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

Judgment Reserved on: March 15, 2016

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Judgment Delivered on: March 21, 2016

+ CRL.REV.P. 72/2014 & CRL.M.A.1794/2014

SAURABH MADAN & ORS.

..... Petitioners

Through: Mr.Anupam S. Sharma, Adv.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with SI Neeraj, PS South Rohini
Mr.Bhupender M. Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. This revision petition has been preferred by the petitioner for seeking his discharge in case FIR No.420/2008 registered at PS Rohini wherein he is facing trial as an accused for allegedly committing the offence punishable under Section 306 IPC and under Sections 4 & 5 of Dowry Prohibition Act.
2. Notice of the petition was issued to the respondent/State.
3. Brief written submissions have been filed by the petitioner as well as by the State.
4. I have heard Mr.Anupam Sharma, learned counsel for the petitioner as well as Mr.Kewal Singh Ahuja, learned APP for the State.

5. Case FIR No.420/2008 under Sections 306 IPC and under Sections 3 & 4 of Dowry Prohibition Act, PS Rohini has been registered against the petitioner on the statement made by Sh.Ashok Arora after the unnatural death of his daughter Vandana who was engaged to the petitioner.

6. In his complaint, Sh.Ashok Arora reported that his daughter Vandana had appeared in her MBA final examination. She was engaged to the petitioner on 07.05.2008. For 15-20 days everything was normal but thereafter the mediator conveyed the demand of a bigger vehicle and services of Gupta Tent for solemnisation of the marriage. The complainant expressed his inability to meet the demands which were beyond his financial capacity and he finalized 'Lavanya' at G.T.Karnal Road to be the venue of the marriage. Since the petitioner and his daughter were seeing each other after the engagement, the petitioner started complaining about physical features of his daughter to which the complainant reacted by telling him to break the alliance which has been fixed after he had seen the girl 4-5 times before engagement.

7. The circumstances preceding the unnatural death of Vandana have been reported as under :-

- (i) On 12.07.2008, the petitioner telephonically called his daughter for an outing in the evening and at 7.00 pm took her alongwith him.
- (ii) The petitioner dropped his daughter at home at 12.00 midnight.
- (iii) After reaching home Vandana had some talk with his sister Shweta and at that time, the petitioner made a call to Vandana on phone.
- (iv) The petitioner and his daughter continued talking on phone for a long time and had some altercation and quarrel while talking on phone.
- (v) His daughter Vandana went to the upper floor to sleep.

(vi) At about 2.20/2.25 (am) his daughter Shweta went upstairs to check whether the conversation between Vandana and the petitioner was over or not and came down crying to inform that Vandana had hanged herself.

(vii) When he reached up, he saw Vandana hanging with a chunni tied on the ceiling fan.

(viii) After untying the chunni, she was taken to Agarsen Hospital where she was declared 'brought dead'.

(ix) On that night, the petitioner Saurabh conveyed to Vandana that he was going to break the matrimonial alliance next day.

(x) His daughter had been compelled to commit suicide because of the threats extended by the petitioner to break the marriage as they were not fulfilling the dowry demands of the petitioner and his family.

8. Mr. Anupam Sharma, learned counsel for the petitioner has submitted that it is a case where Vandana was found hanging at her paternal home. It is not a case where marriage had been solemnised and any presumption under Section 113-A or 113-B of Evidence Act can be raised against the petitioner. Learned counsel for the petitioner has further submitted that it was a case of honour killing as deceased Vandana was having affair with one Amit though she was engaged to the petitioner. He has also referred to the MLC placed alongwith this petition, which records under:-

*'Ligature
L/E Brooze or
?? Stangulation or hang
mark around
the neck'*

9. Learned counsel for the petitioner has also referred to the post-mortem report wherein the cause of death has been given as asphyxia & apoplexy as

a result of pressure over throat structures by ligature. Ligature mark is antemortem in nature.

10. Mr. Anupam Sharma, learned counsel for the petitioner has submitted that there are no allegations of abetment by the petitioner which led Vandana allegedly to commit suicide. If there were allegations of dowry demand made by the petitioner and his family, in that case, the marriage could have been called off rather than committing suicide. The allegations against the petitioner that he complained that the deceased had mole on her face or about the shape of her nose, do not make out a case under Section 306 IPC and under Section 4/5 of Dowry Prohibition Act against the petitioner. In the absence of any active or direct act which led the petitioner to commit suicide, hence the petitioner may be discharged.

11. Learned counsel for the petitioner has relied upon *Sunil Bansal vs. The State of Delhi 2007 (96) DRJ 9*, *Hem Chand vs. State of Jharkhand (2008) 5 SCC 113*, *P. Vijayan vs. State of Kerala and Anr. (2010) 2 SCC 398*, *Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135* and *Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra (2008) 10 SCC 392* wherein it has been repeatedly held that if two views at charge framing stage exist, based upon the material available, the view favouring the accused has to be preferred.

12. Learned counsel for the petitioner has also relied upon *Gangula Mohan Reddy vs. State of A.P. AIR 2010 SC 327* and *Netal Dutt vs. State of West Bengal 2005 (1) Crimes 352 (SC)* in support of his contention that for an offence under Section 306 IPC, mens rea and act by the accused is essential to constitute the offence.

