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

+ CRL.REV.P. 706/2014

STATE (GOVT OFNCT OF DELHI)

..... Petitioner

Through: Ms.Kusum Dhalla, APP for the State

versus

MUKESH JARDARI WAKUDE & ORS

..... Respondents

Through: Advocate (Appearance not given)

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **03.05.2016**

1. This revision petition has been preferred by the State impugning the order dated 12.08.2014 to the extent the learned ASJ has discharged respondents herein (accused Nos. 3 to 5) in case FIR No. 50/10, under Section 498A/304-B/34 IPC, registered at PS Nabi Karim. Only accused nos.1 and 2 i.e. husband and father-in-law of the deceased have been ordered to be charged for committing the offence punishable under Section 498-A/304-B/34 IPC. Respondent no. 1 is Jeth, respondent No. 2 is Jethani and respondent No. 3 is unmarried Nanad of the deceased Kiran who stands discharged.

2. The ground on which discharge of respondents herein has been challenged are:

i. The learned Trial Court could not examine and assess in detail the material placed on record by the prosecution to consider the sufficiency of the material to prove the offence.

ii. The learned ASJ failed to appreciate that the deceased died an unnatural death within four months of her marriage and there are specific allegations of she being treated with cruelty.

iii. The learned ASJ failed to appreciate that the prosecution was only required to bring on record the factum of deceased being treated with cruelty on account of not bringing sufficient dowry and the presumption under Section 113 A of the Indian Evidence Act could have been drawn in this case.

3. The prosecution has annexed copy of the final report under Section 173 Cr.P.C. filed against the accused persons. The case of the prosecution is that on 23.04.2010 on receipt of DD No. 9A, SI Kishan Chand reached RML Hospital where Kiran, aged about 19 years was found admitted with burn injuries received at home.

4. On the MLC the doctor has recorded alleged history of burns due to bursting of stove as told by the patient. The victim Kiran succumbed to her injuries on the same day. Her parents reached Delhi from Mumbai on the same day. Since she had expired within period of seven years from the date of her marriage, SDM Paharganj was informed. Statements of parents of the deceased were recorded on 24.04.2010. They did not make any statement against the husband or in-laws of their daughter about she being harassed on account of dowry demand. Subsequently they again came to Delhi and got their statement recorded on 15.05.2010 before the SDM wherein certain allegations were made about the deceased Kiran being tortured on the ground that her entry in the house was not auspicious and that because of her, mother of her husband had expired. Father of the deceased stated that he suspected his son-in-law – Mukesh for setting his daughter on fire and prayed action against him further stating that the entire family is behind this incident.

5. In the report under Section 173 Cr.P.C., it is further mentioned that the deceased was suffering from hysteria and she was also admitted in Anand Nurshing Home on 05.03.2010 and discharged on 06.03.2010 where Dr. Anand confirmed that she was suffering from hysteria.

6. The prosecution case is that Kiran was first cousin of her husband, she being married to son of her real maternal uncle. The marriage was not consummated. In the statement made by her family, immediately after her death, there was no allegation of she being harassed on account of demand of dowry or for not bringing sufficient dowry. The marriage was solemnized on 27.11.2009 and just six days before the death, Meera Bai her maternal aunt/would be mother-in-law expired. The accusation against respondent Nos. 3 to 5 are that they considered this to be in-auspicious and used to say to her “*tera panv achha nahi hai*”.

7. In the final report it is specifically mentioned that during investigation nothing could surface that deceased was harassed on account of dowry demand. The material not being enough to arrest, father-in-law, jeth, jethani and nanad, they were kept in column No. 12 whereas against the husband of the deceased, charge sheet was filed for committing the offences punishable under Section 498A/304-B/34 IPC.

8. After hearing the parties on charge, relying on the decision of this Court in *Arun Chadha Vs. State* 2013 (6) LR C 306, *Delhi*; *Sunil Bansal Vs. State of Delhi*, 2007 (96) DRJ 9; *Bhagwanti Vs. State* 94(2001) DLT 632 and after considering the material on record, learned ASJ formed an opinion that prima facie the allegations against accused Nos. 3 to 5 were not sufficient to frame a charge against them for the offences punishable under Sections 498A/304-B/34 IPC.

9. It is a case where the deceased got married to son of her real maternal uncle thus the parties were well known to each other. Death of mother of her would be husband six days prior to the marriage must be equally shocking to the complainant family in view of their close relationship. Just because after the wedding all family members allegedly commented that “*tera panv achha nahi hai*” in itself is not sufficient to charge accused Nos. 3 to 5 (respondents herein) for the offences punishable under Sections 498A/304B/34 IPC. The investigating agency did not find it to be case of dowry demand or harassment of the deceased on that count or for abetment to commit suicide.

10. In the case ***Sajjan Kumar vs Central Bureau of Investigation, JT 2010 (10) SC 413***, the Apex court after considering the earlier decision laid down the following guidelines to be considered by the Courts while framing charge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any

basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution stages as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

11. The submission made by learned APP for the State impugning the order on charge of the respondent herein are contrary to the outcome of the investigation in case FIR No. 50/10.

12. The charge-sheet in this case reveals that the material was not sufficient to challan respondent Nos. 3 to 5. The statement under Section 161 Cr.P.C. of the complainant and other family members placed on record also show that on the basis of that material, no case under Sections 498A/304-B/34 IPC or even under Section 306 IPC is made out against respondent Nos. 3 to 5. Rather they were not even made accused in the above named FIR and were placed in Column No. 12.

13. The impugned order suffer from no illegality, hence warrants no interference by this Court in exercise of revisional jurisdiction.

14. The revision petition stands dismissed.

PRATIBHA RANI, J.

MAY 03, 2016

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