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

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Date of Decision: September 19, 2016

+ CRL.REV.P. 460/2015

STATE (GOVT OF NCT)

..... Petitioner

Represented by: Mr.Kewal Singh Ahuja, APP
for the State with SI
Vishwendra, PS Seema Puri.

versus

SANDEEP KUMAR & ORS

..... Respondents

Represented by: Mr.Gourav Kochar &
Mr.Gourav Vashisth, Advs.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

Crl. M.A. 10483/2015

1. By way of this application filed under Section 5 of the Limitation Act, petitioner is seeking condonation of delay of 86 days in filing the revision petition.
2. For the reasons stated in the application, 86 days delay in filing the revision petition is condoned.
3. The application is disposed of.

CRL.REV.P. 460/2015

1. State is aggrieved by the order dated January 28, 2015 whereby learned Trial Court discharged the respondents herein for the offence punishable under Section 304B IPC and ordered them to be tried only for offence under Section 498A/34 IPC.

2. The case FIR No.809/2014, under Section 498A/304B/34 IPC was registered at PS Seemapuri on the statement made by Sadhu Ram, father of the deceased.

3. Respondent/accused Sandeep Kumar, husband of the deceased, his father Ram Bhool and mother Rajesh were charge-sheeted in the above noted case for committing the offence punishable under Section 498A/304B/34 IPC.

4. Learned Judge, Trial Court relying upon the decision of the Supreme Court in AIR 1966 SC 2184 S. Gopal Reddy Vs. State of Andhra Pradesh & 2007(1) Crimes 110(SC) Appasaheb & Anr. Vs. State of Maharashtra formed an opinion that prima facie no offence under Section 304B IPC is made out for the following reasons:

“13. In the present case, it is not alleged by the prosecution that any particular demand was made by the accused persons as a consideration for this marriage between accused Sandeep and deceased Meena. Persuading deceased to seek her share after sale of property belonging to her father cannot be termed as a demand related to the marriage between the parties. In these circumstances, I am in agreement with the contentions of ld. Defence counsel that one essential ingredient of Section 304-B IPC is missing from the case set-up by the prosecution. That essential ingredient is unnatural death on account of cruelty or before the death of victim. In absence of such essential ingredient, the inevitable conclusion would be that all accused persons cannot be charged for offence punishable U/s 304-B IPC. Hence, all accused persons are discharged for offence U/s 304-B IPC.”

5. Feeling aggrieved by the order on discharge of all the three accused persons for the offence punishable under Section 304B IPC, this revision

petition has been preferred assailing the order on charge by the learned Trial Court mainly on following grounds:

(i) Statement under Section 161 Cr.P.C. of the main witnesses i.e. Sh.Sadhu Ram, Smt.Kamlesh and Sh.Arvind – parents and brother of the deceased making specific allegations against all the three accused persons i.e. husband, father-in-law and mother-in-law for demanding the share in the property of her father has not been appreciated which in itself is sufficient to charge them under Section 304B IPC.

(ii) Learned Trial Court failed to appreciate that in a case of dowry death the offence is committed within the four walls of the house and it is for the husband and the in-laws to explain under what circumstances she committed suicide.

(iii) Deceased was harassed for not giving birth to a male child.

(iv) On the day of the incident she talked to her cousin's wife namely Smt.Anju and requested her to come to meet her. Smt. Anju promised to visit next day, but on the same day Meena (deceased) committed suicide.

6. On behalf of the State, learned APP Mr.Kewal Singh Ahuja has referred to the supplementary statement of the father of the deceased wherein he has stated that his daughter told him that her in-laws wanted her father to sell his house and give her share in that and that he promised to buy a plot for her out of his retiral benefits. He further referred to telephonic conversation between deceased Meena and Smt.Anju on the day of incident i.e. June 11, 2014 at 3/4:00 PM when the deceased called her Bhabhi from mobile No. 9266580843. The relevant portion of the statement of Smt.Anju recorded under Section 161 Cr.P.C. about her conversation with deceased Meena reads as under:

“Shaam karib 3-4 baje Meena ne mujhe apne phone 9266580843 se phone kiya ki bhabhi main bahot dukhi hun. Is admi (Sandeep) ne mujhe dukhi kar diya hai. Tumhe main apne bare mein batana chahti hun. Tum mere paas aa jaao. Jo maine meena se kaha ki main kal aaungi. Thodi der mein pata chala ki meena ne fansi laga kar apni jaan de di hai.”

7. Despite Smt.Anju’s assurance to visit her next day Meena committed suicide on the same day i.e. June 11, 2014.

8. Learned APP for the State has relied upon Dinesh Tiwari Vs. State of Uttar Pradesh & Anr.; 2008(14) SCC 94 Dinesh Seth Vs. State of NCT of Delhi & 2015 (216) DLT 755 Ram Kumar @ Rajesh Vs. State in support of his submissions.

