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

+ CRL.REV.P. 635/2018, CRL.M.A. 28780/2018,

CRL.M.A.28781/2018

DEEPAK & ORS.

..... Petitioners

Through: Mr.Abhishek Somkar, Mr. Raj Kumar,
Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. G.M. Farooqui, APP for State with
inspector Sheelwani Singh, P.S. Mundka, Delhi.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

02.08.2018

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The spouse of petitioner no. 1 was found dead in unnatural circumstances within seven years of her marriage. An FIR was registered at the behest of the father of the deceased, who has complained about his daughter being harassed and tortured for dowry as well as her being assaulted earlier by the accused. Five persons were arrested of which two female accused were released on bail, three persons are still behind bars: petitioner no. 1 (husband of the deceased), one Jagbir (sister-in-law of the deceased) and one Ravi (brother-in-law of the deceased). Charges have been framed against all the accused persons.

This petition impugns the said order dated 02.06.2018 framing charges against the petitioners on the ground that there was no material on record for the impugned order to have framed charges.

It is the petitioners' case that the forensic report has found nothing against them therefore the impugned order should be quashed and they be released from incarceration. It is their case that petitioner no. 1 was not at the spot of the crime, but at a distant place-in another locality known as Bawana.

Be that as it may, the Court finds that the impugned order has recorded as under:-

“.....there are sufficient material available on record to frame charge for commission of offence punishable under section 304B/498A/34 IPC against all the accused persons. Ld. Prosecutor while relying upon Raibir @ Raiu & Anr v. State of Harvana AIR 2011 SC 568 also pressed for the charge under section 302/34 IPC and argued that there are certain suspicious circumstances surrounding the death of Sunder Devi (deceased) like deceased died in her matrimonial home and no 100 number call regarding the incident was made by the accused persons. Even the information to the family members of deceased about her death was given from the mobile phone of deceased. There was no hook or any other hanging object on the girder of the room with which the ligature, material i.e. Chunni was said to be tied. The dead body was found lying on the floor and no explanation was furnished by the accused persons as to who had brought the dead body down. The face of the deceased was covered with Chunni and there were ligature marks on her neck, which are clearly seen in the photographs placed on record. The ligature material i.e. Chunni was without knots. Some broken bangles and hair were also found on the spot, which point towards the struggle on the scene of crime. The door of the room where the dead body was found, was found opened and the stopper of the door was found broken from outside. Ld. Addl. PP further argued that as per the postmortem examination report, the death of deceased was caused by hanging and no suicidal hanging was opined by the Board of Doctors.

On the other hand, Ld. Defence Counsel argued that there are no material to indicate that soon before her death, Sunder Devi (deceased) was subjected to cruelty by the accused persons for or in connection with demand of dowry nor is there any material to show any harassment or cruelty on the part of the accused persons. No complaints were ever made by the family members of deceased to the marriage mediator, relatives or police about the harassment caused to deceased by the accused persons. Even, no complaints were made to anyone by the deceased herself during her lifetime. Ld. Counsel further argued that as per FSL result, no blood or skin were detected in the nail clippings of deceased. IO did not investigate properly to find out the proper cause of death of the Sunder Devi (deceased).”

The impugned order has rightly discussed the law on the subject and the facts, as were available before it. The aforesaid reasoning shows that there are sufficient grounds to doubt the conduct of the petitioner. Besides, at the time of framing of charge, the Court is only to see whether a *prima facie* case is made out on the basis of the material available on record and which could lead to conviction. While relying upon the judgments of the Hon’ble Supreme Court, the impugned order further notes:

“As per settled propositions of law, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. A roving enquiry into the material available on record is not warranted at the stage of framing charge. It was held in Smt. Omwati & Anr v. State through Delhi Administration & Ors decided by the Apex Court on 19.03.2001 in Appeal (Crl) No. 304 of 2001 that at the stage of passing the order in terms of section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceedings against the accused. If upon consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms

of section 228 of the Code. The Court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. In Smt. Omwati {supra} case, the Apex Court referred Kanti Bhadra Shah & Anr v. State of West Bengal 2000(1) see 722 wherein it was held that there is no legal requirement that the trial court should write an order showing the reasons for framing a charge. Further, the judgment in State of Bihar v. Ramesh Sinah AIR 1997 SC 2018 was cited with approval wherein it was held that it is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The Hon'ble Bench of three Judges in Supdt. & Remembrancer of Legal Affairs. West Bengal v. Anil Kumar Bhaunia & Ors AIR 1980 SC 52 also laid down that the Court has to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency and even on the basis of strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them.

As per material available on record, the death of Sunder Devi (deceased) occurred within seven years of her marriage, in her matrimonial home, under abnormal circumstances. As per the statements of Shri Prem Singh (father of deceased) and Shri Uday Bhan (brother of deceased), recorded by the SDM and statements of other family members u/s 161 Cr.RC, the deceased was subjected to cruelty for or in connection with dennand of dowry.

In Jasvinder Saini & Qrs v. State (Government of NCT of Delhi) (2013) 7 SCC 256, Rajbir {supra} case was clarified and it was laid down that in a case where a charge alleging the dowry death is framed, a charge under section 302 IPG can also be framed if the evidence otherwise permits but not in a mechanical manner.

In view of the above-mentioned settled propositions of law, having heard the submissions made on behalf of the State by Ld. Addl. P.P, I am satisfied that suspicious circumstances surrounded the death of Sunder Devi (deceased) which prima facie indicate towards commission of offence u/s 302 IPC.

Hence, after consideration of the entire record of the case alongwith the documents submitted with the police report under Section 173 Cr.P.G as well as statements of family members of deceased and postmortem examination report, I am of the considered opinion that there are sufficient grounds for presuming that all the accused persons have committed offence punishable under Section 498-A/34 IPC. Accused persons also presumably committed offence punishable u/s 302/34 IPC or in the alternate, the offence punishable u/s 304B/34 IPC.”

The Court is of the opinion that appreciation of FSL report would be done at the appropriate stage and not at the time of framing of charges. There is no merit in the petition. It is dismissed.

NAJMI WAZIRI, J

AUGUST 02, 2018/acm