

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 415/2018 & CRL.M.A. No.9132/2018**

Date of decision: 05th April, 2021

IN THE MATTER OF:

SAROJ BHOLA & ANR Petitioners
Through Ms. Chanan Parwani, Advocate

versus

STATE OF NCT OF DELHI & ORS Respondents
Through Ms. Kusum Dhalla, APP for the State
and respondent No.2
Mr. Charanjeet Singh, Advocate for
respondents No.3 to 6

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CRL.M.A. No. 9130/2018

For the reasons stated in the application, the delay of 79 days in filing the present case is condoned.

The application stands disposed of.

CRL.REV.P. 415/2018

1. This petition is directed against the order dated 13.11.2017, passed by the learned Additional Sessions Judge-05, West, Tis Hazari Courts, Delhi in Case No. 458/2017. By the order impugned herein, the learned Additional Sessions Judge has discharged respondent Nos.4 and 5 for offences under Sections 306/34 IPC. The petitioners are the parents of the deceased, Aanchal Bakshi. The deceased was married to the respondent No.3 on

26.04.2012. It was an arranged marriage. Out of the wedlock, a child (baby boy) was born on 19.02.2013. On 24.10.2014, i.e. within two and a half years of marriage, the deceased was found hanging by neck from the ceiling fan in her matrimonial house. The Post Mortem was conducted on 25.10.2014 and as per the Post Mortem report the cause of death was "*Asphyxia as a result of ligature hanging*" and the manner of death was found to be suicide. The statements of the petitioners were recorded before the Sub-Divisional Magistrate (for short "the SDM") on 25.10.2014. In her statement, petitioner No.1, the mother of the deceased, said that the deceased was not happy in her matrimonial house and her Mother-in-Law i.e. respondent No.4 and Sister-in-Law i.e. respondent No.5 were responsible for the suicide of the deceased. The petitioner No.2 i.e. the father of the deceased said that he does not have any grievances or any complaints against any person and that no one is responsible for the death of the deceased. No FIR was registered even though there are allegations against the respondent Nos.4 and 5 herein.

2. The material on record shows that the brother of the deceased, i.e. the son of the petitioners herein, wrote an email on 10.04.2015 to the Commissioner of Police stating that no action had been taken even after five months of the death of the deceased. On 02.07.2015, the petitioner Nos.1 and 2 gave statements before the SDM stating that the respondent Nos. 4 and 5 have inflicted cruelty on the deceased by taunting her that she has brought less dowry and were responsible for the suicide committed by the deceased. The petitioner No.2 stated that the earlier statement was given in a hurry. The SDM wrote a letter dated 14.07.2015, to SHO, Tilak Nagar, sending the statements of the petitioner Nos.1 and 2 dated 02.07.2015, for

taking appropriate action and to register FIR. It was mentioned in the said letter that the SHO and the Executive Magistrate have failed to follow rules.

3. On 29.07.2015, after about ten months of the death of the deceased, FIR No.1119/2015 was registered under Sections 306/34 IPC. After investigation, on 09.02.2017, a closure report was filed. The respondent Nos.4 and 5 were kept in column No.12. Despite the closure report, the learned Metropolitan Magistrate-05, West, on 19.07.2017 found that *prima facie* offences punishable under Section 306/34 IPC are made out against the accused and committed the case to the Sessions Court.

4. On committal, the learned Additional Sessions Judge, by the order impugned herein found that the subsequent statements of the parents dated 02.07.2015, before the SDM, are not a part of the charge-sheet. It was also held that the subsequent statement of the parents dated 02.07.2015, purportedly recorded before the SDM, does not bear the stamp and that they are also not signed by the petitioners. The learned Additional Sessions Judge found that *prima facie* there was no material to proceed against the accused persons for charges under Sections 306/34 IPC and discharged the accused. The learned Additional Session Judge further held that there are investigational lapses which requires due probe and directed that a copy of the order dated 13.11.2017 be sent to the Screening Committee for appropriate action in respect of the investigational lapses. It is this order which has been challenged in the instant petition.