9. In the decision reported as Dinesh Tiwari Vs. State of Uttar Pradesh & Anr., relied upon by the State, the Supreme Court placing reliance on its earlier decision in (2012) 9 SCC 460 Amit Kapoor Vs. Ramesh Chander & Another, considered the principles governing the stage of charge as under:

19. 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 that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh: (SCC pp. 41-42, para 4)

4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the

submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either Under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-- ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. 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 deciding the matter Under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence

which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order Under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one Under Section 228 and not Under Section 227.

11. In this case, it is not alleged that the Sessions Judge has not followed Sections 226 and 227 Code of Criminal Procedure before framing the charge. Further, it is not the case of the Appellant that the court has not given him hearing at the stage of discharge Under Section 227 Code of Criminal Procedure. For framing of charge Under Section 228, the judge is not required to record detail reasons as to why such charge is framed. On perusal of record and hearing the parties at the stage of discharge Under Section 227 Code of Criminal Procedure if the Judge is of opinion that there is ground for presuming that the accused has committed an offence, he is competent to frame charge for such offence even if not mentioned in the charge sheet. We find no merit in this appeal. The appeal is accordingly dismissed.

10. Reliance though placed by the State on the decision 2008(14) SCC 94 Dinesh Seth Vs. State of NCT of Delhi & 2015 (216) DLT 755 Ram Kumar @ Rajesh Vs. State being in appeal against acquittal/conviction and dealing the evidence on merits, are of no help to the State in this case.

11. Learned APP has also referred to the statement made by Rajo, relative of the deceased Meena that deceased used to often telephone to tell that her husband, mother-in-law and father-in-law were harassing her for not giving birth to a male child and for compelling her father to sell his Sant Nagar house and give her share.

12. As per the case of the prosecution, Meena was married to Sandeep in August, 2010 and it was second marriage for both of them. While deceased Meena was a divorcee, accused Sandeep was a widower with one daughter from his first wife. Statement of Kamlesh, mother of the deceased has been recorded by Sh.Rajesh Rana, SDM, Seemapuri on June 12, 2014 from 12:30 PM to 1:30 AM.

13. Statement of Sadhu Ram has also been recorded on June 12, 2014 and in both the statements though there are allegations of deceased meena being harassed by her husband but it is either under the influence of alcohol or on account of non-fulfillment of their desire to have a male child and she being taken to quacks and not qualified doctors for the treatment and delivery.

14. No doubt in the supplementary statements of Sadhu Ram and Arvind (father and brother of the deceased) there is reference of deceased Meena telling her father and brother about she being pressurized by her in-laws to ask her parents to sell his Sant Nagar houses and give her share, but these are vague allegations. The marriage lasted for four years before she committed suicide. Not only in the statement made before the SDM immediately after her death, the harassment on above count is missing, in the supplementary statement also it is not even mentioned as to after how many months/years of the marriage this demand was allegedly made. Supplementary statement of Sadhu Ram, father of the deceased contains the version as under:

“Papa mere sasural wale (pati va saas sasur) kehte hain ki apne papa ke makan sant nagar ko bikva kar hissa lo.”

15. In para 10 of the decision in Dinesh Tiwari Vs. State of Uttar Pradesh & Anr relied upon by the State, it was held:

“If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

16. The conversation referred to above in para 6 between deceased and PW Anju on the day of death does not refer to any harassment on account of the dowry demand by her husband or in-laws. The first statement before the SDM by the parents of the deceased refer to the abusive conduct of their son-in-law towards their daughter under the influence of alcohol.

17. When the prosecution case is examined in the light of above principles, the vague supplementary statement referred to above in para 14, even if fully accepted, does not satisfy the ingredients required to charge the accused persons for the offence punishable under Section 304B IPC.

18. The impugned order has been passed by the learned Trial Court after considering the statements of the complainant Sadhu Ram, father of the deceased Meena, as well of the close relatives recorded under Section 161 Cr.P.C. which do not point out any specific dowry demand being made in this case, especially when it was second marriage for both of them. The deceased Meena being divorcee and the accused Sandeep a widower having a daughter from his first marriage, there was no dowry demand even at the

time of marriage or any specific dowry demand being made thereafter during four years of their marriage till she died an unnatural death.

19. The respondents have been rightly discharged for the offence punishable under Section 304B IPC.

20. Finding no illegality or infirmity in the impugned the revision petition is hereby dismissed.

21. No costs.

PRATIBHA RANI, J.

SEPTEMBER 19, 2016

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