

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

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RESERVED ON: 10th May, 2012
PRONOUNCED ON: 16th May, 2012

+ **CRL.Rev.P. 584/2011**

ANAND MOHAN Petitioner
Through: Mr.B.S.Chowdhary, Adv.

Versus

STATE NCT OF DELHI Respondent
Through: Mr.Navin Sharma, APP

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

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1. This Criminal Revision Petition has been filed by the petitioner Anand Mohan, accused in case FIR No.183/2011 registered at P.S.Malviya Nagar, New Delhi against him for committing the offence punishable under Section 498-A/304-B/306 IPC. Petitioner is impugning the order dated 25th November, 2011, vide which the learned ASJ ordered to charge the petitioner for the aforesaid offences.

2. In brief the case of the prosecution is that vide DD.No.9-A, an intimation was received regarding commission of suicide by a lady aged about 28 years. The said DD was assigned to SI Prem Singh, who along with staff reached the spot and met Sh.Dhanesh and two other ladies, namely, Jyoti Singh and Smt.Sunita. One lady was found hanging with iron grill mounted at the door of the bedroom, whose name and address he came to know as Usha Punjab Singh wife of Anand Mohan.

3. Sh.Dhanesh informed the police that the lady along with her husband had been residing there for the last six months as a tenant on the second floor of the house.

4. On 12th May, 2011, two relatives of the deceased came and inquired about Usha Punjab Singh and he accompanied them to the second floor. The door was bolted from inside, when none opened the door, he peeped inside through ventilator and found Usha Punjab Singh in standing position near the door of bedroom but with no movement in her body despite several calls. He opened the door through ventilator and Usha Punjab Singh was found hanging from the grill mounted on the door. He informed the PCR.

5. On enquiry from the relatives present at the spot, it was revealed that Usha Punjab Singh was married to Anand Mohan. SDM was informed and inquest proceedings were conducted. Dead body was sent for post mortem. The brother of the deceased Sh.Rajinder Singh along with his wife Sangeeta Singh came to the police station and this information was given to the SDM. The statement of brother of the deceased was recorded in which he disclosed the marriage of the deceased with Anand Mohan at Arya Samaj Mandir, Kolkata and also her harassment and being treated with cruelty on non-fulfillment of his demand for dowry. The deceased was also harassed by the petitioner saying that he was being offered Rs.25 lacs in second marriage and either she should arrange the money or he would not live with her. The complainant informed that his sister was harassed by Anand Mohan for dowry. She was also threatened with dire consequences on non-fulfillment of demand which led his sister to commit suicide.

6. On the basis of the statement made by the brother of the deceased, FIR No.183/2011 was registered and after completion of investigation charge sheet was filed.

7. One diary and one letter, stated to have been written by the deceased were also recovered and sent to CFSL for comparison of the handwriting on the diary and the letter with the admitted handwriting of the deceased. During the course of hearing, it has been informed that as per CFSL report, letter and diary have been written by the deceased.

8. After considering the material on record, learned ASJ, vide order dated 25th November, 2011, charged the petitioner for committing the offence under Sections 498-A/304B IPC. Alternatively, he was also charged for committing the offence punishable under Section 306 IPC.

9. The impugned order has been challenged by the petitioner on the ground that:

(i) there is no proof of marriage between the deceased and Anand Mohan;

(ii) The investigation report reveals that brother of the deceased despite being given opportunity to produce any proof of marriage, failed to do so;

(iii) The contents of the diary, which as per CFSL report written by her, reveal that she was insisting to marry her, thus making it clear that there was no marriage between the parties;

(iv) Provisions of Sections 498-A/304B IPC pre-suppose existence of relationship of husband and wife, there is absolutely no proof of marriage;

(v) From the testimony of the witnesses recorded under Section 161 Cr.P.C., at the most it can be termed to be live-in-relationship and in that situation, he cannot be charged for offences under Sections 498-A/304B IPC.

(vi) At the time of commission of suicide, the petitioner was away to Bihar to get married to some other girl and there is no question of he being abettor so as to attract the provisions of Section 306 IPC.

(vii) The statement of Sh.Dhanesh recorded under Section 161 Cr.P.C is not signed and there is no rent agreement to prove that the petitioner has ever resided in that house with the deceased as his tenant, claiming the relationship to be that of husband and wife.

10. Learned counsel for the petitioner has relied upon **Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra – (2008) 10 Supreme Court Cases 394** and submitted that if two views are equally possible and the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be fully within his right to discharge the accused.

11. Learned counsel for the petitioner has also placed on record copy of an undated complaint, allegedly written by the deceased to the SHO, P.S. Malviya Nagar, New Delhi and submitted that the prosecution has failed to explain how it came into the possession of this letter, written by the deceased, when it was never sent to the SHO concerned.

12. On behalf of the State, it has been submitted that the statements of the complainant Sh.Rajinder Punjab Singh and his wife Sangeeta Singh is to the effect that the deceased Usha Punjab Singh married Anand Mohan in Arya Samaj Mandir, Kolkata and they were so informed by the deceased. The statement of Sh.Dhanesh Kumar, the landlord is also there to establish that the petitioner contacted him to take the premises on rent and also filled the form, required for verification of tenancy by the police. Anand Mohan also informed him that initially he would be alone and later on his wife would join and that in the month of November, 2011 his wife Usha Punjab Singh also

started living with him in the same premises and both of them were living as husband and wife.

