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

(i) CRL.REV.P. 152/2013

MUNISH JAIN

..... Petitioner

Through: Mr. Vivek Sood, Mr. R.D. Sharma
and Mr. Chetan Sharma, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, Additional Public
Prosecutor for the state with
Insp. Akashay Kumar, AHS/Crime
Branch.

(ii) CRL.REV.P. 154/2013

SHAILENDER KUMAR JAIN

..... Petitioner

Through: Mr. Vivek Sood, Mr. R.D. Sharma
and Mr. Chetan Sharma, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, Additional Public
Prosecutor for the state with
Insp. Akashay Kumar, AHS/Crime
Branch.

(iii) CRL.REV.P. 156/2013

TRISHLA JAIN

..... Petitioner

Through: Mr. Vivek Sood, Mr. R.D. Sharma
and Mr. Chetan Sharma, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, Additional Public
Prosecutor for the state with
Insp. Akashay Kumar, AHS/Crime
Branch.

(9)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
% **11.07.2013**

In the above-captioned three petitions, petitioners are *husband (Shailender Kumar Jain)* mother-in-law-(*Trishla Jain*) and brother-in-law-(*Munish Jain*), who are aggrieved by common order of 18th February, 2013 vide which they have been called upon to face the trial in FIR No. 440/2002 under Sections 306/498A/34 IPC registered at PS Vasant Kunj, Delhi.

At the outset learned counsel for petitioners submitted that challenge to the common impugned order is on identical grounds regarding petitioners facing trial for the offence under Section 306/34 IPC and so these petitions were heard together and are being disposed of by this common order.

The factual background of this case finds mention in the impugned order (*Annexure P-1*) so, there is no need to reproduce the factual matrix herein. Suffice it would be to note that petitioner-*S.K.Jain* got married with deceased in May, 1991 and they were residing in Sharjah (UAE) when petitioner-*Shailender Kumar Jain's* wife died in July, 2002 due to burn injuries. In short, prosecution version is that deceased was humiliated, insulted and maltreated by her in-laws and the deceased had written several letters to her family members complaining that she was treated with cruelty by her husband and in-laws. Since wife of petitioner-*Shailender Kumar Jain* had died unnatural death due to alleged cruel treatment meted out to her by petitioner-accused therefore, on the basis of statements of family members of deceased and the letters purportedly written by deceased to her family, petitioners are being prosecuted for the offence under Section 306/34

IPC.

Learned counsel for petitioners challenges the impugned order on the ground that dying declaration of the deceased recorded in Sharjah exonerates petitioners and permission under Section 188 of Cr.P.C. to prosecute petitioners except *Munish Jain* has been granted for the offence under Section 498A/34 IPC only, which petitioners are not challenging and so, their prosecution for the offence under Section 306/34 IPC is without jurisdiction as there is no sanction for it. Learned counsel for petitioner submitted that a sanction under Section 188 of Cr.P.C. is mandatory not only for the inquiry/investigation but also for trial and in absence of sanction under Section 188 of Cr.P.C. for the offence under Section 306 IPC, petitioners cannot be prosecuted and so, the impugned order is rendered unsustainable. To urge that the ingredients of offence under Section 306 IPC are prima facie not made out, reliance is placed upon decisions in *Suraj Prakash v. State of Delhi* 135 (2006) DLT 135, *Madan Mohan Sharma v. State* 189 (2012) DLT 567 and *Kartar Singh & Ors. v. Central Bureau of Investigation* 2006(2) JCC 1134. Lastly, it was contended with much vehemence by learned counsel for petitioners that even the prosecution case is taken as it is, still from the letters of year 2000 relied upon by the prosecution, petitioners cannot be made to face trial for the offence under Section 306/34 IPC because there has to be proximity between alleged cruelty/harassment and the death, which is lacking in the instant case as the purported letters relied upon by the prosecution are of the year 2000 whereas deceased had committed suicide due to depression in July, 2002. Thus, according to learned counsel for petitioners, presumption as to abetment of suicide by a married woman cannot be raised as there is nothing on record

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from which it could be inferred that petitioners had instigated the deceased to commit suicide. Setting aside of impugned order and discharge of petitioners is sought in this petition.

At the hearing learned Additional Public Prosecutor for State read out the relevant portion of the deposition of the witnesses to show that even in November/December 2001 parents-in-law of the deceased had gone to Dubai and had stayed there with the deceased and her husband and it is alleged that they had made the life of the deceased very miserable there in Sharjah and this was disclosed by deceased on phone to her parents. Attention of this Court was also drawn to the statements of colleagues and neighbours of the deceased in Sharjah to show that deceased was not in depression and so, it would not be correct to conclude that deceased had committed suicide due to depression as alleged by petitioners.

