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

Judgment Reserved on: March 30, 2016

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Judgment Delivered on: April 08, 2016

+ W.P.(CRL) 717/2016

RAJ KUMAR KHATANA

..... Petitioner

Through: Mr.Maninder Singh and Ms.Aekta
Vats, Advocates

versus

STATE & ANR

..... Respondents

Through: Mr.Rahul Mehra, St.Counsel for the
State with Mr.Shekhar Budakoti and
Mr.Sanyog Bahadur, Advocates with
Insp. Vipin Kr. Sharma, SHO/New
Usmanpur

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner Raj Kumar Khatana is presently posted as Assistant Commissioner of Police in Delhi. He has invoked the writ jurisdiction of this Court with a prayer to quash the strictures and directions passed by learned ASJ-03 (North-East District), Karkardooma Court in the judgment dated 20.01.2016 in Session Case No.44592/2015 (in Case FIR No.222/2010 under Section 304-B/302/498-A IPC PS New Usman Pur).

2. The learned ASJ in the judgment dated 20.01.2016 has noted down the lapses in the investigation and issued directions to the Commissioner of Delhi Police that the petitioner shall not be assigned any investigation or supervision of investigation in any case and if already assigned, the same shall be withdrawn immediately. Departmental action against the petitioner was recommended with further direction to file action taken report within four weeks of receipt of the order.
3. In para 19 of the judgment, proceedings under Section 195 read with Section 344 CrPC have been initiated against PW-13 Ct.Naseem. PW-13 Ct.Naseem has not filed any petition challenging the initiation of proceedings against him under Section 195 read with Section 344 Cr.P.C.
4. Notice of the petition was issued to the respondents.
5. I have heard Mr.Maninder Singh, learned counsel for the petitioner as well as Mr.Rahul Mehra, learned Standing Counsel for the State.
6. Before examining the rival contentions, it is necessary to note down the brief facts of the case.
7. On 12.07.2010 on receipt of DD No.9-A recorded at PS New Usman Pur about one lady being shot, ASI Satyapal alongwith Ct.Devender reached H.No.U-200, near Khadde Wali Masjid, Arvind Nagar, Ghonda, Delhi. They found dead body of a female lying on a cot with gunshot injury on head and back portion of the skull. A rifle of .315 bore was lying in the room and magazine of cartridge on the slab. Blood, flesh and skull bones were spread in the room and one mobile was lying in the corner. Pieces of bullet pallet were also lying there. Since the unnatural death of Farheen Khan W/o accused Shehnawaz @ Sonu had taken place within seven years of her marriage, SDM was informed, crime team was summoned to the scene of

crime. On the basis of statement made by parents of the deceased Farheen Khan, case FIR No.222/2010 under Sections 302/304-B/498-A IPC was registered and Shehnawaz @ Sonu – husband of the deceased was arrested and chargesheeted in this case.

8. The accused was charged for committing the offence punishable under Section 304-A/498-A IPC and alternate charge under Section 302 IPC was also framed against him.

9. The approach of learned ASJ while discussing the evidence and giving reasoning for the offence punishable under Section 304-B IPC, discussion and conclusion is upto page 37 of the judgment. From para 8 onwards of the judgment, the Court has proceeded with the presumption under Section 113-B of Indian Evidence Act in a case of dowry death punishable under Section 304-B IPC. On page 37 of the judgment, the learned ASJ has held as under:-

‘(ii) To invoke the presumption u/s 113B Indian Evidence Act r/w Section 304-B IPC, there was a requirements of suspicious circumstances in the death of the deceased which have already existed and proved in this case. The presumption was to be rebutted by accused but accused has failed to rebut this presumption and it shall be presumed that the death of the deceased was a result of dowry death.’

10. After recording as above, from para 11 onwards the learned ASJ proceeded to deal with the medical evidence and expert opinion and again started referring to the evidence of the prosecution witnesses as well the contentions raised on behalf of the accused and the State in para 11.5 though already so recorded in para 7 of the judgment. In para 11.6 (at page No.40) again he records :

“I have heard the arguments and perused the record.”

11. Thereafter he has referred to the FSL result, identity and arrest of the accused, statement of defence witnesses and defence of the accused. Thereafter he held the **accused guilty for committing the offence punishable under Section 498-A/302 IPC** in para 16 of the judgment which reads as under:-

‘16. Keeping in view the fact and circumstances of the case, I am of the considered opinion that prosecution has proved the charges against the accused beyond reasonable doubt. I hereby convict the accused under Section 498-A/302 IPC in terms of charges framed against him.’

