

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 708/2014, CrI. M.B. 11012/2014 & CRL.M.A.**
18191/2014

MOHD ASLAM & ANR Petitioners
Through Mr.Rajbir Singh Gulia, Adv.
with Mr.Jagmohinder Singh
Dahiya & Mr.Ashok Kumar
Sharma, Advs.

versus

THE STATE NCT OF DELHI & ANR Respondents
Through Mr.Ashish Dutta, APP along
with ASI Suresh Kumar, PS
New Usmanpur, in person.
Ms. Ekta Dhama, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

%

31.01.2019

1. The petitioners have filed the present revision petition under Sections 397/401 of the Code of Criminal Procedure, 1973 (Cr.PC) seeking to quash the order dated 23.07.2014 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi.
2. The brief facts of the case as stated are that on 5.12.2004, the deceased Gulzehra was married to petitioner No.1 who was later on found dead on 30.01.2005 within 57 days of the marriage. It is the case of the petitioners that the cause of death was natural. On the other hand, the relations of the deceased- wife suspect foul play. The SDM concerned recorded the statement of respondent No.2 and accordingly,

a case bearing FIR No.32/2005 under Sections 498-A/304B/34 IPC was registered at PS New Usmanpur against the petitioners.

3. During the pendency of the proceedings before the Trial Court, a question arose about the return of the stridhan articles, as the petitioners refused to return the same on the ground that since the death was due to natural causes, Section 6 of the Dowry Prohibition Act would not come to the aid of respondent No.2 for return of the stridhan articles. The learned Metropolitan Magistrate agreed with the petitioners but the learned Additional Sessions Judge, after recording medical evidence, came to a contrary opinion and passed the order dated 12.07.2006. Aggrieved thereby, the petitioners filed a Criminal Revision Petition before this Court which was disposed of vide order dated 21.01.2018.

4. The case was at the stage of recording the prosecution evidence. An application was moved on behalf of respondent No.2 (complainant therein) under Section 311 Cr.PC seeking to summon Dr. S. Lal and Dr. K.L. Sharma, as prosecution witnesses and prayed as under:-

“It is therefore most respectfully prayed that above mentioned medical expert who are material witnesses may kindly be summoned first to adjudicate upon the matter for deciding the issue of 304B IPC against the accused persons, in the interest of justice.”

5. The said application was dismissed by the Trial Court vide order dated 18.02.2014. Aggrieved thereby, the respondent No.2 filed a revision petition before the learned ASJ who passed the impugned

order dated 23.07.2014 as follows:-

“3. The perusal of the record reveals that the impugned order has been passed at the intermediate stage of the proceeding to proceed further in the matter and as such, it is certainly of the nature of interlocutory order and therefore, the revision against the said order is not maintainable. Accordingly, the instance revision petition is hereby dismissed. **However, the perusal of the record reveals that the instant case is an old case pertaining to the year 2005 and it is expected that the Ld. Trial Court shall decide the case as expeditiously as possible and conclude the examination of the complainant and Dr. K.L. Sharma and Dr. S. Lal before the examination of other witnesses.**”

6. After some arguments, the learned counsel for respondent No.2 admitted that Dr. K.L. Sharma, Forensic Expert, was summoned and examined as a Court witness by the learned Additional Sessions Judge on the application moved on behalf of the father of the deceased for return of Stridhan articles, and further, Dr. S. Lal has been arrayed in the list of witnesses, as he conducted the post mortem on the dead body of the deceased, has already been examined and there is now no necessity to summon both the witnesses at this stage. Thus, respondent No.2 is not pressing the application under Section 311 Cr. PC at this stage.

7. Learned APP for the State also admitted the aforesaid position and submitted that in view of the aforesaid facts, there is no necessity to summon them.

8. Learned counsel for the petitioners submitted that in view of the

statements of the learned counsel for respondent No.2 and the learned APP for the State, the impugned order dated 23.07.2014, so far as the observation regarding examination of Dr. S. Lal and Dr. K.L. Sharma before the examination of other witnesses is concerned, may be struck off.

9. Hence, in view of the aforesaid facts the impugned order dated 23.7.2014 regarding examination of Dr. K.L. Sharma and Dr. S. Lal before the examination of other witnesses is set aside. Even otherwise, the impugned order does not disclose any reason or ground for allowing the prayer for the examination of these two witnesses, hence, the same is also liable to be set aside to this extent, on this ground also.

10. The petition is accordingly disposed of. However, it is clarified that this order shall not curtail the right of the prosecution to examine any witness as per law. Pending applications also stand disposed of.

CHANDER SHEKHAR, J

JANUARY 31, 2019/sk