According to learned Additional Public Prosecutor for State *prima facie* case for proceeding under Section 306/34 IPC is made out against petitioners and lack of sanction under Section 188 of Cr.P.C. for the offence under Section 306/34 IPC qua petitioners-*Shailender Kumar Jain* and *Trishla Jain* and under Section 498A/34 IPC qua petitioner-*Munish Jain* would not be fatal at the threshold of trial as an opportunity ought to be granted to prosecution to establish as to whether alleged irregularity in obtaining sanction under Section 188 Cr.P.C. is curable or incurable and since the offences under Sections 306/498A/34 IPC are of same species therefore, lack of sanction under Section 188 Cr.P.C. cannot be fatal to the prosecution and so the impugned order deserves to be sustained.

Submissions advanced have been considered and impugned order, material on record decisions cited have been perused. The parameters which

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govern framing of charge have been recently reiterated by the Apex Court in *Amit Kapoor v. Ramesh Chander and Another* (2012) 9 SCC 460. The pertinent observations made by the Apex Court in *Amit Kapoor* (supra) are as under: -

"At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage."

In the instant case, it would be pre-mature to hold at the threshold of trial that non-obtaining of sanction for the offence under Section 306/34 IPC is fatal to the prosecution case because sanction under Section 188 Cr.P.C. for prosecuting under Section 498-A/34 IPC has already been obtained qua petitioner-*Shailender Kumar Jain* and *Trishla Jain*. As regards petitioner-*Munish Jain* sanction under Section 188 Cr.P.C. has not been obtained at all. Impugned order infact deals with the aspect of sanction under Section 188 Cr.P.C. qua petitioner- *Shailender Kumar Jain* and *Trishla Jain* but does not effectively deal with regarding the mandatory sanction required under Section 188 of Cr.P.C. qua petitioner-accused *Munish Jain*.

Section 188 of Cr.P.C. reads as under:

"Offence committed outside India:

When an offence is committed outside India-

(a) By a citizen of India, whether on the high seas or elsewhere; or

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(b) By a person, not being such citizen, on any ship or aircraft registered in India.

He may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

A bare reading of the aforesaid provision reveals that sanction for not only taking cognizance of the offence committed outside India but previous sanction of the Central Government for trial of such offence is mandatorily required.

Since no sanction for prosecution of petitioner-*Munish Jain* either for the offence under Section 498A/34 IPC or Section 306/34 IPC has been obtained therefore, his prosecution for the aforesaid offence or the offence under Section 306/34 IPC stands vitiated.

It is true that there has to be a reasonable proximity between the alleged cruelty and the death, to prosecute the accused for the offences under Section 306 IPC but, it cannot be said that the deceased was not subjected to cruelty from the year 2000 to year 2002 as there are statements of parents of the deceased and the first informant who is none other than sister of the deceased.

A bare perusal of the charge-sheet and the statements of witness coupled with the letters written by the deceased to her family, *prima facie* make out a case for putting petitioners-*Shailender Kumar Jain* and *Trishla Jain* at trial for offence under Section 306/34 IPC as well and both these offences are of the same species. Trial court has aptly noted that what

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offence is made out and against whom, becomes clear only after investigation/inquiry is complete. So, it is not unusual that initially a person is arrayed as an accused of Section 498A/34 IPC and the charge-sheet is filed for the offence under Section 306/34 IPC as well. Thus, it cannot be said that the sanction for prosecution under Section 498A/34 IPC alone would preclude the prosecution of the accused for the offence of same species i.e. under Section 306/34 IPC. This is an aspect which ought to be left open to be considered at trial to be finally determined as to whether it is a defect which is curable or not and as to whether it is fatal to the prosecution or not.

The petitioners- *Shailender Kumar Jain* and *Trishla Jain* have been called upon to face the trial for a serious offence and the scope of scrutiny at this initial stage of trial is quite limited. It cannot be lost sight of that the offence of cruelty is a continuing one. Applying the ratio of the decisions relied upon to the facts of this case, it cannot be *prima facie* said that the ingredients of the offence under Section 306/34 IPC are utterly lacking as the letters written by the deceased, though two years prior to her death, and the statements of family members of the deceased as well as of colleagues/neighbours of the deceased cannot be discarded merely by relying upon dying declaration of the deceased. It is at trial, dying declaration of the deceased as well as statements of family members of deceased and her colleagues/neighbours etc. is required to be tested and to minutely scrutinize them now would be pre-mature exercise which ought not to be undertaken at the stage of charge.

It needs no reiteration that even on strong suspicion charge can be framed. Viewed from any angle, no case for discharge of petitioners-

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Shailender Kumar Jain and *Trishla Jain* is made out. Impugned order directing petitioners *Shailender Kumar Jain* and *Trishla Jain* to face trial for the offence under Section 306/34 IPC does not suffer from any illegality or infirmity. However, impugned order requiring petitioner-*Munish Jain* to face trial under Section 306/498A/34 IPC is unsustainable due to lack of mandatory sanction under Section 188 of Cr.P.C.

Hence, revision petition of petitioner-*Munish Jain* qua impugned order succeeds and the impugned order against *Munish Jain* is set aside and he is discharged. Impugned order qua petitioners-*Shailender Kumar Jain* and *Trishla Jain* is upheld.

The above captioned three petitions are disposed of in aforesaid terms while not commenting on merits of this case lest it may prejudice either side at trial.


(SUNIL GAUR)
Judge

JULY 11, 2013
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