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

% Order Reserved on: September 30, 2011
Order Pronounced on: October 24, 2011

+ **Crl. Rev.(P) No.236/2009**

DARSHAN LAL MAKAN AND ORS. Petitioners
Through: Mr.Yash Tondon, *Amicus Curiae*
versus

THE STATE Respondent
Through: Mr.Rajesh Mahajan, Additional
Standing Counsel (Crl.) for State
with Ms.Urvi Kathulia, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. Order of 25th February, 2009 of the Trial Court commences the trial in FIR No.137/05 under Section 306/506/34 of Indian Penal Code registered at P.S. Nabi Karim, Delhi against the three petitioners for abetting the suicide committed by Raj Kumar Dua @ Raju on 21st April, 2005.

2. The basis of the case set up against the petitioners is the statement of Mrs.Anita Dua wife of Raj Kumar Dua, which reads as under:-

Signature Not Verified

Digitally Signed By: ANIULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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"I state that I live at the above address with my family. I got married in the year 1991 with Raj Kumar Dua @ Raju. I have three children. My husband Raj Kumar Dua @ Raju used to do the business of readymade garments and for about $\frac{3}{4}$ years back he started working with Vinod Dhingra of Dhingra Properties dealing in property matters in partnership. On the shop where my husband used to work that shop belonged to Vinod Dhingra and my husband used to sit on that shop from the last one year. Surender Makan @ Raju son of Darshan Lal Makan also started working alongwith my husband and Vinod Dhingra. After joining work with Vinod Dhingra, Surender Makan got repairs and painting jobs done in the shop of Vinod Dhingra. Outside the shop he put up a board of 'Dhingra Properties and Makan & Co.'" On account of one accident, the board outside the shop broke and Vinod Dhingra got put a new board entitled 'Dhingra Property Dealers'. Surender Makan @ Raju thought my husband responsible for there not being the name of Makan & Co. on the board and it was for this reason that Surender Makan @ Raju his brother Virender Makan and his father Darshan Lal Makan used to taunt my husband repeatedly and by making false accusations. He was also threatened to be liquidated. For this reason, my husband used to remain under tension. On



account of this tension, my husband also lost his health. I asked my husband a number of times the reason for his tension on which he told me that since when Surender Makan @ Raju has entered the work with him he is tensed since then as Surender Makan @ Raju is not a good person because Surender Makan does dishonesty with other people but my husband is blamed for that. For this reason, Surender Makan has spoiled his goodwill in the market. My husband for the last few days was very scared of Surender Makan @ Raju, his brother Virender Makan and his father Darshan Lal Makan and he used to remain in tension only. My husband had been troubled immensely by Surender Makan @ Raju, Virender Makan and Darshan Lal Makan and it is on this account that my husband because of this, yesterday, i.e., on 21.04.2005, committed suicide. The suicide notes were recovered from the house, copy of which I have seen and am convinced that the suicide notes have been written by my husband Raj Kumar Dua. At several places, it bears his signatures which I can recognize. The above named Surender Makan, Virender Makan and Darshan Lal Makan be punished, legal action be taken against them. Heard my statement. The same is correct."

3. First petitioner claims to be senior citizen and the remaining two petitioners are his sons. The second

petitioner claims to be a working partner in a business venture with one Mr. Vinod Dhingra who had 25% share in it and Raj Kumar Dua (since deceased) also had 25% share in it, whereas the second petitioner had 50% share in this business venture.

4. According to the petitioners, the deceased was not keeping well for the last few months and was irregular in work and was unable to generate business on account of competition and could not meet the demands of business and was not financially well and due to all this, he was frustrated and was mentally infirm. Petitioners assert that the entire sequence of events as disclosed in the alleged suicide note was a figment of his imagination and no reliance could be placed upon the same.

5. Aforesaid order is impugned in this petition as charges under Section 306/506/34 of Indian Penal Code have been ordered to be framed against the petitioners, which according to them is unsustainable as the ingredients of the offence alleged are lacking.

6. In this revision petition filed against the impugned order on charge, reliance has been placed upon a passage of a decision of the Apex Court in Sanju @ Sanjay Singh Senger vs. State of M.P. (2002) 5 SCC 371, which is as under:-

"A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation

and at the same time indulged in drinking as revealed from the statement of the wife Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handwork of a man with a sound mind and sense."

7. When this petition came up for final hearing, there was no appearance on behalf of the petitioners and so, with the assistance of Mr. Yash Tandon, amicus curiae counsel and Mr. Rajesh Mahajan, learned Additional Standing Counsel for the respondent – State, the impugned order as well as this petition was perused. Learned amicus curiae counsel had relied upon the decision of the Apex Court in *Sanju @ Sanjay Singh* (supra) to assert that the ingredients of the offence are lacking and so, petitioners ought to be discharged. On the contrary, learned Additional Standing Counsel had supported the impugned order and had submitted that the evidentiary value of the suicide note and of the statement of the first informant cannot be pre-judged as the same is required to be adjudicated upon at trial, which is in progress.

8. In the face of the statement of the wife of the deceased, as afore-noted, and the suicide note of the deceased, it would be pre-mature for this Court to jump to a conclusion that the petitioners were not instrumental in any manner whatsoever in the commission of suicide by Raj Kumar Dua. What is required to be seen at the stage of framing of the Charge, stands reiterated by the Apex Court

in 'State of Orissa v. Debendra Nath Padhi', **AIR 2005 SC 359** in the following words:-

"All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in State Anti-Corruption Bureau, Hyderabad and Anr. V. P. Suryaprakasam [1999 SCC (Cri.) 373] where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that (emphasis supplied)."

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9. In the light of the afore-noted legal position and in the facts of this case, I do not find any illegality or infirmity in the impugned order warranting any interference in the exercise of the revisional jurisdiction of this Court.

10. Consequently, this petition is dismissed while refraining to comment upon the merits of this case, lest it may prejudice the trial.

11. With aforesaid observations, this petition is disposed of.


(SUNIL GAUR)
JUDGE

October 24, 2011
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