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

Judgment reserved on :09.10.2019
Date of decision : 18.11.2019

\+ Crl. M.C. No.2041/2007 &Crl. M.A.7257/2007
SHRI RANG LAL .....Petitioner

Through: Mr. Rajeshwar Singh, Advocate

versus

THE STATE OF DELHI ..... Respondent
Through: Ms. Meenakshi Dahiya, APP for State with ASI Virender, Crime Branch.

And

\+ Crl. M.C. No.1009/2008 &Crl. M.A.3777/2008
K.L. MEENA ..... Petitioner

Through: Mr. T.N. Razdan, Advocate

versus

THE STATE (N.C.T. of DELHI) ..... Respondent
Through: Ms. Meenakshi Dahiya, APP for State with ASI Virender, Crime Branch

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

Signature Not Verified
Digitally Signed
By:AMULYA

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1. The two petitions have been taken up together as they arise out of the same facts and are thus being disposed of vide this common order.

2. The police report under Section 173 of the Cr.PC, 1973 qua the alleged commission of offences punishable under Section 304A/342/34 of the Indian Penal Code, 1860 was instituted on 30.03.2001 before the learned ACMM, Delhi as the final report in relation to the investigation conducted qua FIR No.297/1997, PS Hari Nagar. The accused arrayed therein were Inspector Sunil Vashisht, Sub-Inspector Rang Lal (petitioner of petition Crl. M.C.2041/2007), Head Constable Braham Dev and Constable Rajpal Singh.

3. The charge sheet was filed along with sanction accorded under Section 197 of the Cr.PC, 1973 r/w Government of India, Ministry of Home Affairs notification no.11001/2/74 UTI dated 20.03.1974 and Section 140 of the Delhi Police Act, 1978 whereby the Hon'ble Lt. Governor of the National Capital Territory of Delhi granted sanction for initiation of criminal proceedings against the above named four accused persons for commission of the offences punishable under Section 304A/342/34 of the Indian Penal Code, 1860. The said sanction order and the charge sheet stated to the effect that on 24.04.1997, the SHO, PS Hari Nagar, Delhi Inspector Rajinder Singh received an information vide DD No.39A and reached the IO Room No.5 (Investigating Officer Room) of PS Tilak Nagar, Delhi where the deceased Rattan Singh was lying dead with a niwar tied around his neck. The dead body was preserved and the S. D. M. (Rajouri Garden), Delhi was informed to reach the spot who then recorded the

statement of the duty officer, Head Constable Jai Kishan, No.320/W, who stated that he was the duty officer from 1 am to 9 am on 24.04.1997 at P.S. Tilak Nagar, New Delhi and that at about 2:05 am SI Rang Lal, No. 4022/D, Head Constable Braham Dev No. 345/W and Constable Raj Pal No.1127/W returned to the Police Station after conducting the investigation of case FIR No. 155/97, registered under Section 379 of the Indian Penal Code, 1860 at P.S. Tilak Nagar, New Delhi and also brought with them Shri Rattan Singh (since deceased) and took him to the IORoomNo. 5 of P.S. Tilak Nagar, New Delhi.

4. It has been stated through the charge sheet and the sanction letter that after about half an hour he i.e. the Head Constable Jai Kishan, the Duty Officer heard the noise of knocking at the door of the said room (i.e. the IO Room No.5)of PS Tilak Nagar and thus he, the Duty Officer reached there and found Constable Raj Pal outside the said room who informed that the person brought by them had bolted the room from inside and was not opening the door and thus the Duty Officer informed this to the SHO Inspector K.L. Meena, the petitioner herein (petitioner of petition Crl. M.C.1009/2008) who was sleeping in his room and on this the SHO immediately arrived there along with the Malkhana Moharar, Constable Kishan and Constable Jitender, D.D. writer and went to the room of duty officer and came back and found that Shri Rattan Singh was lying dead on the ground and thus on the statement of Head Constable Jai Kishan, the Duty Officer the FIR was registered.

5. The inquest proceedings were conducted by the S.D.M. under Section 176 of the Cr.PC, 1973 and the doctor opined the cause of

death as asphyxia, which was confirmed by the Board of doctors. The investigation of the case was subsequently transferred to the Crime Branch and the IO recorded the statements of witnesses and the relevant record, i.e. the daily diary, interrogation register and inquest report of the SDM etc. were collected and the Viscera was sent to the CFSL and the niwar was preserved.

6. The sanction order dated 16.02.2001 thus alleges that through the investigation of the case it had been revealed that Inspector Sunil Vashisht while he was working as Additional SHO, P.S. Tilak Nagar, New Delhi, SI Rang Lal, No.4022/D (petitioner of petition Crl. M.C.2041/2007), HC Braham Dev, No, 245/W and Constable Rajpal Singh, No, 1I27/W who were also working at the said police Station during the relevant period had acted negligently and rashly and did not take all precautions to safeguard the life of the deceased Shri Rattan Singh (deceased)when he was not shown arrested in any case and was wrongfully confined by them on 24.04.1997 from 4:30 AM till his death. The accused persons were also stated to have left the deceased alone in the room of SI Rang Lal without initiating any proceeding against him and it has been stated through the sanction order that it was an act of serious omission on their part to have left the deceased Rattan Singh alone prompting him to end his life on account of mental stress which was caused by the said accused persons and that the confinement of the deceased and negligent act of the said persons caused the death of Shri Rattan Singh.

7. Vide order dated 06.10.2001of the learned ACMM, Delhi, which is the order impugned in Crl.M.C.2041/2007, it has been observed vide paras 2 & 3 thereof to the effect:

> *"2.Arguments were heard on point of framing of charge against the accused persons was that case is time barred as alleged date of offence is 24.4.97 whereas under section 140 of the Delhi Police Act limitation provided for taking cognizance of offence allegedly committed by members of Delhi Police while discharging their duties is one year, a period of limitation can not commence till, it is established.the offence which has been committed and the parsons responsible for committing the offence. After committing of suicide as per allegations the enquiry was conducted by concerned SDM who vide hisreport dated 31.03.99 for the first time opined that it were the accused persons who are were prima-facie guilty of committing alleged offences and before that identity of the accused and nature of offences was not prima-facie made out and as such it cannot besaid that case were time barred and charge sheet was filed on 30.03.2001. Time for obtaining sanction under section 197 Cr.P.C. for prosecuting the accused persons is also to be excluded. Accordingly it can be said that complaint filed is barred by limitation.*
> *3. As per, the allegations, and the statement of witnesses deceased Ct. Raj Pal and HC Braham Dev in early hours on 23.04.97 was produced before accused Sunil Vashistha, Addl. SHO PS Tilak Nagar, and was leter on examined and interrogated by SI Ratan Lai who also took deceased Ratan Lai to Najafgarh, at about 10.00 PM whereas no directions as per allegations were given by Sunil Vashisth, regarding the arrest of deceased Ratan Singh whichwas not show In the police record and accused persons filed to take sufficient precaution for safety of deceased Rattan Singh and thus prima-facie offences punishable under section 304A/342/34 Indian Penal Code, 1860, are made out against all the accused.*

Notice of allegations of offences by given to the accused persons."

and thus holding that a prima facie case was made out for the alleged commission of the offences punishable under Sections 304A/342/34 of the Indian Penal Code, 1860 against all the accused persons and the notice of allegations under Section 251 of the Cr.PC, 1973 was thus framed against all the four accused who were charge sheeted. The said order dated 06.10.2001 was challenged by the petitioner herein SI Rang Lal (petitioner of petition Crl. M.C.2041/2007) by institution of Crl. Rev. P. No.45/2003 and was also challenged by Head Constable Braham Dev by filing Crl. Rev. P. No.46/2003 and by Inspector Sunil Vashisht by filing Crl. Rev. P. No.49/2003, which petitions were disposed of vide order dated 01.10.2003 of the learned ASJ, New Delhi with directions to the petitioners to approach the learned trial Court for recalling the summoning order by filing an appropriate application on the same ground urged with the revision petitions with directions to the learned trial Court to consider such application and pass an appropriate orders.

