

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

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Reserved on: 14th December, 2022

Pronounced on: 04th January, 2023

CRL.M.C. 6030/2018

STATE OF NCT OF DELHI

..... Petitioner

Represented by: Mr. Narinder Jit Singh
Bajwa, APP for the State
with Mr. Shivesh Kaushik,
Advocate.

versus

RAM NIWAS

..... Respondent

Represented by: Mr. Jatin Teotia, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. By this petition, the State seeks setting aside of orders dated 4th December 2017 passed by learned ACMM - 01 (Central), Tis Hazari Courts, Delhi in FIR No. 117/2016 under Sections 306/120B registered at PS Subzi Mandi (Crime Branch) and order dated 15th January, 2018 passed by Ld. Special Judge-02 NDPS Act, Central District, Tis Hazari Court in Criminal Revision No. 11/2018, and consequently direct summoning of respondent Ram Niwas as accused to face trial in the case.

2. The background facts are that on 29th April, 2016 at about 5.30 p.m., DD No. 26 recorded at P.S. Subzi Mandi regarding commission of a suicide by one lady named Rekha @ Tannu. The patient was taken in CATS ambulance where MLC no. 1660/16 was recorded and noted

“patient brought in casualty in drowsy stage A/H/O eaten sulphas one hour back as told by the patient herself”. A hand written note and another complaint running into five pages were handed over to the incharge of the ambulance, Sh. Sanjay Kumar by an unknown person who was later identified as the respondent.

3. In the handwritten note it was stated that the deceased was harassed by SHO Dinesh Kumar and as she could not do anything about it, she was taking her life and held SHO Dinesh Kumar responsible for her death. The investigation was entrusted to Sh. Surinder Kumar, ACP/DIU and Inspector Dinesh Kumar was interrogated. As per Dinesh Kumar, he stated that he had taken charge as SHO Vijay Vihar in 2015 and the respondent who was a bad character of the area was absconding for about 9 years, and had to surrender in Court due to pressure created upon him. He stated that he was being implicated at the instance of the respondent. However, Dinesh Kumar was arrested and subsequently released on bail on 7th May, 2016. The *post-mortem* of the deceased was conducted and CCTV footage was taken from the Tis Hazari Courts where this incident had happened. The respondent was also identified in the CCTV footage and his presence was corroborated by the statement of his neighbours.

4. The case was transferred to Crime Branch and during the course of investigation, the wife of the respondent (Rita Devi) was questioned who stated that the deceased Rekha was staying in their house and had an illicit relationship with her husband which caused tensions at home. She further stated that the respondent had given beatings to her (Rita Devi) and his children, as a result of which FIR No. 352/2016 under Section 323/342/506 IPC had also been registered at PS Vijay Vihar.

After this the respondent ran away from his house, but Rekha was taken by Rita Devi to the police station. During investigation statement of one Sourabh Kumar was recorded, who was working with one NGO named "Kilkari". He stated that Rita Devi had informed him on 20th April, 2016 she was going to lodge a complaint against the Ram Niwas. On 29th April, 2016 when Sourabh Kumar was sitting with Rita Devi at his office Ram Niwas called Rita Devi on her mobile and stated that Rekha was about to die and he would also commit suicide and the SHO will go to jail as he had made Rekha lodge complaints at various places. He stated that Ram Niwas allegedly stated that he had spared Rita but the SHO will not be spared. The respondent was also identified in the CCTV clip by the incharge of the CATS ambulance who confirmed that he had handed over the suicide note to him.

5. Praveen Gupta, a news reporter of TV 24, was also joined in the investigation who stated that on 29th April 2016 at about 11.30 a.m. he received a call and the caller stated that a lady was about to commit suicide in Tis Hazari Court and he could cover the suicide live. The caller told his name as Manish. During investigation, the number from which the call was made was found to be registered in the name of Rekha and was being used by the respondent and from the CDR analysis, the location of the phone was found to be Tis Hazari. Further investigation revealed that in fact the suicide note was actually copied by the deceased under the influence of the respondent and there was no case of abetment of suicide made out against Dinesh Kumar.

