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

% *Judgment Delivered on : August 4th 2011*

+ **CRL.REV. P.No.137/2011**

B.P. SINGH & ORS. Petitioners

Through: Mr.Rajesh Yadav &
Mr.Rajan Chawla, Advs.

versus

STATE & ANR Respondent

Through: Ms.Rajdipa Behura, APP
for State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J. (Oral)

1. Vide FIR No.332/2005, the instant case, under Section 306/34 Indian Penal Code, 1860 was registered against the petitioners at police station Farsh Bazar, Delhi.

2. Feeling aggrieved by the aforesaid FIR, the petitioners had challenged the same being Writ Petition

(Criminal) No.2152-53/2005 which by the order of this Court dated 06.04.2009, has been dismissed.

3. Further, being aggrieved by the order dated 06.04.2009 of this Court, petitioners filed the SLP before Supreme Court which was disposed of vide order dated 09.08.2010 as under:-

“Mr.Siddharth Luthra, learned Senior Counsel appearing for the petitioners, seeks leave to withdraw the petition stating that the petitioners would like to urge all the points, raised in the present petition, at the time of framing of the charge. Accordingly, the Special Leave Petitions are dismissed as not pressed.

It goes without saying that the trial Court would consider all the points, as may be urged before it at the time of framing of charge, uninfluenced by any observation in the impugned judgment or the dismissal of these petitions. It will also be open to the accused to seek exemption from personal appearance before the trial Court.”

4. Thereafter, vide order dated 21.01.2011, Id.Trial Court has framed the charges under Section 306/34 Indian Penal Code, 1860 against the petitioners and the matter was fixed for prosecution evidence, which is still pending before the Trial Court.

5. Vide the instant revision petition, learned counsel for the petitioners submits that in spite of the directions from the Supreme Court vide order dated 09.08.2010, the trial Court has been influenced by the order dated 06.04.2009 passed by this Court, in addition to the other grounds/ material. The trial Court has observed as under:-

“In terms of the suicide note of the deceased it cannot be inferred that the deceased was a over sensitive person or that decision of committing suicide was impulsive one. In fact, it goes to show trauma being faced by the deceased because of the conduct of the accused persons.

It is pertinent to mention here that the accused herein had also filed quashing petition before Hon’ble High Court which was dismissed but the observation of Hon’ble High

Court in that order are very relevant, since all the pleas raised before this court were also raised before Hon'ble High Court and were discussed by Hon'ble High Court in detail.

It was observed by Hon'ble High Court in the order dated 6.4.2009 that:-

'Definition of 'instigation' under Section 107 IPC also includes the making of a false representation. The deceased had done obviously nothing wrong and yet he was asked by the petitioners to connive in a fraudulent act of giving a back paper for which he would be awarded the 'rightful' marks. When he declined to do so, he was assured that the University would be persuaded to rectify the mistake. After a prolonged wait and after repeatedly being given assurances by the petitioners that the necessary correction would be effected, the deceased took the extreme step of committing suicide. "

It was further observed that :-

'It is not possible, on reading of the suicide note as a whole to hold that the conduct of the Petitioners could not have constituted

'instigation'. It is not necessary that should be some verbal exchange which alone leads to suicide. It could be in any other manner which offends the dignity of the victim. The refrain of the Petitioners is that it was always possible for the deceased to have given the back paper without his overall result being affected. This, however, fails to account for the trauma the deceased must have had to face in being asked to commit an obviously fraudulent act by giving a back paper when in fact he had done no wrong.'

It was also observed that the court at this stage cannot sift the evidence. All it is required to examine at this stage is to see whether the material gathered by the prosecution justified the Petitioners being proceeded against for the offence in question.

At the stage of framing of charge similar is the position before this court as at the stage of framing of charge it is not required to sift the evidence but only to see whether material gathered by the prosecution justifies the accused persons being proceeded against for the offence in question. Lastly, having discussed all the arguments, as raised by Ld Defence counsel

three also, Hon'ble High Court observed that it was unable to conclude that not even a prima facie is made out from the material to proceed against the Petitioners for the defence under sections 306/34 IPC. Besides the matter as discussed, same analogy needs to be applied by this court at the stage of framing of charge. Accordingly, prima facie case having been made from the material on record against the accused persons for the offence under section 306/34 IPC, let the same be framed against the accused persons, which is framed and read over to the accused persons who pleaded not guilty and claimed trial."

6. Ld.APP for the State, Ms.Rajdipa Behrui, submits that under Section 228 of the Criminal Procedure Code, the Trial Court has to see the prima facie of the case, whether the charge can be framed apart from the material produced by the prosecution. She further submits that the trial Court has gone through the material and was of the opinion that prima facie the case is made against the petitioners under Section 306/34 Indian Penal Code, 1860.

7. I find force in the submissions of Id.counsel for petitioners that the trial Court should have kept in mind the directions issued by the Supreme Court vide order dated 09.08.2010.

8. I am of the opinion that the trial Court has not acted arbitrarily while passing the order on charge. However, the Trial Court might have ignorantly incorporated the observations of this Court while passing the order on charge without considering the directions by the Supreme Court.

9. By this order, I advise Ms.Savita Rao, Ld.Additional Sessions Judge, Delhi to be careful, in future. Further, I make it clear that it is an advisory only.

10. In the interest of justice, I deem it appropriate to set aside the order on charge dated 21.01.2011. Ordered accordingly.

11. The trial Court is directed to pass the order afresh keeping the directions of Supreme Court dated 09.08.2010 in mind.

12. Ld.counsel for petitioners submits that the trial Judge has since been transferred, therefore, he wishes to re-argue the case on the point of charge.

13. His request is accepted and accordingly, the trial Court/successor Court is directed to hear Id.counsel for petitioners afresh on the point of charge and thereafter pass order, afresh.

14. Accordingly, petitioners are directed to appear before the Ld.trial Court/successor Court on 11.08.2011, for further directions.

15. Criminal Revision Petition No.137/2011 is allowed in above terms.

16. No orders as to costs.

17. The Registrar General of this Court is directed to bring this order in the knowledge of the concerned Judge.

SURESH KAIT, J

August 04th 2011

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