12. The reader of the judgment is unable to understand about the discussion and finding given upto page 37 of the judgment about the charge framed for the offence punishable under Section 304-B IPC and thereafter on page 52 of the judgment, accused being held guilty under Section 498-A/302 IPC. The reference to the facts of the case and the reasoning given in the judgment has become necessary for the reason that it is not possible to make out as to what happened to the finding of guilt recorded for the offence punishable under Section 304-B IPC on page 37 of the judgment and if it was only a discussion on charge under Section 304-B IPC then in the remaining part of the judgment there is no finding by learned ASJ that charge for the offence punishable under Section 304-B IPC is not proved against the accused and he is acquitted of that charge.

13. Since this Court is not dealing with the appeal against the said judgment, I leave it here and proceed to deal with the portion of the judgment from paras 17 to 19 whereby learned ASJ has noted down the lapses in the investigation and passed strictures against the investigating

officer and issued directions to the Commissioner of Police. Relevant paragraphs No.17 to 19 of the judgment making observation against the petitioner and Ct.Naseem (PW-13) read as under :

'17.1. This case has been investigated by the police under the provisions of Section 498-A r/w Section 304B IPC and have not investigated this case from the angle of murder, whereas the use and mode of killing indicates that the DD No.9A and statement of complainant and his wife has specific allegation as to why case has not been investigated from this angle. It is major lapse of investigation.

17.2. Police have not tried to seek the help of forensic team despite the fact that the mode of murder by a licensee weapon in a gruesome manner and forensic investigation was most material and crucial to collect the evidence, but IO neither investigated the case from the angle of murder nor seek the assistant of the forensic team and allowed to dress up the scene of crime and to destroy the material scientific evidence. It is again a lapse of investigation.

17.3 Police have not investigated this case properly and murder of the deceased took place in the room, but dead body was found on a cot in a gallery and no investigation has been carried out as to how and who put the dead body on the cot. It was a material fact which was to be resolved during investigation so that the other family members who tried to remove the evidence from the spot could have been prosecuted, as it was the handiwork of insider, but in the absence of investigation it could not be proved and is a lapse of investigation.

17.4 Further, the father of the accused, who was license holder of the riffle, was responsible to keep the weapon in the safe custody and to maintain the weapon properly, but he kept a loaded weapon in his house in such an irresponsible manner that deceased was murdered by this weapon. In fact, he was also responsible for the negligent handling of this weapon and

he must have been booked for his negligent act, but no action has been taken against him, rather IO has protected him.

17.5 Police did not protect the scene of crime and took the investigation in such a manner that material evidence eliminated from the spot.

18. Ld. Commissioner of Police is hereby directed to initiate a departmental action against the IO Inspector R.K.Khatana (now ACP) for his lapse in carrying out the defective investigation to give benefit to accused and he shall not be assigned any investigation or supervision of investigation in any case, till pendency of departmental enquiry. If any such authority/power have been assigned to him, the same shall be withdrawn immediately. Action Taken Report be filed within 4 weeks positively after receipt of copy of this order.

19. Further, the testimony of the PW13 has proved that he has deliberately and knowingly deposed falsely before this Court with intention that such evidence would be used in this case and I am satisfied that it is necessary and expedient in the interest of the justice that witness should be tried summarily for giving or fabricating false evidence. I hereby take the cognizance of section 195 r/w 344 Cr.P.C. against PW13 Ct.Naseem and issue showcause notice to him as to why he should not to be punished to be relied by next date of hearing. However, these proceedings shall be conducted separately.'

14. On behalf of petitioner, Sh.Maninder Singh, Advocate has made the following submissions :-

- (i) It is a case where all the prosecution witnesses have supported prosecution case and the case has resulted into conviction.
- (ii) The investigation has been conducted by the petitioner to the best of his ability. The petitioner has unblemished record and during his tenure he has conducted investigation successfully in numerous cases. The case of the

petitioner is squarely covered by the decision of this Court in Deputy Commissioner of Police vs. Badlu Paswan & Ors. in W.P.(Crl.) No.3034/2015 decided on 19.02.2016 wherein relying on the decision of Apex Court in *State of Gujarat vs. Kishanbhai etc (2014) 5 SCC 108*, strictures against the DCP (North-East), Delhi have been quashed.

(iii) Learned ASJ could not have passed the strictures and issued directions without giving an opportunity of being heard to the petitioner.

