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

+ CRL.REV.P. 113/2012

Decided on 30th October, 2012
..... Petitioners

KRISHNA PRASHAD & ANR

Through : Mr. Sunil Kapoor, Adv.

versus

STATE Respondent

Through : Mr. Mukesh Gupta, APP with SI
Mahendra, P.S. Burari

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J. (ORAL)

1. Petitioners are parents-in-law of the deceased, who died an unnatural death within one and a half years of her marriage. Dr. S. Lal Conducted autopsy on the dead body and opined that the death was due to injection of "aluminium phosphate" poison. He further observed that the injury nos. 1 to 4 indicated the assault before death. Statements of the parents of deceased were recorded by the Executive Magistrate which led to registration of FIR No. 222/10 under Sections 498-A/304-B/34 IPC at Police Station Burari against the husband and his relatives including the petitioners. During the investigations, statements of the relatives of deceased under Section 161

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Cr.P.C. were recorded by the Investigating Officer. Statement of maid servant was also recorded. After completion of investigations, charge-sheet was filed in court.

2. Trial court, vide order dated 30th January, 2012, has held that a, prima facie, case under Sections 304-B/498-A/34 IPC was made out against the petitioners and has framed charges against the petitioners.

3. Aggrieved by framing of charges under Sections 304-B/498-A/34 IPC against them petitioners have preferred this petition under Sections 397/401 read with Section 482 Cr.P.C. and Article 227 of the Constitution of India. It is prayed that the order dated 30th January, 2012 passed by trial court be set aside and petitioners be discharged.

4. Learned counsel has vehemently contended that the petitioners were living in a far of village in the State of Bihar; while deceased was living with her husband in Delhi, where she had committed suicide. Petitioners did not visit Delhi nor they demanded any dowry from the deceased nor treated her with cruelty. After the death of deceased, her parents have roped in practically the entire family. They have levelled general allegations against the petitioners regarding demand of dowry and harassment, which on the face of it cannot be believed since petitioners had been residing at a place far

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away from Delhi. They were not living with the complainant. It is further contended that in such cases the intention of relatives of the deceased generally remains to rope in the entire family of husband. It is further contended that in the statements recorded by the Executive Magistrate, parents of deceased have made vague and general allegations against the petitioners which are not sufficient to frame charge. In their subsequent statements under Section 161 Cr.P.C. relatives of deceased including her parents have improved their version which make them wholly unreliable and such statements cannot be read against the petitioners. In nutshell it is contended that the general allegations regarding harassment does not disclose a, prima facie, case against the petitioners, thus, no charge under Sections 304-B/498-A/34 IPC could have been framed by the trial court. Reliance has been placed on M. Mohan Vs. State Represented by the Deputy Superintendent of Police 2011 II AD (CRI.) (S.C.) 101, Durga Prasad & Anr. vs. State of M.P. 2010 (3) AIR Kar R 467, Rakesh Kumar Gupta vs. State (Govt. of NCT Delhi) 2010 (1) C.C. Cases (HC) 513, Babita vs. State 2009 (2) JCC 1247, Sunil Bansal vs. The State of Delhi 2007 (2) JCC 1415, O.P. Malhotra & Anr. vs. The State 2005 VII AD (Delhi) 530 and Geeta Mehrotra & Anr. vs. State of U.P. & Anr. 2012 STPL (Web) 606 SC.

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5. There is no gainsaying that in case FIR, medical evidence and other evidence collected during the investigation including the statements under Section 161 Cr.P.C. makes out a, prima facie, case charge shall be framed and meticulous consideration of evidence and material at the stage of charge is uncalled for. Defence of the accused has also not to be considered at the stage of framing of charge. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further than a charge has to be framed. At the time of framing of charge, it is necessary to see that on the basis of documents produced by the prosecution whether grave suspicion arises with regard to commission of crime. Sifting of evidence at the stage of charge is only limited for the purpose to find out as to whether a prima facie case is disclosed against the accused or not. At the time of framing of charges, the probative value of the material on record cannot be gone into but before framing of charge the court must apply its judicial mind on the material placed on record and must be

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satisfied that the commission of offence by the accused was possible.

6. In the State of Delhi vs. Gyan Devi & Ors. JT 2000 (Suppl2) SC 635, Supreme Court has held thus "the legal position is well settled that at the stage of framing of charge the Trial Court is not to examine and assess in detail the material placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the Court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. seeking for the quashing of charge framed against them the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of

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a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases". In Amit Kapoor vs. Ramesh Chander & Anr. 2012 (9) SCALE 58 Apex Court has expressed similar view.

7. In the backdrop of above settled legal position, if the material on record is evaluated, in my view, trial court has rightly held that a, prima facie, case is made out against the petitioners for having committed the offences under Sections 304-B/498-A/34 IPC. Smt. Phulsari Devi, who was working as a maid servant in the house of the deceased, has categorically stated in her statement under Section 161 Cr.P.C. that the petitioners used to visit Delhi from their village and during the stay used to beat the deceased; they used to taunt the deceased that her parents had not given anything and that they should have at least given a car. During the investigation, certain letters written by the deceased were also seized by the Investigating Officer. As per the report of Forensic Science Laboratory, handwriting of the letters matches with the admitted handwriting of the deceased. In these letters, deceased has leveled allegations against the petitioners as well. Father of the deceased has also stated in his statement under Section 161 Cr.P.C. that petitioners used to visit the couple and harass the deceased. Statements of

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the witnesses under Section 161 Cr.P.C. cannot be ignored at this stage of framing of charge and have to be taken as correct on its face value at this stage. Veracity of statements of the witnesses has to be tested during the trial. As regards the contentions of learned counsel for the petitioners that the parents of the deceased have made improvements in their statements under Section 161 Cr.P.C. vis-à-vis their earlier statements recorded by the Executive Magistrate, in my view, this is a subject matter of trial. Statements under Section 161 Cr.P.C. cannot be discarded at this stage without a trial. Judgments relied upon by the petitioners' counsel are in the context of different facts and are of no help to the petitioners.

8. For the foregoing reasons, I do not find any merit in this petition and the same is dismissed.


A.K. PATHAK, J.

OCTOBER 30, 2012
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