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I.No.29
Ct. No.
237.
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CRR 2795 of 2018
In
IA. No. CRAN 1 of 2020 (Old No.CRAN No. 503 of 2020)
Swarup Chanda @ Raju & Ors.
Vs.
State of West Bengal & Ors.

Mr. Ayan Bhattacharjee
Mr. Nirmalya Chatterjee

.... For the Petitioners.

Mr. Debashis Ray
Mr. Imran Ali
Mrs. Debjani Sahu

....For the State.

Ms. Munmum Dutta

....For the opposite party.

Mr. Ayan Bhattacharjee, learned Counsel appearing on behalf of the petitioners submits that initially FIR was registered against the petitioners under Sections 498A/302/304B/34 of the Indian Penal Code. After completion of investigation police submitted charge sheet against all the accused persons under Sections 498A/302/304B/34 of the Indian Penal Code read with Section 3 & 4 of the Dowry Prohibition Act, 1961. Learned Magistrate took cognizance upon offences alleged in the said charge sheet and thereafter committed the case record to Sessions Court. After committal of the case, the Sessions Judge rejected prayer for discharge made by the petitioners and framed charge against all the accused persons under Sections 498A/302/304B/34 of the Indian Penal Code by the impugned order.

Being aggrieved by that order petitioners preferred

the present application. The grounds taken in the present application is that learned Trial Judge has failed to appreciate that in exercising jurisdiction under Section 277 of the Code, the Trial Judge cannot act merely as a post office or mouthpiece of the prosecution but has to consider broad probabilities of the case, the total effect of the evidence and the documents produced before the Court.

In the present context the Court below has turned down the petitioners' prayer for discharge assigning reason which is not cogent. The learned Court below has erred in blantly accepting the charge sheet without considering the fact that the charges leveled against the petitioners are patently absurd and inherently impossible. The Trial Judge has erred in relying on the purported report filed by the Investigating Officer that there is no suicide note of the deceased victim although it is very much apparent from the order of this Court that there exists a suicide note of the deceased victim which is exonerative in nature. Learned Trial Judge did not consider the role and obligation of the learned Public Prosecutor particularly in relation to disclosure which is an important facet of rule of law. Learned Trial Judge has further erred in not appreciating that right of an accused in regard to disclosure of documents is a limited right but is codified and is the very foundation of fair investigation and trial. He further contended that Trial Court did not appreciate

that in absence of the said suicide note, no charge could have been framed against the present petitioners under said sections. Therefore, framing of impugned charges and continuation of further proceedings would be abuse of process of Court.

Learned Counsel appearing on behalf of the State placed the Case Diary and submits that the police report shows that no such suicide note was ever collected by the prosecution nor they have placed any reliance upon such suicide note at any point of time. Accordingly, Court below was justified in framing charge against the present petitioners under Section 498A/302/304B/34 of the Indian Penal Code and order impugned does not call for any interference of this Court.

I have considered the submissions made by both the parties. The basis of the order impugned is that, while dismissing the criminal revisional application filed by the accused being CRR 1439 of 2016, this High Court held that there were allegations of torture of the victim at the behest of the accused in the FIR as well as in the charge sheet and similar statements of witnesses have also been recorded under Section 161 of the Cr.P.C. But he has not explained why such observation can be the basis of framing charge under Sections 498A/302/304B/34 of the Indian Penal Code.

Though it is true that there is no bar for trial Court to frame charge without stating detailed reason, if

from the materials on record the Judge prima facie comes to a conclusion that there are sufficient grounds for proceeding against the accused.

But in the present context though the petitioner did not argue much about framing charge under Section 498A IPC, but they raised serious disputes about framing charge under Section 302/34 and 304B/34 IPC, disclosing certain material facts. In such situation if the order impugned does not reflect the thought process of the Judge concerned to frame charge under Section 302/34 or 304B/34 IPC, it is difficult for a higher forum to examine the correctness of the reasons for holding that there is or is not sufficient ground for proceeding against all the petitioners under Section 302/34 or 304B/34 of the IPC. It is trite law that reason in the soul of every order specially when accused persons have seriously denied and disputed the case of framing charge in the said sections.

Considering the aforesaid facts and circumstances of the case and submissions made by both the parties it appears to me that the issue is required to be reassessed by the Court below and therefore the impugned order is liable to be set aside.

In such view of the matter CRR 2795 of 2018 is hereby allowed. Order No. 01 dated 29.03.2018 and all subsequent orders are set aside. Learned Court below is directed to hear petitioners' application for discharge afresh preferably within a period of six weeks from the date

of communication of the order and to pass an order without being influenced by any observation made herein.

Urgent certified copy of this order duly downloaded from the Official Website of this Court upon compliance of all usual formalities.

(Dr. Ajoy Kumar Mukherjee, J.)