15. Perusal of the record shows that even after the judgment was pronounced, the matter was taken up by the learned ASJ-3 (NE). Following order was passed on 01.03.2016:-

'01.03.2016

*Present : Sh.Zenul Abedeen, Ld.Addl. PP for State with
SHO PS New Usmanpur.*

File is taken up on reply filed on behalf of Ld. Commissioner of Police in pursuance of observation of this Court. Action against IO, then Inspection R.K.Khatana, now ACP, has been directed and he shall not be assigned any investigation or supervision of investigation during pendency of departmental enquiry.

Heard. Reply perused.

As per this reply, there is no mention about this direction of this Court as to whether investigation or supervision of investigation of ACP R.K.Khatana has been withdrawn or not. However, SHO PS New Usmanpur has submitted that now ACP R.K.Khatana is posted with DAP Battalion due to he has no investigation powers, but this fact ought to be mentioned in this reply and also that he shall not be handed over this power during pendency of inquiry. As such, this reply is non compliance of order of this Court.

Ld. Commissioner of Police is again directed to specify to this Court as to whether investigation power/supervision of ACP R.K.Khatana has been withdrawn or not and during pendency of this enquiry, no such authority shall be assigned to him.

SHO PS New Usmanpur has sought two days time to file this reply. Let the reply be filed within a week with all details.

Put up on date fixed. Copy of the order be given dasti to SHO PS New Usmanpur for compliance.'

16. Status report has been filed before this Court wherein it is mentioned that the order passed by learned ASJ has been complied with and enquiry is being conducted by Addl. DCP-II/North East District, Delhi.

17. On behalf of State, Mr.Rahul Mehra, learned Standing Counsel for the State has submitted that findings/directions by learned ASJ in paras 17 to 19 of the judgments need to be set aside which have been passed in violation of the principles of natural justice and without any basis.

18. I have considered the rival contentions and carefully gone through the record.

19. The lapses in the investigation noted by learned ASJ in para 17 of the judgment are on the basis of his own assessment without seeking clarification by putting Court questions to the investigating officer on the above aspect. It may be noted that on receipt of DD No.9A, the spot was visited not by the petitioner/SHO at that time but by ASI Satyapal alongwith Ct.Devender. They were the first to see the scene of crime and thereafter crime team was summoned and SDM was also informed. If the murder appeared to have taken place in the room and dead body was found lying on

a cot in the verandah, the investigation had to proceed with that fact only. The observation by learned ASJ about the statement made by the complainant and his wife that their daughter has been killed but the investigation has not been done from that angle, the very fact that FIR has been registered under Sections 302/304-B/498-A IPC shows that the investigation was conducted from both the angles i.e. murder and dowry death.

20. In this case chargesheet was filed for the offence punishable under Sections 302/304-B/498-A IPC. Charge has also been framed for the above offences. In the judgment from page 2 para 4 onwards upto page 37 entire discussion and conclusion is in respect of charge framed for the offence punishable under Section 304-B IPC. Suddenly thereafter, as already noted, again discussion starts but ends with the finding of guilt in respect of offence punishable under Section 498-A/302 IPC with no mention of what happened to charge under Section 304-B IPC as to whether the person has been convicted or acquitted for that offence. The lapses in the investigation as recorded in para 17 of the judgment at page No.52, have been recorded without seeking any explanation from the investigating officer when he appeared as a witness. If there was any material against some other persons not sent for trial, the Court had ample power to summon them as held by the Apex Court in the decision reported as ***Raghubans Dubey vs. State of Bihar AIR 1967 SC 1167.***

21. Grievance has been raised by the petitioner with respect to the directions issued to Commissioner of Police in paras 17 and 18 of the judgment. It has been held in catena of judgments by the Supreme Court and High Courts that judicial orders are respected for the reason that they are in

conformity with law. Principles of natural justice demand that nobody can be condemned unheard. If the learned ASJ-03 (NE) was not satisfied with the manner in which the petitioner had carried out the investigation, he was required to record those facts or mistakes, express displeasure about the manner in which the investigation was conducted which has not been shown by the learned ASJ-03(NE).

22. In the decision ***Pramod Kumar Jha vs. State of Bihar & Anr.*** in Criminal Appeal No.1092/2002 decided on 18.06.2008 strictures were passed by learned Trial Court against the investigating Officer observing that he was delaying recording of statement of eye witnesses and restatement of the informant because of certain unexplained and mysterious motives in his mind and suspected integrity of the investigating officer in conducting the investigation.

