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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

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CRL. REV. P. No. 706 of 2019**Between:-****THE STATE (GNCT OF DELHI)
THROUGH SECRETARY****....APPELLANT***(Through Mr. Amit Ahlawat, APP for State)***AND****KAVITA
D/O SH. RAMBIR
R/O H. NO. 355/9, JAGRITI VIHAR
MEERUT, UTTAR PRADESH****....RESPONDENT***(Through Ms. Shobha Gupta, Advocates)*

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Pronounced on : 18.01.2023

JUDGMENT

1. This revision under Section 397 read with Section 401 and Section 482 of the Code of Criminal Procedure, 1973 (In short "Cr.P.C.") is directed against the order of discharge dated 05.04.2019 passed by Additional Sessions Judge-05 (In short "ASJ"), Shahdara District, Karkardooma Court, New Delhi in connection with FIR No. 150/2018 registered at Police Station Jyoti Nagar, Delhi for the offence punishable under Sections 498A/304B/34 of the Indian Penal Code, 1860 (In short "IPC").



2. The prosecution's case in brief is that at about 11.48 AM, on 05.05.18, the father of deceased namely Pritam Singh ('Complainant') had received message on his mobile phone from his daughter Madhubala ('deceased') saying that she was going very far from all of them and that she had bad people in her life who had made her life a hell. It was further contained in the same message that her mother and father-in-law were indulging in filthy abuses hurled at the deceased which were not even worth hearing. She had further stated in the said message that she was leaving a suicide note which could be found inside a micky mouse decorated in her room. On 05.05.2018 at 04:50 PM *vide* DD No.40B, a PCR call was received at Police Station Jyoti Nagar, wherein it was informed by Pritam that his daughter had committed suicide by hanging herself and left a suicide note. ASI Begraj along with HC Roop Kumar reached the place of incident *i.e.*, H.No.D-594 Gali No.05, Ashok Nagar and on inquiry came to know that the deceased was taken to GTB Hospital. Thereafter, they reached the hospital wherein *vide* MLC No.B2644/14/18, the deceased was declared bought dead. During enquiry, it was revealed that the death of the deceased had occurred within seven years of the marriage of deceased as she got married on 02.12.2015. The suicide note was written by the deceased claiming to be fed up by her father-in-law, mother-in-law and husband. She further alleged that her sister-in-law was the root cause of the misery. On the basis of the statement of the complainant, FIR for the offence under section 498A/304B/34 of the IPC was registered.

3. On 02.08.2018, after completion of investigation, chargesheet was filed under Sections 498A/304B/34 of the IPC against accused persons namely Amit Kumar (Husband), Rambir (Father-in-law), Urmila (Mother-in-law) and Kavita ('Respondent/Sister-in-law'). However, the Respondent was not arrested. Thereafter, learned Metropolitan Magistrate

took cognizance and committed the case to the learned Sessions Court.

4. On 05.04.2019, learned ASJ heard the parties on charge. After perusal of the material available on record, the learned ASJ did not find any specific allegation of harassment or demand of dowry against the present respondent. No *prima facie* case was made out as there was not a single allegation contained either in the suicide note of the deceased or even in the statement of the father of deceased. Learned ASJ framed charges against all the three accused persons under sections 498A/304B/34 of the IPC, however, he discharged the respondent. The petitioner/State, therefore, prefers revision under Section 397 of the Cr.P.C. before this court.

5. Learned APP appearing on behalf of the State submits that learned ASJ gravely erred in not considering the allegations made in the FIR and the suicide note which clearly constitutes an offence under Section 498A of the IPC. He has referred to various paragraphs of the FIR and suicide note to demonstrate that specific allegations have been made against the in-laws of the deceased. He considers the suicide note as a dying declaration of the deceased. According to him, at the time of framing of charge, learned trial court had to only ascertain whether there were grounds for presuming that the accused/Respondent had committed the offence and not to see if the allegation would result into their conviction.

6. On the other hand, learned counsel appearing on behalf of the respondent opposes the prayer and submitted that this court should not interfere with the well-reasoned order passed by the learned ASJ. The allegations in the FIR and suicide note are not specific and therefore, the learned ASJ has rightly discharged respondent.

7. I have heard the learned counsel appearing on behalf of the parties and perused the record.

8. Section 498A of the IPC prescribes that whoever, being the

husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. For the purposes of Section 498A of the IPC, Explanation (a) and (b), clearly gives out as to what would “cruelty” mean. It has been prescribed that “cruelty” means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

9. The learned trial court relied on the judgment of the Hon’ble Supreme Court in the case of *Kashmir Kaur v. State of Punjab*¹ to state that in order to attract the provisions of section 304B of the IPC the following essentials must be satisfied that is (i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; (iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

10. The learned trial court framed charges against the accused husband and the parents-in-law. Ld. Trial Court relied on the judgments of *Bansi Lal v. State of Haryana*², and *Prema S. Rao v Yadla Srinivasa Rao*³, to establish Section 304B of the IPC, one of the ingredients of the offence which is required to establish is that “soon before her death” she was

¹ AIR 2013 SC 1039.

² (2011) 11 SCC 359.

³ AIR 2003 SC 11.

subjected to cruelty and harassment “in connection with the demand of dowry”. When the essential ingredients are established by reliable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. It should be continuous and such continuous harassment, physical or mental should be inflicted upon the deceased. Moreover, it should occur within 7 years from the date of her marriage.

11. It is a settled law that a judge, while considering the question of framing of charges, is certainly empowered to weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the material placed before the court discloses great suspicion against the accused, which has not been properly explained, the court will be fully justified in framing the charge and proceeding with the trial. However, in *P. Vijayan v. State of Kerala*⁴ and *Yogesh v. State of Maharashtra*⁵, it was held that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. In exercise of jurisdiction under Section 227 of the Cr.P.C., the judge cannot act merely as the 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 and should not make a roving inquiry into the pros and cons of the matter and weigh the evidence if he was conducting a trial [*Union of India v. Prafulla Kumar Samal and Anr.*⁶].

12. The Hon’ble Supreme Court in the case of *Satbir Singh and Anr.*

⁴ AIR 2010 SC 663.

⁵ (2008) 10 SCC Pg. 394.

⁶ (1979) 3 SCC 4.

v. State of Haryana,⁷ dealt with a matrimonial issue where the appellants had challenged their conviction under Section 498A and 304B IPC. In that case, the deceased (wife of the appellant) had burned herself as she was constantly being harassed by the family for dowry. The Hon'ble Supreme Court observed the key ingredients of Section 498A and 304B IPC, which are that the (a) prosecution must prove the cause of death was a demand of dowry and (b) the accused person has played an active role.

13. In the present case, learned Trial Court after perusing the material on record, held that the material was sufficient to invoke provisions of section 498A and 304B of the IPC against the accused husband and his parents. However, with regard to the sister-in-law/present respondent, learned Trial Court did not find even a single allegation contained either in the suicide note or the statement of the complainant nor was there anything alleged to have been found against her during the investigation, as per the entire charge sheet.

14. Taking into consideration the overall facts of the present case and in the absence of any specific allegation or role attributed to the respondent, this court does not find any justification to take a different view than the one which has already been taken by the learned trial court.

15. In view of the aforesaid, the instant petition stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 18, 2023/C'sha