dowry and that the prosecution has failed to establish the amounts as claimed were given by the brothers. The father of the deceased was a barber till 2001. The brother Arun Kumar had deposed that he had an amount of Rs.1.5 lacs with him and the remaining amount was taken by him from his brother Pravin Kumar, PW-6 and the amount of Rs.2,05,000/- was given allegedly at the time of the birth of the son to the deceased. However, PW-6 Sh. Pravin Kumar had stated that an amount of Rs.4 lacs was taken as a loan and he had not given any amount to his

brother. Mr. Arun Kumar, PW-5 did not produce any document on the basis of which it could be established that he had taken the loan for allegedly giving the amount to the accused or that he had the amount with him as claimed by him, which could be given by him to the accused.

The reasons which prevailed with the Trial Court are the inherent inconsistencies between the statement of two brothers PW-5 & PW-6 about alleged amounts given to the accused and the deceased sister; no complaints made against the accused by the family members of the deceased or by the deceased herself to anyone including an uncle living near the matrimonial home of the deceased and Mr. Ramphal, the mediator; non examination of the uncle living near the matrimonial house of the deceased and the mediator Ramphal; the sister PW-13, namely, Sunita not informing anyone about the deceased telling her that she was beaten up and an amount of Rs.50,000/- was demanded by the deceased; the last rites of the deceased being performed at the native village of the deceased in the presence of her parents and that even the deceased had never revealed the alleged problems faced by her either to her parents or her sister or her brother or uncle or mediator and the allegations of alleged cruelty and harassment being omnibus and generic without any details and manner of cruelty.

The Trial Court has also considered in detail, connotation of 'dowry' as expounded by the Supreme Court in Appasaheb and Anr. Vs. State of Maharashtra, AIR 2007 SC 763 and Satvir Singh & Ors. Vs. State of Punjab and Anr., 2001 (4) Crimes 45 and came to the inference that there was no demand for dowry as contemplated under Section 2 of the Dowry Prohibition Act.

This Court has heard the learned counsel for the petitioner in detail seeking leave to appeal against the judgment dated 26th February, 2010, acquitting all the respondents/accused of charges under Section 304B, 498A and 34 of IPC. This Court has also gone through the testimony of relevant witnesses from the Trial Court record, which was called for and the relevant documents.

This is settled law that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favor. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanor of witnesses and observing their conduct in the Court is not to be substituted by

another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record

its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal.

The learned additional public prosecutor Ms. Kapoor, has emphasized that the Trial Court has passed the order mechanically as in para 37 it has been held by the Trial Court that the marriage was five years old whereas the deceased Poonam had got married on 6th February, 2006 and had committed suicide on 6th October, 2007. Apparently, it is a typographical mistake and on the basis of which, it cannot be held that the findings of the Trial Court are perverse or unsustainable. The Trial Court has also noted that the deceased had got married on 6th February, 2006 and had committed suicide on 6th October, 2007. Taking the observations made by the Trial Court in the judgment, it is apparent that the observation that the marriage is five years old is only a typographical mistake, which, however, would not entitle the petitioner for leave to appeal.

The learned counsel for the petitioner also contended very vehemently that the observation of the Trial Court that the deceased was cremated in her native village by the accused in the presence of her parents is not correct. The learned counsel, however, was unable to show from the evidence from the record of the Trial Court that the said observation or finding of the Trial Court is not based on evidence or is not sustainable. It has not been shown by the learned counsel that the

parents of the deceased had not been present at the time of her funeral in the native village where the deceased was cremated by the husband/accused. If PW-13 had visited the deceased on 3rd October, 2007, she would have told her parents about the alleged demand of dowry which allegedly led to suicide by the deceased and in that case, the relative of the deceased would not have allowed the accused to perform last rites, cremation of the deceased in her native village.

On the basis of the evidence on record, the Trial Court has taken a view that PW-11 and PW-13 are planted witnesses and has not relied on them. This is no more *res integra* that if a view taken by the Trial Court on the basis of testimony of the witnesses, which Court also has an advantage of observing the demeanor of the witnesses, the possible view taken by the Trial Court is not to be substituted by the Appellate Court even if another view is possible. This Court, however, on perusing the testimonies of witnesses PW- 5 & 6, brothers of the deceased and PW-13, sister of the deceased and PW-11 is of the opinion that there is no perversity in the finding of the trial Court nor the inferences taken by the Trial Court can be termed to be unsustainable.

Ms. Kapoor, the learned Addl. Public Prosecutor also emphatically insisted that PW-13 had told about her visit to her brothers PW-5 & PW-6 and they have deposed about it. However, perusal of the testimonies of these two witnesses from the record of the trial Court it is

apparent that these two witnesses have not deposed anything about the alleged visit of PW-13 on 3rd October, 2007 to the deceased. Had she visited the matrimonial house of the deceased, she would have definitely communicated as to what had transpired there as had been alleged by her. In the circumstances the finding of the trial Court that PW-11 and PW-13 are planted witnesses cannot be faulted nor can be termed to be unsustainable or perverse nor are there any grounds to grant leave to the petitioner against the impugned judgment.

No other plea has been raised by the learned counsel for the petitioner seeking leave to appeal against the order of acquittal. No grounds have been made out by the petitioner to grant leave to appeal and in the facts and circumstances the findings of the trial Court cannot be termed to be illegal, unsustainable or perverse.

In the totality of facts and circumstances, there are no grounds to grant leave to appeal to the petitioner. Therefore, the petition to grant leave to the petitioner is without any merit and it is dismissed.

ANIL KUMAR, J.

NOVEMBER 25,2010

'rs'

S.L. BHAYANA, J.