6. The respondent was arrested on 5th August 2016 and besides the disclosure statement, eight mobiles were recovered out of which one mobile bearing number 9811321840 was registered in the name of

deceased Rekha. The investigation concluded that it was not Dinesh Kumar but respondent Ram Niwas who had abetted the suicide of Rekha and a charge-sheet was accordingly filed.

7. *Vide* order dated 4th December 2018, learned ACMM refused to summon Ram Niwas and held there was no *prima facie* case made out against the said accused and instead summoned Dinesh Kumar as an accused for commission of offence under section 306 IPC, on the basis of his name being mentioned in the suicide note. The State preferred the Revision Petition before the Sessions Court which was dismissed *vide* the impugned order. Dinesh Kumar also preferred a Revision Petition against the summoning order of the learned ACCM and his petition was allowed on 10th October 2018.

8. A perusal of the impugned order would reveal that while the facts as stated above have been traversed, however, a conclusion is drawn that the entire evidence collected by the investigating agency can at best indicate that accused Ram Niwas was aware about the plans of the deceased to commit suicide and that he was having a grudge against the then SHO Dinesh Kumar. The impugned order concluded that this by itself was not sufficient to attract the offence of abetment of suicide. According to the learned ACMM, the whole theory of investigation and incitement by accused Ram Niwas was based upon his disclosure statement and nothing else, while on the contrary, the suicide note categorically named suspect Dinesh Kumar. The other issue which was dealt with by the learned ACMM was whether he had the power under Section 209 Cr.P.C. to discharge an accused before committing the case to the Court of Session. To this, the learned ACMM stated that since there were no “*sufficient grounds for proceeding*”, as per Section 209

Cr.P.C., the accused could be discharged at this stage and Dinesh Kumar could have been summoned instead. As per the impugned order, it is evident that the fact of the respondent having contacted the news reporter of TV 14 to ask him to cover the commission of suicide by the Rekha was not considered sufficient to at the very least consider the respondent as an accused for the abetment of suicide. The absence of evidence at that stage to suggest that the respondent intentionally aided commission of the offence by his non-interference or his omission was taken by the Revisional Court as sufficient for the ACMM to have discharged him.

9. The State in support of its contention submitted that since the controversy involved offence under Section 306 IPC which is exclusively triable by the Session's Court, reference ought to be made to Section 209 C.r.P.C. that provides that the offence triable by the Court of Session should be committed by the Magistrate before whom the accused is brought. Accordingly, discharge application should be entertained by the Trial Court which is the Sessions Court, rather than the Magistrate who has no jurisdiction. In support, the State relied upon the decision in *Leelawati v State & Anr* 2013 SCC Online Del 285 and *Sukhbir Singh v State of UP*, 2022, SCC Online Allahabad 483. The respondents on the other hand, relied upon the decision of the Hon'ble Supreme Court in *Sajjan Kumar v CBI* (2010) 9 SCC 368 and *Dharampal and Ors v State of Haryana & Anr* (2014) 3 SCC 306.

10. The facts and circumstances relating to this incident, particularly the role of Ram Niwas, taking into account the alleged evidence collected during investigation, cannot exculpate Ram Niwas at this preliminary stage. Not only that the deceased decided to commit suicide

at the Tis Hazari complex but also that Ram Niwas who seemed to be her paramour took the suicide note from her and was present at the crime scene in the CCTV footage, as also allegedly called the Live TV News 24 television to ask them to utilize the opportunity to cover the suicide live. Even if any one of these elements is not proved, it would still not exculpate Ram Niwas from at least the possibility of having abetted the suicide or having a role in the events leading to it. In any event, at this stage with the trial not having proceeded ahead, what is to be examined is whether from facts as stated in the chargesheet *prima facie* case of offences stated is made out.

11. As per the prosecution, no admitted signatures of the deceased could be found during investigation on the suicide note. Per assessment of all the statements recorded by the investigation, even though they would not be strictly admissible, it would not be possible to state that Ram Niwas did not have any role whatsoever in the act of suicide by Rekha and was merely an accidental or a passive observer, having no control over the situation, nor having instigated it. The very fact that he is present at the location where this incident took place, and was allegedly the one who called the live TV channel informing about the possibility of a suicide, itself would make it evident that at the very least, he ought not to have been discharged by the Magistrate. In this context, it is important to note that the definition of abetment as provided in Section 107 IPC includes both acts of commission and omission.