5. Notice was issued on 14.05.2018.

6. Replies have been received.

7. Learned counsel for the petitioners states that the investigation has been shoddy right from the beginning. The FIR was registered by the Police

after ten months and there is no reason why the FIR was registered after ten months even when the petitioner No.1 had given a statement that respondent Nos.4 and 5 were torturing the deceased for bringing insufficient dowry. It is stated that the statements given by the petitioners on 02.07.2015 contains detailed averments of the harassment met out to the deceased have not been even part of the charge sheet.

8. Learned counsel for the petitioners would contend that the ingredients of Section 304B have been made out. The allegations made by the petitioners are specific that there were repeated demands of dowry and the respondent Nos.4 and 5 wanted half of the property of the petitioners.

9. Learned counsel for the petitioners contends that the petitioners have specifically stated that the deceased has complained to them about the taunts being made by respondent Nos. 4 and 5 for bringing less dowry. She would state that all the ingredients of Section 304B read with Section 113B had been made out and there was no reason why the presumption of dowry death is not attracted in the present case. She would state that the FIR and the charge sheet do not mention Section 304B. It is contended that despite noticing several lacunae in the investigation, learned ASJ did not order for further investigation.

10. Learned counsel for the petitioners also stated that the petitioners had given detailed complaints to the Commissioner of Police complaining of the harassment they suffered in the hands of the Investigating Officer. She would contend that a defective investigation should not inure to the favour of the accused.

11. *Per contra*, learned counsel for the respondent Nos.3 to 6 states that the petitioners have made improvements in the statements dated 02.07.2015

and that it could not have been taken into account at all. He would state that there is no demand of dowry and the petitioners are only trying to implicate respondent Nos. 4 and 5 to arm twist the investigation. He contends that the present petition was filed by the petitioners against the closure report. It is stated that the revision petition cannot be entertained at all. The petitioners were satisfied with the investigation and now they cannot turn around and challenge the order of discharge which had been passed on the basis of the material available with the Judge. It is stated that now it is not open to the parties to contend that investigation was faulty.

12. Heard Ms. Chanan Parwani, learned counsel appearing for the petitioners, Mr. Charanjeet Singh, learned counsel appearing for the respondents No.3 to 6 and Ms. Kusum Dhalla, learned APP appearing for the State and perused the material on record.

13. The charge-sheet in the instant case bleeds of wounds inflicted by the Police. It looks as if the investigation was oriented in order to give a closure report. The material on record discloses that the FIR was registered after ten months of the incident, which is contrary to law. The information regarding death was received on the date of the death itself, a complaint was filed on 25.10.2014, the very next day of the incident. The parents of the deceased went to the SDM and gave a subsequent statement on 02.07.2015. The SDM forwarded the letters to the SHO, Tilak Nagar on 14.07.2015 and the FIR was registered on 29.07.2015. There is no explanation as to why the FIR was registered after ten months. The petitioner No.1 in her statement dated 02.07.2015, had stated that the respondent Nos.4 and 5 herein were demanding dowry from the deceased. Despite this categorical allegation there was no reason, whatsoever, not to lodge an FIR for an offence under

Section 304B IPC. There is no material to show as to what was done in those ten months. The judgment impugned herein itself shows the glaring lapses in the investigation. The relevant portion of the impugned judgment dated 13.11.2017 reads as under:

"The Ld. Prosecutor had pointed out to statements of Parents of the deceased dt. 02.07.2015 on the last hearing in the Court on 03.10.2017 and hence, the above mentioned Police officers were called for clarifications. There is a statement of Smt. Saroj Bhola dt. 02.07.2015 (Photocopy) purportedly recorded by the SDM concerned. It does not bear any Stamp of designation. Likewise, there is a photocopy of statement of Yodh Raj Bhola also dated 02.07.2015, which appears to be actually made by him on 30.06.2015 as per the opening lines thereof. This statement also is not signed on each page, not in original and does not reveal by itself to have been recorded before an SDM. The police did not rely on these statements as the final report U/s 173(2) Cr.P.C. is absolutely silent on them. The documents are not on judicial file and even the list of documents attached with Final Report makes no mention of the same.

