

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

+ CRL.REV.P. 90/2012

STATE

..... Petitioner

Through Mr. Naveen Sharma, APP for the State.

versus

BHAWNA SHARMA

..... Respondent

Through

AND

+ CRL.REV.P. 520/2012

RAJ KUMARI

..... Petitioner

Through Mr. KaushalYadav with Ms.Mamta Rani, Advts.

versus

STATE NCT OF DELHI & ANR. Respondents

Through Mr. Naveen Sharma, APP for the State. Mr. Naveen Gaur with
Mr.AbhijeetBhagat, Advts. ,SI Rajinder Prasad, PS Hari Nagar

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER

14.2.2013

1. By this order I propose to dispose of two criminal revision petitions filed by the State as well as by private party challenging the common order dated 5.11.2011 whereby the learned Trial Court has discharged the co-accused, Mrs. Bhawna Sharma for the commission of offences under Sections 306/406/420/34 IPC.
2. Criminal Revision Petition has been preferred by the State to assail the said order dated 5.11.2011 mainly on the ground that the suicide note itself contains specific allegations against the co-accused Bhawna and such allegations against Bhawna are strong enough to frame charges against her for committing the offences under Sections 306/406/420/34 IPC.
3. Addressing arguments for the State, Mr. Naveen Sharma, APP for the State submits that at the stage of framing of charges the trial court is required to look into the prosecution case only and not the defense of the accused person, which can be appreciated only during the trial of the case. Counsel also argued that the learned Trial Court has wrongly observed that the allegations against the co-accused Bhawna Sharma are superficial in nature and does not make out a strong prima facie case against her for framing of the said charges.
4. Criminal Revision Petition No. 520/2012 has been preferred by the mother of the deceased to challenge the same order dated 5.11.2011 and the arguments

advanced by counsel representing the petitioner follows the same lines of arguments as advanced by the counsel for the State. Contention raised by the counsel for the petitioner is that the suicide note cannot be treated as a weak piece of evidence and any person specifically named in the suicide note must at least face trial after framing of charges. Counsel also submitted that at the stage of framing of charges the Court has merely to form a prima facie view and not analyze the evidence in great detail to find out as to whether such an accused person would be ultimately convicted or not.

5. I have heard learned counsel for both the petitioners.

6. Since the State itself has challenged the said order dated 5.11.2011, there is none to contest these petitions. The present case relates to the commission of suicide by one Sarita. This lady and the accused, Mr. Bhuvnesh Prakash Sharma were working in the office of the CBI while the co-accused, Mrs. Bhawna Sharma, whose name was also found in the suicide note left by the deceased, is a legally wedded wife of Mr. Bhuvnesh Prakash Sharma. As per the prosecution story, information was received by the police on 6.1.2010 that a bad smell was coming from house No. 55/19, Hari Nagar, Tilak Nagar, New Delhi. When the police reached the spot, it found that the bad smell was coming from the second

floor of the said house. Finding the main door at the second floor of the house locked, the police broke open the main door and found the dead body of the said lady lying on the sofa in a highly decomposed condition. On searching the place of incident, one suicide note running into three pages was found under the pillow lying below the head of the dead body. The said suicide note was shown to the father of the deceased who identified the dead body as well as the hand writing of the deceased. Husband of the deceased came from Russia on 8.1.2010 and he also identified the hand writing of the deceased on the suicide note.

7. It is the case of the prosecution that when the husband of the deceased Sarita was posted in Afghanistan, Russia she met with the accused Mr. Bhuvnesh Prakash Sharma and illicit relations developed between them. Sarita had got allotted the Government accommodation in Aaram Bagh, Paharganj, Delhi in 2007 and both of the deceased and the accused Bhuvnesh used to go to that house during day time and started helping each other financially with passage of time. Both of them had deposited their jewellery with Muthoot Finance Ltd. and deceased had given the money to the accused. It is also the case of the prosecution that the accused Bhuvnesh Prakash Sharma had promised to marry the deceased and to achieve the said purpose he had even asked the deceased to take divorce from her husband and

even a divorce petition was found unsigned in her house. This illicit relationship of Sarita and Bhuvnesh Prakash Sharma came to the knowledge of Bhawna Sharma, wife of Bhuvnesh Prakash Sharma and later on Bhuvnesh Parkash Sharma refused to marry the deceased and such refusal on the part of Bhuvnesh Sharma led the deceased to commit suicide by consuming some poisonous substance. The contents of the suicide note left by the deceased as referred to in the impugned order are reproduced as under:-

"I Sarita suicide by myself only because of BhuvneshPrakash Sharma, CA in CBI HO. He has cheated me. He has taken all my gold jewellery near about 5 to 6 lakh and all cash about 4 lakh from me. He has ruined my life. He plays satta in cricket and other games also. He is the only person who has forced me to commit suicide. He promised me that he will give divorce to his wife and make me his wife. I cannot understand his planning. My last wish is that all my jewellery and cash to be given to my mother for my children and he may be punished. i.e. hang till death. God will never forgive him. I am sorry my children (Jaisal&Ashtami) (2) I have given 2.25 lakh on behalf of Naveen Rawat, 65,000 on behalf of Rajender Prasad and 70,000/- on behalf of Rajan to B.P. Sharma, JAO CBJ/HO all money may be collected from him and be paid to my mother Smt. Raj Kumari. I have borrowed Rs.10,000/- from Sh. Arya and Rs. 20,000/- from Sh. K.K.Sharma they may be paid and the money may be taken from B.P. Sharma JAO on behalf of Dalal Bearer in canteen this money should be taken and paid to my mother. B.P. Sharma

