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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 213/2015, CRL.M.A. 5163/2015 & CRL.M.A.**
17817/2015
JAI SINGHPetitioner

Through: Mr. Rajiv Mangla, Ms. Monika and
Mr. Hrithik Jarodia, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANRRespondents
Through: Mr Hitesh Vali APP with Mr
Deepankar Kataria Advocate for State
with SI Surendra Singh, PS SB Dairy.
Ms. Babita Ahlawat and Mr. Satyam
Sisodiya, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
06.08.2024

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1. This petition has been filed assailing impugned order dated 18th October, 2014 passed by the ASJ in FIR No.63/2009. The FIR was registered under Sections 306/498A/34 IPC at PS Shahabad Dairy. Charge-sheet was filed on 14th March, 2011. Charges were framed and the trial has since progressed.
2. Midstream during the trial, an application was moved under Section 216 Cr.P.C. by the complainant for alteration of charges. The plea was made that the husband of the deceased had made various calls post-midnight till early morning, apparently to various relatives. However, the calls, which were made to the police, were only in the morning at about 4:00 A.M.



Besides the correct addresses were not given during the calls so that the ambulance could not reach in time.

3. Further, it was contended that the poisonous substance, namely, *aluminium phosphide* detected in the viscera of the deceased and the cause of the death, as per FSL, results in vomiting. But there was no vomit on the scene of the crime, thereby also attracting implication under Section 201 IPC.

4. As per the *post-mortem* report that the examination was made at about 12:00 noon on 09th March, 2009, the time since death was about 5:00 hours. On this basis, he states that the death ought to have occurred at about 6:00-7:00 A.M. in the morning.

5. As per the petitioner, the substance in question would take about 4:00-5:00 hours to cause death, therefore, on the assumption that it could have been ingested in the night, there was no reason why the accused/husband did not contact the ambulance immediately.

6. Reliance is placed on the examination of PW-17, the IO in this regard. What is stressed is that post the impugned order being passed on 18th October, 2014, the IO has been cross-examined thereafter.

7. Moreover, it has been contended that the presumption under Section 106 of the Indian Evidence Act would also apply to the accused/husband, basis the last seen theory, for which he places reliance on certain decisions of the Supreme Court. He highlights the IO's statement that the accused did not make any effort to shift her to the hospital despite having conveyance, including cars and tractors in the village itself.

8. In this scenario, it would be apposite if the petitioner approaches the Trial Court in a renewed application under Section 216 Cr.P.C. and places his submissions *de novo*, which the Trial Court may consider on its own merits.



9. It is made clear that this Court has just recorded the submissions of the petitioner above, and has not passed any observations on the merits of the matter.
10. Trial Court may consider the testimonies on record and assess the matter on its own merits.
11. It has been pointed out to the APP for the State that it is recorded in the Trial Court's order on 04th April, 2024 that the original case filed of the case has been requisitioned by this Court in this revision petition.
12. The same shall be sent back by the Registry to the Trial Court for further assessment.
13. The petition is disposed of with the above observations. Pending applications, if any, are rendered infructuous.
14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

AUGUST 6, 2024/MK