8. Vide order dated 15.03.2014 in Crl. M.C.672/2004 filed by HC Braham Dev assailing the order dated 01.10.2003 of the learned ASJ, the matter was remanded back to the learned ASJ observing to the effect that it would be improper for the Magistrate to re-decide the case and that the verdict of the Hon'ble Supreme Court in ***K M Mathews Vs State Of Kerala 1992 (1) SCC 217*** was not applicable to the facts of the case and the learned ASJ was directed to decide the matter in accordance with law.

9. Vide order dated 13.04.2007, which is also the impugned order in Crl. M.C.2041/2007 filed by SI Rang Lal, Crl. Rev. P.Nos.59/2006, 60/2006 & 61/2006 filed by SI Rang Lal, Head Constable Braham Dev and Inspector Sunil Vashisht were disposed of observing to the effect that the impugned order dated 06.10.2001 of the learned trial Court had rightly held that a prima facie commission of offence was made out against the accused HC Braham Dev and SI Rang Lal petitioner herein qua the offences punishable under Sections 304A/342/34 of the Indian Penal Code, 1860 and thus Crl. Rev. P.Nos.59/2006, 60/2006 & 61/2006 were dismissed. As regards Inspector Sunil Vashisht, however, the order dated 06.10.2001 was set aside with the matter having been remanded to the learned trial Court for the fresh hearing in relation to the arguments addressed on behalf of Inspector Sunil Vashisht which were observed to have not been discussed by the learned trial Court. Constable Raj Pal, the other accused arrayed in the charge sheet did not assail the order on charge dated 06.10.2001.

10. Vide order dated 15.10.2007, the learned MM, Rohini held that there was prima facie material available on record against the Addl. SHO Inspector Sunil Vashisht qua the alleged commission of the offences punishable under Sections 304A/342 of the Indian Penal Code, 1860. Vide the said order dated 15.10.2007, the then SHO Inspector K.L. Meena (petitioner of Crl. M.C.1009/2008) was also summoned as an accused in the matter in terms of Section 319 of the Cr.P.C., 1973. The observations of the learned trial Court in the order

dated 15.10.2007 which relate to the petitioner Inspector K.L. Meena are detailed in paras 20 to 26 of the said order which read to the effect:

> *"20. The matter does not end here. All through, the SHO was also present in the P.S. The DD entries on the part of SHO appear to have been manipulated. The information which is gathered from the DD Registered is that SHO was away from P.S. for the whole of the day on the pretext of giving evidence in the court of Shri Nepal Singh, the then learned ASJ, Delhi and the entries were made in the DD Register to this effect. However, the copy of ordersheet, which has been placed on record clearly reveals that SHO had sent his exemption application from appearance in the said court, meaningthereby that he did not appear in the said court. Even as per his own statement, he had instructed Addl. SHO at about 10.30 P.M. tosupervise the investigation of deceased, whereas as a station House Officer/Officer Incharge of the P.S., he was required to be do it in his own supervision, which is again a flaw. From the statement of witnesses and the material on record, it is prima facie evident that the Addl. SHO as well as SHO were negligent in overlooking the safeguards which are to be adhered to in case of interrogation of accused persons. Therefore, it is the duty of this court to bring SHO also to book. He cannot get away from his responsibilities as SHO. He is also equally guilty of wrongfulconfinement and death of deceased by rashness/negligent act. Now, we are at a stage, where SHO has not been chargesheeted in this matter, however, there is prima facie material against him of his involvement in the matter as well. This court has also taken cognizance in the matter. Can after taking cognizance this court can go into this aspect as to whether SHO is also required to be chargesheeted in thematter? The answer to this question is in "affirmative".*

21. In case reported as "Raghubans Dubey V/s State of Bihar" AIR 1967 Supreme Court 1167-1967 Criminal Law Journal 1081=1967 (2) SCR 423 as also in "Rajendra Prasad V/s The State &Ors.", reported as 2001 (8)SCC 522 it was held that, "cognizance taken by a Magistrate is of the offence and not of the offender. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent bythe police some other persons were also involved, it is his duty to proceed them against those persons as well.

22. In "S.W.I.L. Limited V/s State of Delhi", 2001 (6 SCC 670 JT) 6 SC 405, it was held that, "there is no bar u/s 190 that oncethe process is issued against some accused, on the next date, the Magistrate cannot issueprocess to some other persons against whom there is some material on record, but their names are not included as accused in the chargesheet. To similar effects are the jugements "Murari Lai Goel V/s State of NCT" 105 (2003) DLT 438.

23. In the case of "Jagdish Ram V/s Stateof Rajasthan &Anr." reported as 2004 (I) JCC 611, it was held that, at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exist or not for further proceedings in the matter. It is well settled that notwithstanding the opinion of thepolice, a magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an areaexclusively within the domain of a magistrate. At this stage, the magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there issufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of

issuing process to the accused, the magistrate is not required to record reasons.

24. In view of law laid down in the aforesaid judgments, it is now well settled that if there is sufficient material before the court to summon additional accused on a subsequent hearing before the stage of 319 Cr. P.C. then those accused can indeed be summoned.

25. Accordingly, in view of the above discussion, charge against Addl. SHO is liable to be framed u/s 304A/342 IPG and SHO, Inspector K.L. Meena is also liable to be summoned as an accused in the matter. I order accordingly.

26 Issue B/Ws in the sum of Rs. 5,000/- against Inspector K.L. Meena, the then SHO of P.S. Tilak Nagar, returnable on 05.11.2007."

11. Vide order dated 20.03.2009 in Crl.M.C.2041/2007, the petitioner SI Rang Lal was exempted from personal appearance before the learned trial Court, which order is in existence though there was no stay of proceedings as also clarified by this Court vide orders dated 26.10.2017 & 25.10.2018. In Crl. M.C.1009/2008 vide order dated 20.03.2009 Inspector K.L. Meena, the petitioner of Crl. M.C.1009/2008 was exempted from personal appearance in the learned trial Court, which order has continued till date with it having been clarified vide order dated 25.10.2018 by this Court that there was no stay of the proceedings before the learned trial Court and that the learned trial Court may proceed in the matter in accordance with law.