13. Learned counsel for the petitioner has also contented before this Court that the case law cited by him has not been dealt with by the learned Trial Court while passing the impugned judgment.

14. The learned Trial Court while passing the impugned order has referred to the case law cited by the petitioner in para 4 of the impugned order and in paras 7 and 8 of the impugned order by relying upon ***Alpana Dass vs. CIR 132 (2006) DLT 85*** and ***Umar Abdula, Sakoor Sorathia vs. Intelligence Officer Narcotics Control Bureau JT 1999 (5) SC 39*** it was held that on grave suspicion alone charge can be framed and at this stage, probative value of the material on record is not to be gone into in depth.

15. In para 11 of the impugned order, the learned ASJ has observed that the case law relied upon by the learned counsel for the accused was not applicable to the facts of this case.

16. It may be noted here that before learned Trial Court, one of the contentions raised was that deceased was having love affair with one Amit and it was a case of honour killing which the Court considered to be a subject matter of trial.

17. There cannot be any quarrel about the various legal principles laid down in the decisions relied upon by the learned counsel for the petitioner. The submissions made by learned counsel for the petitioner that the decisions relied upon by him before the learned Trial Court have not been considered, needs to be rejected in view of the decision of Supreme Court in ***Kanti Bhandra Shah and Anr. Vs The State of West Bengal, JT 2000 (1) SC 134*** wherein it was held as under :-

“If the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. If he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. He is only required to frame a charge in writing against the accused.”

It was further held as under :-

“If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all road blocks causing avoidable delays. If a magistrate is to write detailed orders at different stages because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down.”

18. Another contention raised on behalf of the petitioner that it was a case of honour killing i.e. murder and not suicide. Learned Trial Court has rightly observed it to be a subject matter of trial which needs to be considered by the learned Trial Court at the appropriate stage after examining all the circumstances as well the testimony of the doctor who conducted the post-mortem.

19. Legal Position is well settled that at the stage of framing the charge probative value of material on record cannot be gone into. The Apex Court in the case ***State of Maharashtra vs. Som Nath Thapa (1996) 4 SCC 659***

has considered the issue as to when a charge can be framed. The relevant paragraphs of the report are extracted hereunder:-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use.

When can charge be framed?

25. This legal question is not as knotty as the first one. This is for the reason that there are clinching decisions of this Court on this aspect of the matter.

26. Shri Ram Jethmalani has urged that despite some variation in the language of three pairs of sections, which deal with the question of framing of charge or discharge, being relatable to either a sessions trial or trial of warrant case or summons case, ultimately converge to a single conclusion, namely that a prima facie case must be made out before charge can be framed. This is what was stated by a two-Judge Bench in R.S. Naik v. A. Antulay, MANU/SC/0198/1986: 1986CriLJ1922 .

27. Let us note the three pairs of sections Shri Jethmalani has in mind. These are Sections 227 and 228 in so far as sessions trial is concerned; Sections 239 and 240 relatable to trial of warrant cases; and Sections 245(1) and (2) qua trial of summons case. They read as below:

Section 227: Discharge - If, upon consideration of the record of the case and the documents submitted therein, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 228: Framing of Charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for trial of warrant-cases instituted on a police report;

(b) is exclusively trial by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

(Emphasis supplied)

Section 239 : When accused shall be discharged - If, upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Section 240 : Framing of charge - (1) if, upon such consideration, examination, if any, and hearing the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 245 : When accused shall be discharged - (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

28. Before advertng to what was stated in Antulay's case, AIR (1986) SC 2045, let the view expressed in State of Karnataka v. L. Muniswamy, (1977) 3 SCR 113, be noted. Therein, Chandrachud, J. (as he then was) speaking for a three Judge Bench stated at page 119 (of SCR) : (at pp. 1493-94 of AIR), that at the stage of framing charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.

29. What was stated in this regard in *Stree Atyachar Virodhi Parishad's case*, (1989) 1 SCC 715, which was quoted with approval in paragraph 78 of *State of West Bengal v. Mohd. Khalid*, AIR (1995) SCW 559 is that what the Court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into."

20. In the case ***Omkar Nath Mishra & Ors. vs. State & Anr. AIR 2008 SC (Supp.) 204*** the Supreme Court explained the legal position and the approach to be adopted by the Court at the time of framing of charge and discharge in the following words:-

'11. It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.'

21. Reverting to the present case, the circumstances enumerated above (in paras 5 to 7), right from the stage the petitioner took Vandana for an outing at about 7.00 pm till she was dropped by him at 12.00 midnight and the altercation/quarrel between the two on phone and her unnatural death same night by 2.20/2.25 am prima facie make out a case for proceeding against him for the offences complained of. The presumption of guilt of the accused

to be drawn at the initial stage is only for the limited purpose of deciding whether a prima facie case exists against the accused to proceed with the trial or not.

22. Thus, it cannot be said that the charge against the petitioner was groundless so as to require an order of discharge under Section 227 Cr.P.C.

23. The impugned order passed by learned Trial Court does not suffer from any illegality or infirmity.

24. The revision petition is dismissed.

MARCH 21, 2016
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PRATIBHA RANI, J.