The then ACP concerned who monitored the investigation admitted that the above aspects are not clarified in the Charge-sheet. The Court does not even have any document to form an Opinion that subsequent statements of Parents dt. 02.07.2015 were recorded by the SDM and forwarded to the concerned SHO or not. Moreover, if the 10 relied on these statements then, there ought to have been some evidence against the accused persons in the statements of the Parents U/s 161 Cr.P.C. so recorded by the 10 on 29.07.2015. Thus, the Court will have to proceed on the statements of the Parents recorded by the SDM concerned on 25.10.2014"

14. Apart from a sketchy reason that the documents were not signed no reason has been given as to why the statements of the petitioners dated 02.07.2015, has not been taken on record. Moreover, nothing at all is mentioned in the charge-sheet as to what investigation was done on the basis of the subsequent letters.

15. Material on record discloses that on 30.10.2017, the petitioner No.1 wrote a letter to the Commissioner of Police complaining about the way the investigation is conducted. There are specific allegations in the complaint that the IO told the petitioners to give statements as per his will and suggestions and that he threatened her. There are allegations in the said letter that the IO was forcing the parents of the deceased to enter into a compromise with the respondents herein. It is stated in the said letter that while recording the first statement before the SDM, the IO has told them to make statement as told by him and he had threatened them that there was no other alternative before them. When even after ten months FIR was not registered, the petitioners went to the SDM and explained to them the torture they had suffered at the hands of the IO. Only when the SDM wrote letter dated 14.07.2015 was the FIR registered. The letter categorically states that the FIR does not contain the facts which were mentioned in their subsequent statements. In the complaint, the petitioners states that the IO demanded money from them and constantly threatened them. The complaint states that when the IO was asked as to why he has not even mentioned about the second statement dated 02.07.2015, they were curtly told that the matter is before the Court and the Court will take decision as to what has to be done. It is stated that the petitioner then found that the charge-sheet has been filed

in the Court. The complaint states that investigation has not been done properly.

16. The material on record also shows that there was considerable delay on the part of the investigating officer to collect the *viscera* report of the deceased. A complaint was made to the Joint Commissioner of Police regarding delay on the part of Police but no action was taken. On 20.09.2016, the SDM once again wrote a letter to the SHO, Tilak Nagar, for appropriate action. All these factors were sufficient for the Courts below to order further investigation. The committing Magistrate should have ordered for further investigation under Section 173(8) Cr.P.C, unfortunately it has not been done.

17. To construe an offence under Section 304B i.e. dowry death, the death of the women could have been caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with, any demand for dowry. In the present case the death has occurred within seven years of marriage. There are allegations that respondent Nos. 4 and 5 were demanding dowry. The deceased died by committing suicide. All the ingredients of Section 304B are made out but surprisingly FIR was not registered for an offence under Section 304B. Section 113B of the Indian Evidence Act raises presumption as to dowry death. Section 113B of the Indian Evidence Act reads as under:

"113B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person

to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death."

18. In the present case, the Magistrate did not notice the fallacies in the investigation and did not order further investigation. Unfortunately, the learned ASJ also did not resort to ordering further investigation after commenting on the glaring loopholes with the investigation.

19. In the present case there is sufficient material to show that before the death of the deceased, she was subjected to cruelty/harassment in connection with demand of dowry by the respondent Nos.4 and 5 and hence the presumption under Section 113(b) of the Indian Evidence Act will apply. This presumption is, however, rebuttable in trial.

20. It is well settled that the defective investigation cannot itself be a ground for discharge. If negligent investigations and calculated omissions or lapses become the basis for acquittals/discharge, the faith and confidence of people on the criminal justice administration will be eroded. It is well settled that where there has been negligence on the part of the investigating agencies or omissions either negligently or with a design to favour the accused, then it becomes the obligation of the Court to ensure that proper investigation is carried out. The Courts must not close its eyes to the fact that it is the victim who knocks the doors of the Court and seeks justice must not left high and dry with the feeling that the accused have escaped due to the perfunctory/faulty/defective investigation.

21. The Supreme Court in Vinubhai Haribhai Malaviya & Ors. v. State of Gujarat & Anr., (2019) 17 SCC 1, has observed as under:

"18. It is clear that a fair trial must kick off only after

an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit."