12. The petitioner of Crl.M.C.2041/2007 SI Rang Lal contended that he was on sanctioned leave upto 23.04.1997 and he reported on

duty on 11 am in the police station Hari Nagar on 23.04.1997 and that the deceased accused Rattan Singh along with another accused Sandeep had been apprehended at 4.30 a.m. by Head Constable Braham Dev and Constable Raj Pal when they spotted the accused on Outer Ring Road near Ganesh Nagar at about 4.30 a.m. in the early morning of 23.04.1997 which caused suspicion about their complicity in some cognizable offence and of the design to commit a cognizable offence and thus both the accused Sandeep and Rattan Singh (since deceased) were brought to the police station and were kept in room no.5 when the petitioner SI Rang Lal was on leave and joined his duty at 11.00 a.m. on 23.04.1997. The petitioner SI Rang Lal thus submits that the apprehension of Rattan Singh (since deceased) had been made in his absence and the case had been entrusted to Shri Sunil Vashisht, Additional SHO for interrogation and that he the petitioner herein was neither entrusted the custody of the deceased accused Rattan Singh nor was his interrogation entrusted to him.

13. It has been submitted further by SI Rang Lal that at about 1.15 p.m., he along with his staff went on patrolling duty and at about 3 p.m., three pick pockets were arrested along with the knife in their possession by the petitioner herein and by two other police officials named Ved Prakash and Brahm Dev and three FIRs were recorded at the instance of the petitioner and two other police officials against the three pick pockets at about 6.30 p.m. and that till then, he was not aware of the deceased Rattan Singh or his co-accused Sandeep being detained by the Additional SHO in room no.5 allotted to the petitioner and another Sub Inspector Ashok Kumar. The petitioner further

submits that at about 10.30 p.m. he was called by Shri Sunil Vashisht, Additional SHO that a stolen car could be recovered at the instance of the deceased Rattan Singh and that the petitioner was supposed to take the accused Rattan Singh to the site (where no car was recovered). The petitioner submits that this order was confirmed by Shri K.L. Meena (petitioner of Crl. M.C.1009/2008), SHO, PS Tilak Nagar, Delhi who also asked the petitioner to take the accused Rattan Singh for the recovery of the stolen car under the monitoring and supervision of Additional SHO Sunil Vashisht, the IO of the case.

14. The petitioner SI Rang Lal further submits that Rattan Singh was taken to Kachi Colony, Najafgarh by him accompanied by Head Constable Brahm Dev and Constable Raj Pal and Constable Ved Prakash but no recovery was made at his instance and the petitioner returned to the Police Station with Rattan Singh at around 2 a.m. on 24.04.1997 and the petitioner SI Rang Lal left the Police Station for night checking leaving Rattan Singh (deceased) in the custody of Constable Brahm Dev and Constable Raj Pal and Rattan Singh (since deceased) was taken by Constable Raj Pal to room no.5 which is the office of the petitioner SI Rang Lal and Sub Inspector Ashok Kumar Sharma.

15. The petitioner submits that within half an hour, Constable Raj Pal walked out of the room to check if the Duty Officer could send someone else to substitute him and at that point of time, Constable Raj Pal heard the bolting of the room from inside by the deceased accused Rattan Singh and the SHO K.L. Meena who was sleeping in his room in the Police Station was informed by the Duty Officer Jai Kishan that

somebody had bolted the room from inside and that there was an apprehension of something undesirable and thus, the SHO Inspector K.L. Meena (petitioner of Crl. M.C.1009/2008) ran to the room and ordered the other police personnel present at the site to break open the door and on opening the door, they saw Rattan Singh hanging from a ceiling fan with the help of Nivar rope.

16. The petitioner further submits that at about 3:25 a.m., the petitioner was called through a wireless message by the SHO when the petitioner was on patrolling duty and within 5-10 minutes, the petitioner reported at the Police Station and he was informed that the accused Rattan Singh had committed suicide in the room.no.5 which was being shared by the petitioner along with Sub Inspector Ashok Kumar. The petitioner SI Rang Lal further submits that he was not entrusted with the custody of the deceased by the SHO or by the Addl. SHO Sunil Vashisht at any point of time. The petitioner further submits that as borne out from the report under Section 176 Cr.PC, 1973 as well as from the statements under Section 161 of the Cr.PC, 1973 and that it was a matter of record that Constable Rajpal (one of the accused charge sheeted who did not assail the order of framing of notice under Section 251 of the Cr.PC, 1973), had walked out of the room no.5 to check if the duty officer could send some other person to substitute him regarding the custody of the deceased Rattan Singh and that at that point of time, the petitioner was on night patrolling and had no supervision or control over the custody of the deceased Rattan Singh and that because the deceased Rattan Singh had committed suicide when he was all alone in the room in the absence of Constable

Raj Pal, the petitioner contends that there can be no allegations levelled against himof commission of any kind of negligence qua the deceased Rattan Singh. The petitioner thus submits that the impugned order dated 06.10.2001 of the learned ACMM, Delhi and order dated 13.04.2007 of the learned ASJ, Delhi are bad in law and on the facts liable to be set aside in as much as the petitioner had no role whatsoever to play in the commission of the offence.

17. The petitioner further submits that the DD entries that have been made have been manipulated by the SHO concerned to escape his liability and it was further submitted by SI Rang Lal that the sanction that was accorded by the Government was invalid and defective and time barred and that there was no prima facie case against him of the offences punishable under Sections 304A/342 of the Indian Penal Code, 1860, The petitioner further submits that cognizance had not been taken within a year of the commission of the offences and thus the charge sheet was time barred under Section 140 of the Delhi Police Act,1978 in as much as the date of the alleged commission of the offence was 24.04.1997 and the enquiry report under Section 176 of the Cr.PC, 1973 was submitted on 31.03.1999 and the charge sheet was filed on 20.05.2000.

18. Vide order dated 13.04.2007, the learned ASJ observed to the effect:

> *"8.Section 197 of Cr.PC makes a previous sanction mandatory when the person concerned commits an offence while acting or purporting to act in the discharge of his official duty. Section 140 prescribes a period of limitation only when the person concerned is prosecuted*

for any act done under the colour of duty or authority. The important question is whether the revisionists were acting under colour of duty or authority. In the instant case, the allegations against the revisionists are that they illegally confined Rattan Singh who later on committed suicide. In my view, the acts attribated to the revisionists had no nexus to their duty and, therefore, no sanction U/s 197 Cr.P.C. or under section 140 of Delhi Police Act would be required for their prosecution. The contention of Ld. Counsel for the revisionist is devoid of any force and the same is hereby rejected.

9. It has also submitted by Ld. Counsel for revisionist Rang Lai that revisionist was not entrusted the custody of the deceased at any point of time by the SHO or Addl. SHO. I have gone through the report U/s. 173 Cr.P.C. and other material available on record. As per the material available on record, it was Ct. Raj Pal and HC Braham Dev who brought Ratan Singh (since deceased) in the police station and it was revisionist Rang Lai who interrogated the deceased Ratan Lai. There are allegations thai neither the arrest of deceased was made in the record nor the reLitives of deceased were informed regarding his arrest. Prima-facie there is sufficient material on record against the revisionist to show that deceasedwas illegally confined/detained in the police station.