23. Aggrieved by the strictures passed by learned Trial Court, Crl.Revision No.90 and Cr.W.J.C. No.103 of 1999 was filed by Shambhu Nath Pandey and P.K.Jha before the High Court of Patna. In the decision reported as ***Shambhu Nath Pandey & P.K.Jha vs. The State of Bihar & Ors. 2002 (1) PLJR 151*** it was observed as under:-

'8. Now I shall advert to the remarks and so called strictures by the trial Court against the I.O. All that the trial Court directed was that there should be a departmental enquiry regarding the conduct of the I.O. and during the course of this departmental proceeding, he should not be entrusted with any investigation work. This writ is concerned with the aforesaid remarks and direction of the trial Court. It was submitted before me that the trial Court had passed strictures against the I.O. and his remark was a stigma upon his career. I am of the opinion that, of course, a Court of law should not resort to

passing strictures against any government official being moved by sentiments. But when a particular remark is warranted by the evidence on the record, and it forms' basis of a particular finding I do not think, such remarks can be withheld by the trial Court. The remarks casting doubt or veiled aspersion on the conduct of Police Official which is well merited on the circumstances on the record, can legitimately be passed and some times such remarks form the basis of a particular finding of fact and it becomes inevitable. In the instant case, the trial Court had simply doubted the integrity of the I.O. in taking the re-statement of the informant and imputed certain motive upon him which was well warranted by the circumstances on the record. So there was nothing wrong in the remarks recorded by the trial Court. Then he directed the proper authority to initiate just a departmental proceeding and directed that no investigation work should be entrusted to the I.O. during the course of departmental proceeding. In the opinion of Petitioner's lawyer, this direction was a sort of punishment which the trial Court was not authorized to inflict. In this connection, I am of the opinion that by directing that no investigation work should be entrusted to P.W. 12, I.O. Pramod Kumar Jha, the Court did not impose any punishment upon the I.O.; rather to safeguard the interest of the public in general, he made this direction. Of course, it is not necessary that the Police Officer must be entrusted with the investigation work, as part of his duty. He may be entrusted with other duties, such as, maintenance of law and order etc. and simply because he is debarred from taking up investigation, I do not think that that will be a sort of punishment upon his career, nor can this cast a stigma, because if he is exonerated in the departmental proceeding, the direction in this connection shall automatically lapse. So the Court's direction was neither punishment imposed by the I.O. nor it was a stigma upon his career. So far other directions and observations passed by the trial Court in its judgment regarding payment of compensation to the accused and the departmental proceeding be initiated against the B.D.O. etc., I need not touch upon those directions. So those directions remain in tact.'

24. The petitioner Pramod Kumar Jha impugned the judgment passed by High Court of Patna by Special Leave to Appeal (Crl.) No.1289/2002. The Hon'ble Supreme Court while allowing the appeal and directing deletion of the directions given by the learned Trial Court as also by the High Court of Patna, held as under:-

'We feel that the direction given for initiation of the Departmental Proceedings and other directions should not have been given in the judgment. All that the Court could have done if it felt that there was lapse on the part of the Investigating Officer, to record this fact.'

'But going further and directing that the Departmental Proceedings should be initiated and further findings which virtually finds him guilty are certainly not the permission course.'

25. The learned ASJ while mentioning the lapses of the Investigating Officer as per his own assessment, has condemned investigating officer unheard. By issuing directions regarding initiation of a departmental action against the petitioner and not assigning him any investigation or supervision of investigation in any case and if any such authority/power have been assigned to him, the same shall be withdrawn immediately and then calling for Action Taken Report, the learned ASJ-03 (NE) has practically rendered the petitioner who is of the rank of Assistant Commissioner of Police as toothless tiger.

26. Although PW-13 Ct.Naseem is not a petitioner before this Court but from the record it is clear that while dealing with the testimony of PW-13 in the judgment, no observation was made by learned ASJ that he has deliberately and knowingly deposed falsely before the Court with intention

that such evidence would be used in this case. For this purpose, I would refer to sub-para (xii) at page No.24 of the judgment and paras No.14.3 & 14.4 at page No.47 of the judgment, which are extracted as under:-