12. As regards the power of the Magistrate to discharge the accused at the stage of committal to Sessions, the Hon'ble Supreme Court in ***Sajjan Kumar*** has stated that "*a Magistrate enquiring into a case under Section 209 is not to act as a mere Post Office and has to come to a conclusion*

whether the case before him is fit for commitment of the accused to the Court of Session. 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.” The Hon’ble Supreme Court further states *“if there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case.”* The exposition by the Hon’ble Supreme Court in ***Dharampal (supra)***, is also based on the satisfaction to be achieved by the Magistrate that the case has been made out to proceed against the person named in column A of the report. On the other hand, this Court in ***Leelawati v State & Anr. (supra)***, states that *“the job of the investigating agency was over on filing the charge-sheet and for the purpose of taking cognizance, the learned Magistrate was required to consider the charge-sheet and the material annexed therewith. Under Section 209 Cr.P.C., when it appears to the learned Magistrate that some of the offences, in respect of which charge-sheet has been filed, are triable exclusively by the Court of Sessions, it is mandatory on the part of the Magistrate to commit the case to the Court of Sessions after complying with the requirements of Section 207 & 208 Cr.P.C. The learned Magistrate had no jurisdiction of power to consider and scrutinize the evidence as a Trial Court. He had no power to discharge the accused for the offence punishable under Section 306 IPC which is exclusively triable by the Court of Sessions”*. In ***Sukhbir Singh (Supra)*** the High Court of Allahabad has relied upon the decision of the Hon’ble Supreme Court in ***Sanjay Gandhi v. Union of India*** (1978) 2 SCC 39

that the committing Magistrate has no power to discharge the accused in a case exclusively triable by the Court of Sessions.

13. Notwithstanding decisions of the High Courts, it would have to be seen whether the Hon'ble Supreme Court ruling in *Sajjan Kumar (supra)* gives power to the committing Magistrate to sift the evidence in order to ascertain whether the accused as per the charge-sheet ought to be discharged or not. From the passage extracted above, it is to be noted that the Hon'ble Supreme Court has held that the Magistrate is entitled to sift the materials on record, but only for seeing whether there is sufficient evidence for commitment and not whether there is sufficient evidence for conviction. The ability to discharge the accused is only when the evidence is totally unworthy of credit but the Hon'ble Supreme Court clarifies "*if there is some evidence on which the conviction may reasonably be based he must commit the case*".

14. The Hon'ble Supreme Court (Constitution Bench) has held in *Hardeep Singh v. State of Punjab* (2014) 3 SCC 92 that:

"47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC,

to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.”

(emphasis supplied)

15. If the respondent's contention is accepted that the Hon'ble Supreme Court in ***Sajjan Kumar (supra)*** gave a wider power to the committing Magistrate to assess the evidence to the extent whether the charge-sheet does provide reasonable grounds on which to accuse a person and whether the accused person can be tried or not, it would in the considered opinion of this Court stretch the scope and purview of Section 209 Cr.P.C to an unreasonable extent and much beyond what the provision entails. A bare perusal of the language of Section 209 Cr.P.C would categorically show that it has to appear to the Magistrate that “*the offence is triable exclusively by the Court of Session*”. The sifting and perusal of evidence should only be limited to that extent. The Hon'ble Supreme Court's observation in ***Sajjan Kumar (supra)*** that “*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*” is underscored for this purpose. If the offence as charged in the final report is an offence triable by sessions, the committing Magistrate would be obliged to commit it to the Court of Session. Any expansion or any unbridled amplification of the powers of the Magistrate in exercise of Section 209 Cr.P.C functions would open a Pandora's box where despite not being the Trial Court having jurisdiction to try the offences in question, it would be in a position to discharge the accused on an assessment of the evidence at the stage of committal itself.

16. In view of the above discussion, in the considered opinion of this Court, the petition of the State is to be allowed and the impugned orders dated 4th December 2017 of the learned ACMM and 15th January 2018 of the Revisional Court, Tis Hazari, Delhi are hereby set aside as regards the discharge of the respondent Ram Niwas.

17. Petition is disposed of.

(ANISH DAYAL)
JUDGE

JANUARY 04, 2023/RK