10.lt has been submitted by Ld. Counsel for revisionist Braham Devha. Ld. Trial court has not appreciated the fact that revisionist has only brought the suspect to the police station and it is the duty the Superior Officer to pass necessary directions or instructions, with regard to the custody of any suspect. 1 have gone through the record. There are allegations that Ratan Singh (since deceased) was taken to Najaf Garh and after returning From Najaf Garh in the night, Ratan Singh's custody was handed over to Ct. Raipal and revisionist Braham Dev by SI Rang Lai and the failed to take sufficient precaution

for the safety of deceased. Therefore, the contention of Ld. Counsel for revisionist is devoid of merit."

19. It is essential to observe that the statement dated 24.04.1997 of Head Constable Jai Kishan 320/W, PS Tilak Nagar which forms the basis of the FIR states to the effect that he was posted as the Duty Officer from 1 am to 9 am at P.S. Tilak Nagar, New Delhi and that at about 2:05 am SI Rang Lal (petitioner of Crl. M.C.2041/2007), Head Constable Braham Dev and Constable Raj Pal had returned to the Police Station after conducting the investigation in FIR No. 155/97, registered under Section 379 of the Indian Penal Code, 1860 at P.S. Tilak Nagar, New Delhi and had brought with them Shri Rattan Singh (since deceased) s/o Shri Ram Chandra, r/o Village Tikla, P.S. Bawal, District Rewari, Haryana whose name had been learnt on assailing the same and he was taken to the IO Room No.5 by the said police personnel and after about half an hour, there was a sound of knocking on the door, on hearing of which, he, Head Constable Jai Kishan went to the IO Room NO.5 and found Constable Raj Pal present there who informed Head Constable Jai Kishan that the person who had been brought by them had bolted the room from inside and was not opening the door and on which, he, HC Jai Kishan ran to the SHO Inspector K.L. Meena (petitioner of Crl. M.C.1009/2008) who was sleeping in his room and informed the SHO of the same and on this the SHO ran to that room and on hearing the noise Constable Kishan, Malkhana Moharar, and Constable Jitender, D.D. writer came to the spot and started breaking the door and he HC Jai Kishan returned to

Rojnamacha and after 15-20 minutes he returned to the room of S.I. Rang Lal and found that the person who had been brought by them named Rattan Singh was lying dead on the floor and there was a nivad round his neck and he HC Jai Kishan subsequently learnt that Rattan Singh had remained alone in his room and he hanged himself to death and committed suicide.

20. Without any observations on the merits or demerits of the trial, a bare perusal of the statement dated 24.04.1997 of HC Jai Kishan which forms the basis of the FIR brings forth that the deceased Rattan Singh had been detained in the IO Room No.5 i.e. room of SI Ranglal (Petitioner of Crl.M.C.2041/2007) and had been left alone there without any adequate precautions. In the circumstances, the observations of the learned ASJ to the effect that there was no arrest made of the deceased on the record nor the relatives of the deceased were informed of his arrest and that it was SI Rang Lal who interrogated the deceased, cannot be overlooked and brings forth prima facie that the deceased had been illegally confined/ detained in the police station. In fact even the averments made by SI Rang Lal in the present petition categorically bring forth that Rattan Singh and Sandeep had been apprehended on a suspicion and that Rattan Singh (since deceased) had been taken to Kachi Colony, Najafgarh by the petitioner SI Rang Lal, Head Constable Braham Dev and Constable Raj Pal and Constable Ved Prakash but there was no recovery effected and that SI Rang Lal returned to the Police Station with Rattan Singh (since deceased) at around 2 a.m. on 24.04.1997 and the petitioner SI Rang Lal then left the Police Station for night checking leaving Rattan

Singh (deceased) in the custody of Brahm Dev and Constable Raj Pal and Rattan Singh (since deceased) was taken by Constable Raj Pal to room no.5 which is the office of the petitioner SI Rang Lal and Sub Inspector Ashok Kumar Sharma whereas the FIR itself states that SI Rang Lal and the accompanying police personnel Head Constable Braham Dev and Constable Raj Pal had taken Rattan Singh (since deceased) to the IO Room No.5 and that SI Rang Lal, the petitioner herein was conducting investigation in relation to FIR No.155/97, PS Tilak Nagar under Section 397 of the Indian Penal Code, 1860 is categorically averred in the FIR itself and thus it is apparent that it was the prima facie responsibility of the IO SI Rang Lal who had taken Rattan Singh (deceased) for interrogation and for conducting investigation and had brought him back to the police station and placed him in his own room and that he ought to have taken care of the custody and well being of Rattan Singh. In the circumstances, it is apparent that there is no infirmity in the impugned order dated 06.10.2001 of the learned ACMM, Delhi nor in the order dated 13.04.2007 of the learned ASJ observing that a prima facie case qua commission of the offence punishable under section 304A/342/34 of the Indian Penal Code, 1860 against SI Rang Lal is made out in as much as it is also essential to observe that it has been rightly held by the learned ASJ vide the impugned order dated 13.04.2007 that the provisions of Section 140 of the Delhi Police Act, 1978 do not apply in as much as the acts alleged against the petitioner SI Rang Lal do not fall in the ambit of performance of duty of SI Rang Lal in as much as Section 140 of the Delhi Police Act, 1978 prescribes a period of

limitation only for acts concerned under the colour of duty or authority and that in the instant case, the allegations against the petitioner herein were that he along with other accused had illegally confined Rattan Singh who later on committed suicide which acts thus had no nexus to the duty and that thus the bar of limitation prescribed under Section 140 of the Delhi Police Act, 1978, which reads to the effect:

> *"140. Bar to suits and prosecutions.-*
> *(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of an such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a Police Officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.*
> *(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month' s notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.*
> *(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a*

declaration by the plaintiff of the time and manner of service thereof." does not apply.

21. Significantly, through the inquest report under Section 176 of the Cr.P.C, 1973 conducted into the cause of death of Shri Rattan Singh s/o Shri Ram Chander who died on 24.04.1997 in police custody at the Police Station Tilak Nagar, the brief facts put forth are to the effect:

- *"Telephonic information regarding the death of Shri Ratan Singh was received by the then SDM, Shri Prakash Chandra. The information was given by Shri P.N Arora ACP Tilak Nagar Dist West. The SDM got there by 6:00 a.m. and started toe inquest proceedings.*
- *As reported by the police officers of Tilak Nagar police station Ratan Singh who is alleged committed suicide at 2:30 a.m. on 24.4.97, in room no. 5 occupied by Shri. Rang Lai, SI in PS. Tilak Nagar.*
- *Ratan Singh was illegally detained in the PS Tilak Nagar. There is no entry regarding his arrest in PS Tilak Nagar records.*
- *The articles available near toe body were seized and seizure memo was prepared.*
- *The body of the deceased was lying on the floor in room no. 5 with a "nivad" rope around his neck.*
- *The photographs of the body from different angles were taken. The body was examined and form no.25.35 (1) (B) was filled in. As recorded in form no. 25.35 (1) (B). The body was examined at 6:07 a.m.*
- *Following is the information as recorded in the form no. 25.35 (1) (B):*
  No relatives of the deceased were present at the time of examination. Shri. Rang Lai, SI and Shri. BramhaDev, HC of PS, Tilak Nagar identified the body as of Ratan Singh. His eyes and mouth were open but thetongue was not protruding. Some bruises were seen in front of

toe neck only. Loop of "nivad" rope wasaround front side of the neck and middle of the head. No blood, liquid including semen, urine or blood clotsseen at or near mouth, ears, eyes and genitals and anus.
The body of the deceased was vigorous, the built was thin and was of height of 5'6". Rumour suggestedthat the deceased had hanged himself.