22. The said judgment also has categorically held as under:-

"42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation

would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* [*Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel* [*Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel*, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , *Athul Rao* [*Athul Rao v. State of Karnataka*, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and *Bikash Ranjan Rout* [*Bikash Ranjan Rout v. State (NCT of Delhi)*, (2019) 5

SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled."

23. The power of this Court to direct further investigation is well recognised. In Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762, the Supreme Court observed as under:

"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the

investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in Disha v. State of Gujarat [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628], Vineet Narain v. Union of India [(1998) 1 SCC 226 : 1998 SCC (Cri) 307], Union of India v. Sushil Kumar Modi [(1996) 6 SCC 500] and Rubabbuddin Sheikh v. State of Gujarat [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006].

45. The power to order/direct “reinvestigation” or “de novo” investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the court may, by declining to accept such a report, direct “further investigation”, or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

46. The Code does not contain any provision which deals with the court competent to direct “fresh investigation”, the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. The superior courts can direct conduct of a “fresh”/“de novo” investigation, but unless it specifically directs that the report already prepared or the investigation so far conducted will not form part of

the record of the case, such report would be deemed to be part of the record. Once it is part of the record, the learned Magistrate has no jurisdiction to exclude the same from the record of the case. In other words, but for a specific order by the superior court, the reports, whether a primary report or a report upon "further investigation" or a report upon "fresh investigation", shall have to be construed and read conjointly. Where there is a specific order made by the court for reasons like the investigation being entirely unfair, tainted, undesirable or being based upon no truth, the court would have to specifically direct that the investigation or proceedings so conducted shall stand cancelled and will not form part of the record for consideration by the court of competent jurisdiction."

(emphasis supplied)

The said judgment has been relied on and has been quoted extensively and relied by the Supreme Court in Chandra Babu v. State, **(2015) 8 SCC 774**.

24. The investigation in the case at is extremely shoddy. Statement given by the petitioner which have been given by the petitioners on 02.07.2015 are not even part of the record before the Magistrate. The learned ASJ in the impugned judgment has pointed out glaring gaps in the police report which warrant further investigation. Even though the ingredient of offence under Section 304-B is made out, an FIR was not registered under this Section. The learned Additional Session Judge while passing the impugned judgement after noticing that there are glaring inconsistencies should have ordered for further investigation. The report of the SDM was present along with the statements. Those statements could not have been discarded at this juncture and should have been left to be proved in trial. The SDM could have been examined to ascertain whether the statements were recorded by

him or not. The learned Additional Sessions Judge was not correct to discard the statements of the petitioners herein dated 02.07.2015, made before the SDM, only on the ground that it does not bear the stamp of the Magistrate. The learned Additional Sessions Judge was also not justified in discarding the statement of the petitioner No.2 dated 02.07.2015, on the ground that it was not signed on each page, after recording that the Police did not rely on the statements as final report was silent on them. It was the duty of the Additional Sessions Judge to find out and ascertain as to why they were not on the file and even on the list attached to the final report. The deceased was married on 26.04.2012 and she passed away on 24.10.2014, within two years of her marriage.

25. The contention of the learned counsel for the respondents No.3 to 6 that the petitioners cannot raise arguments that the investigation was shoddy because they did not challenge the closure report cannot be accepted. It was for the Court to see that there are glaring lapses in the investigation when the closure report was filed. As stated earlier, it was well within the power of the learned Magistrate or the learned Additional Session Judge while hearing arguments on charge to direct further investigation even in the absence of a protest petition.

26. In view of the above, the impugned judgment is set aside. The Police is directed to conduct further investigation on the basis of the statements given by the petitioners on 02.07.2015 before the SDM. This investigation must be done by a different Investigating Officer not below the rank of an Inspector, and it has to be examined as to whether an offence under Section 304B is made out or not. Needless to say that investigation is to be conducted without being influenced by any observations made by this Court.

Accordingly, the revision petition is allowed. The order dated 13.11.2017, passed by the learned Additional Session Judge-05 (W), Tis Hazari Courts, Delhi in case No.458/2017 arising out of FIR No.1119/2015 is hereby set aside. The petition is disposed of along with the pending application.

SUBRAMONIUM PRASAD, J

APRIL 05, 2021

Rahul/hsk