‘(xii) Police collected the bullet pallet vide memos Ex.PW13/A and Ex.PW13/B which were containing magazine of live cartridges and fired cartridge case in barrel of riffle. Riffle belonged to the father of the accused. It is the case of the accused himself that his father was not at Delhi and away from Jamat and he also left his house at about 11:30 am to collect rent from a tenant who was residing nearby and returned back not prior to 12:55-1:00 pm. The mother of the accused also left house along with other children in lap to the school to pick her other children. The wife of the accused i.e. deceased was along at about 12:15 pm and suddenly a noise of explosion heard by the DW4 and saw two persons running outside the house from rear gate. At about 12:30 pm, DW3 saw that people started gathering at the spot and police also came there. DW1 has also supported this testimony that accused came to him to collect the rent but he was going to have bath due to he asked him to wait and thereafter had breakfast and meanwhile accused kept on talking to his grandmother Naginii who also used to reside in the same house, but suddenly they heard a noise outside house that firing had taken place in the house of accused and they rushed to the house of accused and found that the wife of accused had been shot.

14.3 Another defence taken by the accused is that the testimony of PW13 who is the main witness of the prosecution is not trust worthy and renders the case of the prosecution untrustworthy. I have gone through the testimony of PW13 which has a number of contradictions made like a lay man but those may be due to lapse of time between the period of incident and deposition or deliberate. However, proceedings were conducted in his presence and his deposition is to be appreciated in view of his calibre as constable and not much educated like IO. He did not try to ascertain the identity of the persons present at the spot after the incident and was also not

aware about the presence of family members of both parties despite his stay at the spot upto 5.00 pm. Ld. SDM never visited the spot but still he deposed that he visited the spot and also deposed many facts related to his visit and stay at the spot. He has deposed contradictory, as on the one hand, he has deposed that Ld. SDM visited the spot, on the other hand, he himself visited the office of the Ld. SDM and also was not aware about the timing of reaching there or his stay at the office of the Ld. SDM, etc.

14.4 PW13 got registered the FIR from PS after receiving the rukka from IO but strangely he was not aware as to who prepared and handed over rukka to him or when he reached PS to get registered FIR. He was informed that the accused had shot his wife but he did not remember who informed him firstly, but still he went to the spot first and did not try to protect the scene of crime and allowed the family members of the accused to enter the spot and disturb the scene of crime. Similarly, he did not remember the procedure of the arrest of the accused. As such, all discrepancies have proved that these discrepancies are deliberate to assist accused, but accused is not entitled to get benefit of lapses of investigation.'

27. Thus, while referring to the statement of PW-13 Ct.Naseem without recording any finding in the judgment that he has deliberately made a false statement. Rather learned ASJ was of the view that his testimony is to be appreciated in view of the caliber as a Constable who is not much educated. Only contradictions/discrepancies have been noted in the testimony which must have appeared during his cross examination. If the discrepancies appeared due to inability to recollect the sequence of events, it was not desirable for the learned ASJ to record in concluding paragraphs that he has deliberately made a false statement before the Court knowing that such evidence would be used in the case for the reason no such finding was recorded while discussing the testimony of PW-13 Ct.Naseem.

28. The observations made by Sh.Devender Kumar, ASJ-03 (NE), Karkardooma Court in paras 17 to 19 of the judgment passed in Session Case No.44592/2015 being unwarranted, are directed to be deleted and expunged from the said judgment. It is further directed that the action initiated by the Commissioner of Police against the petitioner pursuant to the directions contained in paras 17 to 18 of the judgment and subsequent order dated 01.03.2016 as well as the action initiated by the Court concerned against PW-13 Ct.Nasem are hereby quashed.

29. Before parting, it is necessary to record that this Court while disposing of W.P.(Crl.) No.3034/2015 titled as Deputy Commissioner of Police Vs. Badlu Paswan & Ors. decided on 19.02.2016 has directed that the copy of the decision dated 19.02.2016 by this Court alongwith copy of the orders dated 23.05.2015, 22.06.2015 and 02.12.2015 passed by Sh.Devender Kumar, ASJ-03 (NE), Karkardooma Court in Sessions Case No.10/2012 be placed before the Inspecting Committee of Sh.Devender Kumar, ASJ-03 (NE), Karkardooma Court.

30. Let copy of this order also alongwith copy of the judgment dated 20.01.2016 and order dated 01.03.2016 passed by Sh.Devender Kumar, ASJ-03 (NE), Karkardooma Court in Sessions Case No.44592/2015 be placed before the Inspecting Committee for the year 2015 of Sh.Devender Kumar, ASJ-03 (NE), Karkardooma Court.

31. The writ petition stands allowed in above terms.

As prayed copy of the order be given dasti to learned counsel for the parties.

PRATIBHA RANI, J.

APRIL 08, 2016/‘st’