- *Statements of the following persons were recorded by the then SDM Sh. Prakash Chandra before orderingthe postmortem on the body of the deceased.*
  Shri. K.L. Meena, SHO PS Tilak Nagar.
  Shri Rang Lal, Sub-Inspector, PS Tilak Nagar.
  Shri Bramha Dev, Head Constable, No. 345/W, PS Tilak Nagar.
  Shri Raj Pal, Constable, No. 1127, PS Tilak Nagar.
  Shri Krishan Pal, Constable, No. 1489, PS Tilak Nagar.Shri Jitender Kumar, Constable, No. 1130/W, PS Tilak Nagar.
  Shri Ved Prakash, Head Constable, No. 448/W, PS Tilak Nagar.
  Shri. Ved Prakash, Constable, No. 1876/W, PS Tilak Nagar.
  Shri Ramesh Kumar S/o of Shri. Mela Ram, resident of B-108, Ganesh Nagar, Delhi.
- *SHO Harinagar was directed to seal toe room where Ratan Singh was reported to have hanged himself by thethen SDM.*
- *Doctors of Maulana Azad Medical College, Civil Hospital, GTB Hospital, New Delhi and DeenDayal hospitalconstituted a board of doctors to conduct the postmortem on the body of Ratan Singh at DeenDayalUpadhayayhospital mortuary. The postmortem was conducted on 25.04.97 at 2:10 p.m. The videography was done and stillphotographs were taken of toe postmortem.*
- *FIR was registered (No. 297/97) of this case at Hari Nagar PS on 24.04.97 under section 342/304/34Crime team of CFSL on the request of SDM arrived and had*

taken photographs of the site of incident, measurement of the door, impression/scratch which could have been created by some force on the door of room no. 5 to asses the possibility of breaking open the door from outside, (it was reported by the police officials that thedeceased bolted himself in the room in which he was kept and did not open on repeated knockingand bangingwhich forced the police officials to break open the door apprehending something undesirable).

- *A piece of nivadrecovered by the then SDM Shri. Prakash Chandra in the premises of PS Tilak Nagar.This pid:3 resembled the nivad which was used by Ratan Singh for hanging. The piece was sent for laboratory forexamination by CFSL."*

22. Furthermore, the analysis of oral and documentary evidence and conclusion and laches on behalf of the police officials pointed out in the inquest report, reads to the effect:

"During the course of inquiry it has been revealed that Shri Ratan Singh along with Shri Sandeep S/o Shri Kaptan Singh were arrested by Shri Bramha Dev, Head constable and Raj Pal Constable. They were seen by themon outer ring road near Ganesh Nagar at about 4.30 a.m. early morning of 23.4.97 in the circumstances causing suspicion in their mind about being concerned in some cognizable offense or their design to commit such cognizable offense They were brought to the police station and were kept in room no. 5. During the whole day additional SHO Shri Sunil Kumar Vasisht, Shri Rang Lai, SI. and Shri Bramha Dev at different points of time as mentioned in their statements interrogated them. During the course of interrogation Ratan Singh had admitted some thefts of carsduring last few months. This information was noted down by the aforesaid mentioned police officers. At about 10.30 p.m. K.L.Meena, SHO was informed about Ratan Singh and his involvement in car thefts. He directed shri Rang Lai, SI to take necessary legal action under the supervision of Shri Sunil Vasisht, ASHO who left the PS about 11 30 p m Ratan Singh

was taken to Kachi colony Najafgarh by Rang Lai and was accompanied by H/C Bramha Dev and Ved Prakash and Constables, Rajpal and Ved Prakash. Bramha Dev set Shri Sandeep who was arrested with Ratan Singh was set free before proceeding to Najafgarh as reported. Nothing could be recovered at the place mentioned by Ratan Singh where the vehicles lifted were supposed to have been stationed. Rang Lai andother returned to PS along with Ratan Singh at around 2 p.m. on 24.4.97. Rang Lai left the PS for night checking leaving Ratan Singh in the custody of Constable Bramha Dev and constable Raj Pal. Bramha Dev then went to his barrack to sleep leaving Raj Pal to take care of Ratan Singh. Raj Pal took Ratan Singh to room no. 5, which is office of Sh. Rang Lal SI and Ashok Kumar Sharma SI. After about half an hour constable Raj Pal walked out of the room to check if the duty officer could sent someone else to substitute him. He had barely walked out of the room,he heard the bolting of the room from inside. He knocked the door and asked to open it. But there was no response to his knocking and his subsequent banging of the door. SHO K.L. Meena was sleeping in PS in his room he was informed by duty officer Jai Kishan that somebody has bolted the room from inside and there is an apprehension of something undesirable. SHO K.L.Meena rushed to the room and repeated the exercise of knocking and banging.

He ordered other police personal present at the site to break open the door. It was reported that they used an iron window frame/grill to break open the door. On opening the door they saw Ratan Singh hanging from the ceiling fanwith the help of "nivad" rope. On touching the body of the Ratan Singh SHO, Meena felt the warmth of his body.

He ordered to bring down the body hoping that the person might be alive, they massaged his feet and chest but he didn't respond to any of these stimuli, he was dead. SHO informed the senior police officials and police officers of police station Tilak Nagar. Information was sent to PS Hari Nagar for registration of the case.

The above description is the version of the statements of police officials made before the SDMs, of the events and the

circumstances, which lead to the arrest, and the death of Shri Ratan Singh. The Statements of the relatives of Ratan Singh revealed that Ratan Singh was living in Delhi for last 7, 8months and was doing some job in some plastic factory, they also stated that there was never a police case againstRatan Singh in the past.

On analyzing the statements of person recorded during the inquest proceedings and the documentaryevidence following points have been highlighted.

As per analysis of the witnesses no one has stated any incident of physical assault with Ratan Singh. As per the statement of police officials Sandeep was at the police station till midnight on 23.4.97. He was interrogated two times and in his statement he never stated if Ratan Singh was ever was tortured by police officials. He also met Dara Singh his friend to whom, he didn't tell anything which might reveal physical torture to Ratan Singh by police officials. As per the observations on the dead body by the then SDM(RG) there was no blood spot on the cloth or 3body of the deceased. The private driver Ranjeet Singh who drove raiding party to Najafgarh also didn't mention anything abnormal about the physical condition of Ratan Singh.