JAO may be punished and also his wife Smt. Bhawna Sharma. They both are responsible and involved (Sarita (3) Mummy all my jewellery and cash is with Bhuvnesh Prakash Sharma and his wife Bhawna. She used to say ill words on telephone to me and also threatened me to kill. She is also involved in this planning. They should be punished (B.P. Sharma and his wife Bhawna). He has kept all my jewellery in Muthoot Finance Group in Paharganj all receipts are in my purse. Bye and have u Jaisal&Ashtami my house may be given to my children. (sd. English Sarita).

Mummy I have SBI slip policy + PLI and LIC. Collect all my money and deposit it in my children account. Jaisal and Ashtami both will give fire to my dead body, their father Kishore Kumar may not be allowed to touch my dead body. I have saving account in corporate on bank in CGO (Sarita) (4) B.P. Sharma and his wife Bhawna has planned it they both may be punished (Sarita) his M.No. 9868218758, 9868218752 (Sarita).BhawnaW/oBhuvnesh Sharma has to ched me..... lot i.e. why I am ----- she is ruined my I request you to you punished B.P. Sharma has taken 50,000/- from K.K. Sharma on my behalf and also My arrear i.e. Rs.....12,000/- from he has taken Me on my i.e..... all my money May be given to my Father and children he has taken also taken Rs.65,000/- on my behalf from Sh. Suraj Mal, U.....”

8. The exact allegations which were leveled by the deceased against Bhawna Sharma in her suicide note are reproduced as under:-

“Bhuvnesh’s wife has tortured me a lot that is why I am suiciding. She has ruined my life..... B.P.Sharma and his wife Bhawnahas planned it. They both may be punished..... Mummy all my jewellery and cash is with Bhuvnesh and his wife Bhawna. She used to do ill words on telephone to me and also threatened me to kill. She has also involved in this planning. They both should be punished.”

In the end of suicide note it is written that “B.P.Sharma JAO may be punished and also his wife Smt. Bhawna they both are responsible and involved.”

9. The learned Trial Court after carrying on discussion on the legal principles to be taken into consideration at the time of framing of charges found that the allegations leveled against the co-accused Bhawna in the suicide note are superficial and do not make out a prima facie case against her.

10. The Apex Court in ***Union of India v. Prafulla Kumar Samal and Anr.***, AIR **1979 SC 366**, laid down broad principles that have to be taken into consideration by the courts while framing the charges. These principles have been relied upon in plethora of judgments and are reproduced as under:-

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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:

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

11. Applying the principles enunciated above to the present case in order to find out whether or not the court below was legally justified in discharging Bhawna, it can be seen that although the deceased leveled certain allegations against the co-

accused Bhawna Sharma in her suicide note, but these allegations do not show that the co-accused Bhawna Sharma had committed any overt or covert act which could have led the deceased to commit suicide. An offence under Section 306 IPC would be attracted only if there is an abetment for the commission of an offence. The parameters of the *abetment* have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing and an act or illegal omission takes place in pursuance of that conspiracy, or the person should have intentionally aided any act or illegal omission. The explanation to Section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of *abetment*. Enough suspicion does arise against a person who has been named in the suicide note, but wherein a case after seeing the contents of the suicide note, it is difficult to decipher the role of such a named person or point out any act or omission on part of such a named person to instigate commission of suicide, the Court may take into consideration the totality of the facts and circumstances of the case and may form prima facie view to not proceed against such a named person. (***Ref. Netai Dutta v. State of West Bengal, (2005) 2 SCC 659***) In facts of the present case, the deceased had in

fact admitted her relationship with Mr. Bhuvnesh Prakash Sharma, who is husband of the co-accused Bhawna Sharma and there are no such allegations so far as the over-all role of Bhawna Sharma is concerned. The name of co-accused Bhawna Sharma finds mention in the suicide note only after the deceased demands punishment for Mr. Bhuvnesh Prakash Sharma. Except naming the accused at few places in the suicide note along with non-specific allegations, the deceased has not stated as to how the co-accused used to harass her and was ultimately responsible for her suicide. She has just alleged of threatening calls from the co-accused Bhawna, which could have been made by the co-accused after knowing about the illicit relations between the deceased and her husband. The allegations with respect to the co-accused having custody of the jewellery and cash of the deceased and also with respect to her involvement in planning with her husband do not inspire any confidence. On the contrary, the facts and circumstances of the case points out that the co-accused was herself cheated and betrayed by her husband and the deceased.

12. In the light of the above, this Court finds that the trial court rightly discharged the co-accused Bhawna for the commission of offences under Sections

306/406/420/34 IPC by the order dated 5.11.2011. I find no illegality or any kind of infirmity in the said impugned order passed by the trial court.

13. There is thus no merit in the present revision petitions. The same are accordingly dismissed.

KAILASH GAMBHIR

February 14, 2013