13. On behalf of the State, it has been further submitted that as the brother and sister-in-law did not arrange the marriage of the deceased with the petitioner, they have made the statement to this effect on the basis of communication received from the deceased. The statement of Sh.Dhanesh, the landlord as well as the verification by the police in respect of the tenancy to whom the premises were let out, would reveal that the petitioner has stayed in that house as tenant. It has also been submitted that at the stage of charge the Court has not considered whether the case would ultimately result in conviction or not. Prima facie, there is sufficient material on record to charge the petitioner for committing the offence punishable under Sections 498-A/304-B/306 IPC and the impugned order need not be interfered with.

14. I have considered the relevant contentions and also gone through the record.

15. During the course of arguments, learned counsel for the petitioner was asked about the dates when the diary was written by the deceased to the effect that she was insisting the petitioner to marry her. He fairly conceded that it is undated. The copy of letter written to SHO, P.S., Malviya Nagar and placed on record by the learned counsel for the petitioner which is part of the charge sheet, was seized by the police during investigation as on last page of the charge sheet, date and manner of seizure is given. The relevant portion from the chargesheet is extracted as under:

"On 14/5/2011 itself I along with the complainant searched the house of the deceased. On searching brother of the deceased produced some medical papers and one complaint which she wrote to the police but there was no receipt."

16. This answers the query of counsel for the petitioner as to how police came into possession of this letter, copy of which he filed today in Court.

17. This complaint addressed to the SHO, P.S. Malviya Nagar is to the effect that the author of the letter i.e., Usha Punjab Singh (deceased) wife of Anand Mohan was residing at 15, Begum Pur Park, Near Shivalik, C Block along with her husband. She got married to Anand Mohan three years ago on 22nd June, 2007 and thereafter started living with him as his wife at different places. She has further written how she has been treated by her husband as he did not disclose about his marriage to his parents and now in order to have more dowry he was getting married to another girl of his parent's choice and treated her with cruelty to get rid of her and very soon he would be getting married to another girl. Not only that, she had apprehension in her mind that her husband could take her life if she make a complaint to the police. He had tried to strangle her and beat her which even resulted in hair line fracture of the bones of her chest and back. She wanted legal action to be taken against her husband, who had been cheating and exploiting her.

18. The judgment ***Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra (Supra)*** relied upon by learned counsel for the petitioner does not advance his case any further for the reason that it is not a case where two views are possible so as to extend any benefit to the petitioner to discharge him. There is material collected by the prosecution and statement of landlord about the petitioner living with the deceased as her husband in the rented premises. No doubt the usual proof of marriage, like, wedding card, photographs are not available with the prosecution but that is for obvious reason that it was

not an arranged marriage and as per complaint addressed to SHO, PS Malviya Nagar by the deceased, it was performed at Arya Samaj Mandir, Kolkata.

19. After considering the numerous judgments, in the case ***Sajjan Kumar vs Central Bureau of Investigation, JT 2010 (10) SC 413***, the Apex court laid down the following guidelines to be considered by the Courts while framing charge :-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

20. The main contention on the basis of which impugned order has been assailed is absence of proof of marriage between the deceased and the petitioner. The statement of brother and sister-in-law of the deceased as well landlord is on record that the deceased was living with the petitioner as his wife in the tenanted premises. In the complaint addressed to the SHO which was recovered from the house of the deceased during search, she has even mentioned the date of her marriage with the petitioner. In **Reema Aggarwal vs. Anupam & Ors. AIR 2004 SC 1418**, the issue whether in a case under Section 498-A IPC it is necessary that the marriage is valid in law, was dealt with. In para 18 of the report, the Apex Court dealt with this subject in detail and it is extracted as under :-

'18. The concept of "dowry is intermittently linked with a marriage and the provisions of marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legislation problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498-A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enter into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or

unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence bigamy will not apply to “any person whose marriage with such husband or wife had been declared void by a Court of competent jurisdiction”. It would be appropriate to construe the expression ‘husband’ to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions – Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of ‘husband’ to specifically include such persons who contract marriage ostensibly and cohabit with such woman, in the purported exercise of his role and status as ‘husband’ is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.

21. At the stage of framing of charge, Sections 227 and 228 CrPC are applicable. On reading the same prima facie it is clear that at the initial stage of trial, the Court is not required to meticulously judge the truth, veracity and effect of evidence to be adduced by prosecution during trial. The probable defence of the accused need not be weighed at this stage. The Court at this stage is not required to see whether the trial would end in conviction. Only prima facie the Court has to consider whether there is strong suspicion which leads the Court to think that there are grounds for presuming that the accused has committed the offence.

22. In the instant case, in view of legal position as discussed in para 18 of the report **Reema Aggarwal vs. Anupam & Ors.** (Supra), extracted above, I am of the considered view that absence of proof of marriage at this stage is no ground to discharge the petitioner. The

present revision petition has no merits and the same is hereby dismissed.

MAY 16, 2012
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PRATIBHA RANI, J