The role of SHO, Shri K.L.Meena in the whole episode is not established as he has not been indicated in any interrogation and detention of Shri Ratan Singh. K.L.Meena SHO was briefed about the arrest of Ratan Singh at10.30 p.m. on 23.4.97 when Bramha Dev HC, Ranga Lal SI, and Sunil Vashist ASHO assembled in his room for a meeting in connection with a visit of DCP to PS Tilak Nagar next morning. The information was given to SHO after 18 hours of arrest. No one had mentioned the time of the arrest of Ratan Singh and Sandeep. He directed the sub ordinates to follow the legal procedure. His subordinates either failed to inform him or concealed the information about the time of Shri Ratan Singh's and Shri Sandeep's arrest and the mode of their detention.

Shri K.L. Meena SHO, PS, Tilak Nagar was not present on 23.4.97 when the accused were brought to police station after the arrest he was at his home and was away for most of the time on 23.4.97 as per the DD Register entries. Section 2 (O) of

CrPC that "officer in charge of a police station" includes, when the officer incharge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable. In statements made by Shri Raj Pal and Shri Bramha Dev stated that the officer in charge of police station Shri Sunil Vasisht, ASHO PS Tilak Nagar (in the absence of K.L. Meena, SHO) was informed about thearrest of Ratan Singh and Sandeep. These two Junior police officers have fully complied with the requirement of section 56 CrPC, i.e., taking or sending the person arrested before the officer incharge of PS. It was the duty of ASHO to record the arrest and the information relating the commission of cognizable offense by Ratan Singh and Sandeep under section 154 (1) CrPC (information in cognizable cases). As per the statements of Rajpal and Bramha Dev and ASHO, the interrogation of Ratan Singh was done but failed to record the information in the prescribed manner. The ASHO has not given any reasonable and satisfactory explanation about his not following theprocedure of law. Sunil Vasisht, ASHO, had admitted that he had interrogated Ratan Singh at one point of time.

Further he failed to inform the relatives/known person/persons of the accused and violated the provision regarding the bail, which amounted to illegal confinement under section 342 IPC.

As per the statement of police officer including Shri Rang Lal himself, Ranglal came in the picture when K.L.MEENA, SHO briefed him at 10.30 p.m. and asked him to proceed as per the law in the case of Ratan Singh.

Rang Lai SI, had returned after availing casual leave at about 11a.m. on 23.4.97 as entered in DD register in PS. Asstated by Sunil Vasisht, ASHO who saw Rang Lai SI, interrogating Ratan Singh around noon 23.4.97 soon after hecame from leave. It is matter of investigation whether Rang Lai, SI started investigating the case on his own or was he ordered by ASHO. It implies that Sunil Vashisht had knowledge of detention of Ratan Singh but still he denies giving any instruction/order to Rang Lai SI. Later in the day around 2 p.m. on 23.4.97 when he

met K.L.Meena SHO, he failed to inform about the arrest and detention of Ratan Singh.

It is an admitted fact that after returning from Najafgarh in the night Ratan Singh's custody was handed over toRajpal Cons, and Brahma Dev Head Cons by Rang Lai, SI Sh. Sunil Vashist stated that he left the PS after meeting with SHO at about 11 p.m. on 23.4.97 with due permission from SHO. But he did not record his departure in DD register.

On 29.4.97 Shri Jai Kishan HC, no 320/W had filed an affidavit before the then SDM Shri Prakash Chandra stating therein "that while the statement of deponent was being recorded it could not be contented categorically that SHO K.L.Meena directed the deponent to inform ASHO Shri Sunil Vashist at his residence and called ASHO to Police Station on the night intervening on 23.4.97 and 24.4.97 and accordingly deponent phoned at 4.45 a.m. and informed the mother of ASHO to send him at PS. Accordingly, ASHO reached PS at 5.30 a.m., by that time all senior officers i.e. including DCP West, Additional DCP Headquarters West, ACP Tilak Nagar and other ACPs had reached the PS.

Filing an affidavit is not a mode of tendering witness in a criminal inquiry. Further, it is not understood whether this has to be taken in defense of Shri Sunil Vashist or against him about his absence from PS. He had arrived at PS at 9.55 p.m. on 23.4.97 after patrolling duty. Further, he has not offered any reason for not recording his departure in DD register.

It is not clear as why and how Ratan Singh committed suicide as no case was made against him and nothing wasrecovered fi-om him. Police could not trace any vehicle, which alleged to have been lifted by Ratan Singh and his associates.

CONCLUSION

Statements of key witness namely Sandeep S/o Shri Kaptan Singh and Dara Singh s/o Sh. Raj Kumar Ratan Singh's landlord Shri Ramesh Kumar and statements of others, there is no direct evidence of physical abuse against the body of Shri Ratan Singh. As per opinion of Doctors of the board, the injuries mentioned in postmortem report were not sufficient to cause death and were superficial in nature. Report further says

that 'rather suicide is confirmed' which I feel is an assumption rather than a fact or certainty. Statements of police officials, that they had broke open the door also gets support from the CFSL physical Laboratory's report which states that the door was opened by applying force from the outside.

As per the postmortem report and its further clarification, CFSL Physical laboratory report and circumstances, Iam of the opinion that Ratan Singh had died due to hanging but it cannot be ascertained whether it was a suicide.There are certain lapses on the part of the police officials, which I feel are indirectly responsible for the death of Shri Ratan Singh. Following points reveals how casually the case of Ratan Singh was handled:

1. Police can arrest a person without any warrant under section 41,107 to 110and 151 of CrPC. As the police have not recorded any FIR against the deceased (Ratan Singh) and Sandeep, it is not known under provision of law they were arrested. No seizure memo of the Master keys alleged to have been recoveredfrom Ratan Singh was ever prepared.

2. Sh. Ratan Singh was arrested at 4.30 am on 23.4.97. Within 24 hours he was required to be produced before the Magistrate. No efforts were made to produce him within the time period allowed. When a person is arrested without warrant u/s 41 CrPC then it is regulated by section 56 CRPC which states that "a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions contained as to bail, take or send the person arrested before a magistrate having jurisdiction in the case, or before the officer in charge of the police stations. Constable Rajpal and Head Cons Brahma Dev who arrested the Ratan Singh and Sandeep had informed the officer in charge i.e. to ASHO Shri Sunil Vashisht. Section 56 CrPC implies that if the police does not think fit to take the bail, the arrested person has to be taken to the Magistrate.

3. Section 57 CrPC of says that a person arrested without warrant not to be detained for more than twenty-

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four hours. The provision of this section is to prevent forced confession and prevent police stations being used as Jails. Police officer failing to produce an arrested person before magistrate within 24 hours is guilty of wrongful detention. Keeping a person under restraint which prevents him from going wherever he likes, on the pretext that no actual arrest is made, is illegal and an abuse of police powers: it is infact custody under arrest and violation of section 56 and 57. The detention was illegal both of Rattan Singh and Sandeep.

4. ASHO Sh. Sunil Vashisht had seen both Ratan Singh and Sandeep in the room of SI Ranglal as per his own statement but he failed to give any direction to initiate any procedural proceedings. He was the in charge of the Police Station at that time as SHO KL Meena was not at the Police station at that time. It is admitted fact that true name and residence of Ratan Singh was ascertained. He should have been released on bond with or without surety as per the provision of section 42 (2) CrPC which states "When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required.

