

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

% Judgment reserved on: 04th July, 2018
Judgment delivered on : 05th July, 2018

+ CRL.REV.P.717/2017 & CrI.M.A.15750/2017(stay)

VIPIN KAUSHIK @ VICKY & ORS. Petitioners

versus

THE STATE NCT OF DELHI Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vikas Sharma, Mr. Pradeep Kumar, Mr. Rajat Nagar and Mr. Deepak Aggarwal, Advs.

For the Respondents : Mr. Kamal Kr. Ghai, Addl. PP for the State with Inspr. Anuj Agarwal
Mr. Ashok Kumar Tiwari, Adv. for R-2 with R-2 in person

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The petitioners had filed the present revision petition impugning the order on charge dated 06.05.2017 and the charge framed on 20.05.2017, whereby the Trial Court held that there is sufficient material on record to frame charges under Section 498A/34 IPC and 304B/34 IPC in the alternative under Section 306/34 IPC against all the accused persons.

2. Petitioner no.1 is the husband of the deceased, petitioner no.2 is the wife of the elder brother of petitioner no.1 and petitioner no.3 is the mother of the petitioner (mother-in-law of the deceased).

3. On 04.07.2018, learned counsel for the petitioner withdrew the petition in so far as petitioner no.1 and 2 are concerned and restricted the same to petitioner no.3 i.e. the mother-in-law.

4. The subject FIR No. 58/2016 was registered under Section 498A/304B/34 IPC P.S.Gandhi Nagar on the complaint of the father of the deceased who has contended that his daughter was married to petitioner no. 1/the son of the petitioner no.3. He received information that his daughter had locked herself in a room and was not opening the door. When he along with his brother and neighbours reached her house the door was closed from inside. When they opened the door, they found that his daughter had committed suicide.

5. In the FIR, it is alleged that his daughter used to complain about her in-laws and used to say that her Jethani (husband's elder brother's wife) used to harass her.

6. Learned counsel for the petitioner submits that there is no material or even an iota of evidence against the petitioner no.3, the mother-in-law. It is contended that post the committing of suicide, inquest proceedings were conducted by the concerned SDM. It is submitted that learned SDM recorded the statement of the

complainant/father of the deceased, the sister of the deceased, the brother of the deceased as also the mother of the deceased.

7. Specific queries were put to the said persons by the SDM with regard to the role of the petitioner no. 3 (mother-in-law) as to *whether there was any complaint ever by the deceased qua her*, the answer was in the negative.

8. Complainant Rajkumar (father of the deceased) was asked the question *“Whether the deceased complained against mother-in-law and father-in-law”* to which, answer given was *“no there was no such complaint”*. Question: *“Whether Bharti complained about her in-laws.”* Answer: *“My daughter Bharti complained that her sister-in-law tortured her.”*

9. The sister of the deceased: Anjali, in reply to a question *“when did you talk to Bharti last time?”*, answered *“I talked last time to Bharti on Saturday 06.02.2015 and she told that her mother-in-law is not like as she was earlier. She used to taunt on me.”*

10. The brother of the deceased in response to the question *“Whether Bharti complained about any relatives or in-laws”*, answered *“Bharti used to say that her sister-in-law Pooja and mother-in-law used to taunt her and always complain about the articles given at the time of festivals.”* In response to the question *“against whom you want action and why”*, the answer given was *“I*

want action against Bharti's sister-in-law (Jethani) because she used to complain against her."

11. In the statement given by the mother of the deceased to the question "*whether Bharti made any complaint against her mother-in-law and father-in-law*", the answer given is "*Bharti told that her mother-in-law has not been behaving properly except that there was no other complaint.*"

12. Learned counsel for the petitioner further submits that in the statements recorded under section 161 Cr.P.C. of all the above, there is no averment or allegation against the petitioner no.3, mother-in-law. Learned counsel for the petitioner submits that there is no allegation regarding demand of dowry or cruelty against the petitioner no.3 either in the statement made before the SDM or in the subsequent statement under Section 161 Cr.P.C.

13. Learned counsel for the petitioner submits that only where the material placed before the Court raises a grave suspicion against the accused, which has not been properly explained, only then it can be held that a prima facie case for framing of charge is made out.

14. Learned APP as also learned counsel for the complainant concede that apart from the above-referred statements, there is no material against the petitioner no. 3.

15. In *Almohan Das v. State of West Bengal* [AIR 1970 SC 863 : (1969) 2 SCR 520 : 40 Com Cas 643 : (1970) Cri LJ 860] the Supreme Court laid down the role of the magistrate at the time of framing of charge as follows:

“A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused: if there is some evidence on which a conviction may reasonably be based, he must commit the case.”

16. Further, the Supreme Court in *Union of India vs. Prafulla Kumar*, AIR (1979) 3 SCC 4 has held as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the un-doubted 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;

(2) 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;

(3) *That test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

(4) *That in exercising his jurisdiction under Section 227 of the code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

17. A Coordinate Bench of this Court in *Bhagwanti vs. State* 2002(1) JCC 127 reiterated the principle that at the stage of framing of charge broad probability of the case, total effect of the evidence and documents produced before it and any basic infirmity appearing in the case can be considered. Only where grave suspicion arises against the accused would it be proper to frame a charge. If there are

vague and bald allegations without anything more, charge cannot be framed.

18. In the present case in so far as petitioner No. 3/mother-in-law of the deceased is concerned, there is categorical statement by the relatives of the deceased that she had no complaint against her. Though two of the relations have stated that the conduct of mother-in-law was not the same and that she was not behaving properly, there is no allegation that the petitioner's mother-in-law used to harass the deceased or make any demand for dowry. The focus of the allegations in the statements made before the SDM as in the inquest proceedings as well as the statements recorded under Section 161 Cr.P.C. appears to be against the husband and the jethani and not against petitioner No. 3.

19. Clearly, from the material produced before the trial court, one cannot come to the conclusion that grave suspicion arises as against petitioner No. 3, the mother in law. The test laid down by the Supreme Court in Prafulla Kumar (supra), for framing of charge, is not satisfied. The trial court while framing charge has erred in considering the case of all the three accused at par, without examining that the allegations against the three are not at par.

20. On examination of the material produced, in my view no case for framing of charge is made out against petitioner no.3, the mother-in-law. For the foregoing reasons, the impugned order on charge dated

06.05.2017 and the charge framed on 20.05.2017, qua petitioner No. 3: Smt. Yashodhara wife of Mam Chand Kaushik, is set aside. Petitioner No.3 is directed to be discharged. It is clarified that any observation made herein shall not have any bearing on the merits of the case during trial in so far as other accused are concerned.

21. The petition is dispose of in the above terms.

22. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA J

JULY 05, 2018

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