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

% Judgment delivered on: 29th November, 2018

+ CRL.REV.P. 139/2018

LALIT KUMAR & ORS

..... Petitioners

versus

STATE (NCT OF DELHI)& ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vikram Panwar with Mr. Vikas
Walia and Mr. Suyash Sinha,
Advocates.

For the Respondent: Ms. Kusum Dhalla, APP for the State.
Mr. Bipin Kumar Jha, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

29.11.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 139/2018 & Crl.M.A.3126/2018 (stay)

1. Petitioners impugn order on charge dated 04.01.2018, whereby, charge has been framed against the petitioners under Section 498A/323/307/506/34 IPC.

2. Learned counsel for the petitioners submits that though the

petitioners are innocent and are not liable to be charged for any offence, he restricts his prayer to the framing of charge under Section 307 IPC as *prima facie* from the perusal of the record no offence under Section 307 IPC is made out. He submits that they shall be facing trial in the other offences.

3. Subject FIR No.526/2016 was registered under Sections 498A/506/323/34 IPC, Police Station Timar Pur on the allegations of the wife on the petitioner No.1 (the husband) and father and mother of the petitioner No.1, contending *inter alia* that they wanted to murder her.

4. It is alleged that the mother-in-law held her hair, father-in-law held her legs and the husband poured poisonous liquid into her mouth. The poisonous liquid stated was *All-Out* (a mosquito repellent).

5. The Trial Court, in the impugned order, has noticed the contention of the petitioners that they have been falsely implicated. Further, it is noticed that it was the father-in-law himself, who had taken the complainant to the hospital. Further, the Trial Court has noticed that the FSL report has come negative and the contention of the petitioners that the allegation that complainant had been administered *All-Out* were negated by the MLC itself. After noticing the same, the Trial Court has framed charges *inter alia* under section 307 IPC against all the accused.

6. Learned counsel for the petitioner submits that a bare reading of the allegations do not raise any suspicion leave alone grave suspicion insofar as the offence under Section 307 IPC is concerned out. It is contended that the complainant herself had sought to drink *All-Out* and thereafter appeared to have fainted. Her father in law apprehending that she had drunk *All-Out* took her to the hospital.

7. Learned counsel appearing for the complainant as well as the learned APP for the State submit that the facts sufficiently show that an offence under Section 307 IPC is made out.

8. Learned counsel appearing for the complainant relies on the judgment of the Supreme Court in *Sadhu Saran Singh vs. State of U.P. & Ors.*: AIR 2016 SC 1160 to contend that the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence.

9. MLC of the complainant, which has been filed on record, shows that petitioner No.2 had taken the complainant to the hospital and had informed the hospital authorities that she had consumed *All-Out* liquid.

10. Perusal of the MLC shows that there is no symptom reported in the MLC of consumption of any poisonous substance. Further, *gastric lavage* sample was taken and sent for forensic examination. The examination report of the Forensic Science Laboratory, referred

to by the Trial Court, shows that the Forensic Science Laboratory has opined that on Chemical, Microscopic, TLC & GC-MS examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibits '1' and '2'. The exhibits that were sent to Forensic Science Laboratory were gastric lavage as also the Refill Bottle of All-Out alleged to contain the poisonous substance.

11. The only allegation insofar as the offence under Section 307 IPC is concerned is that the petitioners had sought to administer All - Out liquid to the complainant. It is on this basis that the prosecution had filed a chargesheet contending that the petitioners had sought to administer a poisonous substance to the complainant with the intention of murder her and accordingly Section 307 IPC was made out.

12. The Forensic Science Laboratory report negates the version of the prosecution that any poisonous substance was administered to the complainant. The report for poisonous substance was in the negative for the two exhibits i.e. the gastric lavage and the Refill Bottle of All-Out alleged to contain the poisonous substance.

13. The MLC does not report that the complainant was showing any symptoms of poisoning. On the other hand, in front of all parameters the word "NAD" (i.e. Nothing Abnormal Detected) is mentioned.

14. Neither the medical report nor the Forensic Science Laboratory report supports the case of the prosecution that poisonous substance was administered to the complainant. Since the scientific evidence is clearly against the version of the prosecutrix, no suspicion, leave alone grave suspicion, arises against the petitioners of having committed an offence under Section 307 IPC.

15. Further, it may be seen that in the judgment *Sadhu Saran Singh* (supra), the Supreme Court has relied on a decision of the Supreme Court in *Darbara Singh vs. State of Punjab*: (2012) 10 SCC 476, wherein, the Supreme Court has held that unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy and if medical evidence make the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence.

16. As noticed above, in the present case, there were no symptoms visible of the complainant having been administered any poisonous substance, as may be noticed in the MLC and further the Forensic Science Laboratory report has negated the commission of the offence administering poison to the complainant, in my view the medical as well as the Forensic Science Laboratory report completely contradict the version of the prosecutrix that she was administered a poisonous substance.

17. Since, no poisonous substance was administered to the

complainant, accordingly, it cannot be held that there was any attempt to murder by the petitioners. Since there is no grave suspicion arising from the facts of the case vis-à-vis the petitioners having committed an offence under Section 307 IPC, the Trial Court has erred in framing a charge under Section 307 IPC.

18. Accordingly, the impugned order dated 04.01.2018 is modified to the above extent. Trial Court shall appropriately amend the charge and pass appropriate consequential orders.

19. It is clarified that this Court has neither considered nor expressed any opinion on the contentions/allegations of either side insofar as the other offences are concerned and for which charges have already been framed by the Court.

20. The petition is disposed of in the above terms.

21. Order *Dasti* under the signatures of the Court Master.

NOVEMBER 29, 2018
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SANJEEV SACHDEVA, J