5. There is an act of omission on the part of police officer in charge ASHO Sunil Vashisht did not inform about the detention of Ratan Singh and Sandeep to SHO KL Meena when he saw him during the day time as he was well aware about the detention of Ratan Singh and Sandeep. Again in night at about 10.30 pm 23.4.97 SHO had directed the ASHO to proceed as per the law in the case of Ratan Singh. But ASHO admitted that he had left the Police Station for his residence. He did not show his ravanagi in the DD diary.

6. Sandeep was arrested along with Ratan Singh but Sandeep was detained till midnight only. He was released without any bond or surety. By whose order he was released Is not known. This was violation of section 59 of

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CrPC, which states that 'no person who has been arrested by a police officer shall be discharge except on his own bond, or on bail, or under the special order of a Magistrate.'

7. In the PM report some injuries are mentioned, particularly the injuries of the Head. It has to be ascertained how the deceased sustained these injuries and it is matter of investigation how the deceased acquired the piece of nivad while he remained in watchful custody of police official throughout.

The above points indicate lapses on the part of police officials in discharging their duties as per the law which ultimately lead to the death of Sh. Ratan Singh. It is not clear why Sh. Ratan Singh had hanged himself as no case..... to show his involvement in any cognizable offence and subsequently which could have aroused fear of Police or feeling of guilt or shame that could have driven him to commit suicide. Though I have confined myself to ascertain the cause of death as per the documents on record and circumstances, however, it will not be out of place to mention that the case needs further investigations on the points as enumerated above, to look into the reasons for lapses on the part of concerned police officers."

clearly prima facie bring forth the complicity and laxity on behalf of SI Rang Lal (the petitioner of Crl. M.C.2041/2007) at the time of confinement of Rattan Singh (deceased) who was confined, without warrant and without any information to the nearest Magistrate after having so confined him coupled with the factum that the arrest and information relating to the commission of cognizable offences by Rattan Singh was not recorded.

23. The petition filed by SI Rang Lal assailing the impugned orders dated 06.10.2001 of the learned ACMM, Delhi and 13.04.2007 of the learned ASJ, Delhi is thus dismissed.

24. On behalf of the petitioner of Crl.M.C.1009/2008, Mr. K.L. Meena, the then SHO of PS Tilak Nagar, it was submitted that he had no role whatsoever to play in the commission of any offences punishable under Section 304A/342/34 of the Indian Penal Code, 1860, and that he had not even been charge sheeted and that even the inquest report under Section 176 of the Cr.PC, 1973 of the inquest proceedings conducted by the SDM exonerated him and that the notice under Section 251 of the Cr.PC, 1973 vide order dated 06.10.2001 had only been framed against four persons charge sheeted and no fresh evidence had been brought on record and that the learned trial Court had invoked the provisions of Section 319 of the Cr.PC, 1973 on the basis of the same evidence already on the record without any further development which order it was contended is contrary to law.

25. The petitioner Inspector KL Meena submits that he was posted as the SHO of the Police Station Tilak Nagar where a person committed suicide when he was detained there by the other accused police persons without any record of his detention and without informing about his detention him, the petitioner, the then SHO. The petitioner placed great reliance on the observations made by the SDM which read to the effect:

> *"The role of the SHO Shri K L Meena (present Petitioner) in the whole episode is not established as he has not been indicated in any interrogation and detention of Shri Rattan Singh (the deceased). K. L Meena SHO was*

briefed about the arrest of Ratan Singh at 10.30 pm on 23.4.97 when Bramha Dev HC, Rang Lai SI and Sunil Vashisht ASHO (all accused persons) assembled in his room for a meeting in connection with a visit of DCP to PS Tilak Nagar next morning. The information was givento the SHO K L Meena after 18 hours of arrest. No One had mentioned the time of the arrest of Ratan Singh and sandeep. He (K L Meena, the present petitioner) directed the subordinates tofollow legal procedure . His subordinates either failed to inform him or concealed the information about the time of Shri Rattan Singh's (Deceased) and Shri Sandeep arrest and the mode of their detention."

26. The petitioner submits that vide the impugned order dated 15.10.2007, there is only a presumption that has been raised by the learned trial Court assuming that the petitioner was guilty as he was the Station House In-charge and that he had manipulated the DD entries and it has been submitted on behalf of the petitioner that the SDM and the IO of the Crime Branch had not mentioned anything about the petitioner being involved in any kind of such manipulation. The petitioner further submits that on the date of the illegal detention of the deceased, he was at his home and the entry of ravangi was also therein in the DD entry register and that the SDM also in his inquiry report had mentioned that when the SHO was not available at the police station, the next person below him was presumed to be the head of the police station and in this case, the then ASHO who was himself an accused and who had interrogated the deceased himself before his suicide was holding the responsibilities of the SHO concerned. The petitioner has further submitted that his being summoned was barred

by time in as much as the offences were not punishable with imprisonment beyond a period of three years.

27. The petitioner further submits that in as much as he was working as the SHO at the relevant time and in dereliction of duty, he is alleged to have committed the offence and thus he cannot be prosecuted without a valid sanction from the competent authority under Section 197 Cr.P.C., 1973 and Section 140 of Delhi Police Act, 1978 and that under Section 140 of Delhi Police Act, 1978, the requisite sanction was to be obtained within a year of the alleged commission of the offence and not beyond. The petitioner has further submitted that he was not placed in Column No.2 of the charge sheet and thus could not have been summoned without any fresh evidence having been collected. The petitioner has further submitted that in terms of verdict of this Court in ***Anirudh Sen Vs. State (NCT of Delhi) 2006 (3) JCC 2081***after cognizance has been taken, a person cannot be arrayed or summoned as an accused before evidence is recorded at trial.

28. Through written submissions and oral submissions made on behalf of the petitioner, reliance was placed on the verdict of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and Ors.*** (2014) 3 SCC 92 vide paras 57, 83-85, 92-96, 117, which read to the effect:

> *"57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its*

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application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

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83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial.

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92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

Question (iv)—What is the degree of satisfaction required for invoking the power under Section 319 CrPC?

93.Section 319(1) CrPC empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

94. In Pyare Lal Bhargava v. State of Rajasthan [AIR 1963 SC 1094 : (1963) 2 Cri LJ 178] , a four-Judge Bench of this Court was concerned with the meaning of the word "appear". The Court held that the appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. In Ram Singh v.

Ram Niwas [(2009) 14 SCC 25 : (2010) 1 SCC (Cri) 1278] , a two-Judge Bench of this Court was again required to examine the importance of the word "appear" as appearing in the section. The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in Vikas v. State of Rajasthan [(2014) 3 SCC 321 : (2013) 11 Scale 23] , held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

96. In Rajendra Singh [Rajendra Singh v. State of U.P., (2007) 7 SCC 378 : (2007) 3 SCC (Cri) 375 : AIR 2007 SC 2786] , the Court observed: (SCC p. 388, para 16)

"16. Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion

not to proceed, since the expression used is 'may' and not 'shall'. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression 'appears' indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319 CrPC can be exercised?

and

— Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

117.1. In Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : AIR 2013 SC 3018] , the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge,

an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is

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satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge [Ed.: The conclusion of law as stated in para 106, p. 138c-d, may be compared: "Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction". See also especially in para 100 at p. 136f-g.] . The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

> *117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh."*

to contend that vide the impugned order, the learned trial Court had made the petitioner, KL Meena liable simply because he was the SHO, Officer In-charge and guilty of vicarious liability, which is unknown to the jurisprudence of the criminal law and that the police, SIT and the SDM had not found any deficiency in the working of the SHO but had rather recorded that he, on bringing down the body from the ceiling fan felt it to be warm and massaged its parts to revive it and that he had not interrogated the deceased and had rather directed the SI to act as per law under the supervision of the Additional SHO.

29. On behalf of the State, learned APP for State relied upon the observations in para 39 of the verdict in ***Hardeep Singh Vs. State of Punjab and Ors. (supra)*** which reads to the effect:

> *"39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court. The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make*

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inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial."

to contend that there was no infirmity in the order of the learned trial Court summoning the petitioner herein.

30. It is essential to observe that as laid down by the Hon'ble Supreme Court in ***Rajesh &Ors. Vs. State of Haryana*** in Crl. Appeal No.813/2019, a verdict dated 01.05.2019, it has been observed vide paras 7.8 thereof which read to the effect:

> *"7.8 Considering the law laid down by this Court in the case of Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 of the CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 of the CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial."*

31. Undoubtedly, the evidence is yet to be recorded in the matter. It is thus sought to be contended on behalf of the petitioner, Sh. K.L. Meena that the provisions of Section 319 of the Cr.PC, 1973 cannot be brought into play. The scope and ambit of exercise of power under Section 319 of the Cr.PC, 1973 in terms of the verdict of the Hon'ble

Supreme Court in ***Sukhpal Singh Khaira vs. State of Punjab*** in Crl. A. No.885/2019 ***&Joga Singh and Another vs. The State of Punjab*** in Crl. A. No.886/2019, as observed vide verdict dated 10.05.2019 has been referred to be placed for the constitution of a bench of appropriate strength for considering the substantial questions law formulated vide para 27 of the said verdict, which read to the effect:

> *"27. After pursuing the relevant facts and circumstances, the following substantial questions of law arise for further consideration-*
> *I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?*
> *II. Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?*
>
> *III. What are the guidelines that the competent court must follow while exercising power under Section 319 Cr.P.C?"*

32. It is essential to observe that vide para 26 of the verdict of the Hon'ble Supreme Court in ***Sukhpal Singh Khaira vs. State of Punjab (supra)*** it has been categorically observed to the effect that the powers under Section 319 of the Cr.PC, 1973 being extraordinary in nature, the learned trial Court should be cautious for summoning the accused to avoid complicity and to ensure fair trial and that we must remind ourselves that timely disposal of the matters furthers the interest of

justice. **It is essential to observe that the learned trial Court vide the impugned order dated 15.10.2007 has vide para 24 thereof already adverted to elsewhere hereinabove categorically brought forth that the summoning of the petitioner KL Meena presently is not, at this stage, on invocation of Section 319 of the Cr.PC, 1973 but on the basis of material which the learned trial Court has observed to be sufficient to summon the petitioner KL Meena as an additional accused.**

33. On a consideration of the entire available record, without any observations on the merits or demerits of the case against the petitioner herein or any of the other accused summoned in the case, it is essential to observe that though undoubtedly the charge sheet did not array the petitioner Shri K.L. Meena as an accused and though the report of the SDM virtually exonerated him, the factum that the petitioner being the SHO of the PS Tilak Nagar was responsible for the conduct of the affairs at the Police Station and the factum that the petitioner was even aware of the detention of the Rattan Singh (since deceased) in the Police Station is indicated to be prima facie brought forth through the material collected by the Investigating Agency.

34. The petitioner herein undoubtedly in terms of Section 2 (o) of the Cr.PC, 1973 was the officer in charge of the PS Tilak Nagar under whose administrative supervision all proceedings were being conducted at the police station.

35. The averments in the FIR as well as in the inquest proceedings indicate that at the time when Rattan Singh (since deceased) apparently bolted the IO Room No.5 from inside, the then SHO KL

Meena, the petitioner herein was sleeping in his room at the police station when he was informed by the Duty Officer Jai Kishan that somebody had bolted the room from inside and there was an apprehension of something undesirable and he is then stated to have rushed to the room and knocked and banged at the door and ordered the police personnel to break open the door and on opening of the door, they saw Ratan Singh hanging from the ceiling fan with the help of nivad rope and on touching the body of the Ratan Singh, the SHO K.L. Meena, the petitioner herein felt the warmth of his body and ordered to bring down the body hoping that the person might be alive and massaged his feet and chest but he did not respond to any of these stimuli.

36. That the Magistrate is empowered in terms of Section 190 of the Cr.PC, 1973 to take cognizance of any offence in terms of Section 190(1) (a)(b)(c) as legislated therein which includes the issuance of summons to an accused who may be even named in Column No.2 of the charge sheet and not sent up as an accused to face trial on the police report and can do so without holding any further inquiry as contemplated under Sections 190/202 of the Cr.P.C. 1973 but on the basis of the police report itself which if it brought forth that there was material sufficient to issue such summons to a person not arrayed as an accused by the police is settled law as laid down by the Hon'ble Supreme Court in ***Dharam Pal and Ors. vs. State of Haryana and Another (2014) 3 SCC 306*** whereby it has specifically been observed vide paras 33 & 35 of the said verdict to the effect:

"33.As far as the first question is concerned, we are unable to accept the submissions made by Mr. Chahar and Mr. Dave that on receipt of a police report seeing that the case was triable by Court of Session, the Magistrate had no other function, but to commit the case for trial to the Court of Session, which could only resort to Section 319 of the Code to array any other person as accused in the trial. In other words, according to Mr. Dave, there could be no intermediary stage between taking of cognizance under Section 190(1)(b) and Section 204 of the Code issuing summons to the accused. The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Session Judge, till the Section 319 stage was reached in the trial. Furthermore, in the event, the Session Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same.

35.In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."

37. On a perusal thus of the observations in para 20 of the order of the learned trial Court dated 15.10.2007 already adverted to elsewhere

hereinabove, it is apparent that there is no infirmity in the same in summoning the petitioner herein K.L. Meena qua the alleged commission of offences punishable under Section 304A/342 of the Indian Penal Code, 1860.

38. Reliance that has been placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Sunil Bharti Mittal vs. Central Bureau of Investigation (2015) 4 SCC 609*** to contend that there can be no vicarious liability merely because the petitioner was the officer in charge of the police station concerned, does not aid and assist the petitioner presently in as much as the petitioner, the officer in-charge of the police station in terms of Section 2(o) of the Cr.PC, 1973 being the officer, in-charge of the police station and present at the police station at the time when Rattan Singh (Since deceased) bolted himself within the IO Room and hung himself to death, was clearly available at the police station, thus necessitates the consideration of the innocence or otherwise of the petitioner only at the anvil of trial.

39. The petition Crl.M.C.1009/2008 is thus dismissed.

40. The records of the learned trial Court and of the Revisional Court be returned forthwith with directions to the learned trial Court to proceed expeditiously in accordance with law.

18/11/2019

ANU MALHOTRA, J.

NOVEMBER 18, 2019/vm