

**Court No. - 65**

**Case :-** CRIMINAL REVISION No. - 1092 of 2022

**Revisionist :-** Sushil Kumar And 6 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Shailesh Kumar Tripathi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rahul Chaturvedi,J.**

Heard Sri Shailesh Kumar Tripathi, learned counsel for the revisionists as well as learned A.G.A. and perused the records of the instant revision.

After hearing learned counsel for the revisionists and learned A.G.A. for the State, the Court is proposing to decide the revision at the admission stage itself.

Aggrieved and dissatisfied by the order of learned Additional Sessions Judge, Court no.5, Varanasi, whereby the learned Judge has decided/rejected paper No.31'Kha' seeking DISCHARGE under section 227 of Cr.P.C. from the allegations under section 498A, 306, 379, 323, 494, 504, 506 IPC, Police Station-Maduadeeh, District-Varanasi vide its order dated 28.02.2022 on behalf of all the seven charge sheeted accused persons, now revisionists, the present revision has been preferred.

Before addressing on the legal points of the issue, it is imperative in the interest of justice to give skeleton facts of the case, so as to appreciate the legality and validity of the order impugned in its correct/proper prospective.

**FACTS OF THE CASE :-**

Deceased (Ms. Anchal Rajbhar) during her life time, has lodged the present FIR against Sushil Kumar, the husband and all his family members on 22.09.2018, under sections 323, 494, 504, 506, 379 IPC with the allegations :-

a) that both of them resides as husband and wife at Madauli, Post-Bhullanpur, police station-Maduadeeh, District-Varanasi ;

b) From this relationship, both of them got one son namely Ayush(2 years) ;

c) Sushil Kumar was already married with some other lady and having two children from her and without divorcing her, rather without disclosing this fact he got married with the deceased ;

d) After enticing the informant, who is married lady again solemnized marriage on 21.02.2010 at Durgakund Temple, Varanasi with the consent of both ;

e) Soon after the marriage when this fact came to the knowledge of other family members, namely the named accused persons of the FIR, they have started misbehaving torturing and abusing her and has made her life miserable for

almost about 10-12 years ;

f) Their atrocities crossed all the limits when her husband under the pressure of his family members have virtually deserted her and now kept a new lady ;

g) The informant, Anchal Rajbhar after lodging the aforesaid FIR, has consumed some poisonous substance on the same day i.e. on 22.09.2018.

After lodging of the FIR, and thereafter, her sad demise by consuming some poisonous substance, the police has started deep probe into the matter and eventually has filed their report under sections 173(2) Cr.P.C. on 20.11.2011, under section 323, 494, 504, 506, 379, 306, 498A IPC against all the named accused persons except Section 494 IPC, which was additional against revisionist no.1. On this charge sheet, learned concerned Magistrate has taken the cognizance on 23.11.2018.

From the records of the case, para 20 of the affidavit, its own admission by the revisionist no.1 that he got married third time with one Abhilash Singh on 15.09.2018 and this marriage was registered before Marriage Registrar Officer-I, Varanasi without giving divorce to her earlier two wives.

This seems to be the sole reason whereby the deceased (Anchal Rajbhar) has taken this extreme step by consuming some poisonous substance and committed suicide.

From the forensic examination of deceased's viscera, deadly poison Aluminium Phosphate was found.

#### **SUBMISSIONS ADVANCED :-**

On these factual aspect of the issue, learned counsel for the revisionists have pointed out certain glaring and astonishing procedural loopholes during the investigation viz, the case crime no.424 of 2018 was got registered by Ms. Anchal Rajbhar (hence deceased) on 22.09.2018 at 18:37 hrs. whereas on the same day, she was admitted at Ganga Hospital and Trauma Center, Varanasi and its medical officer have informed the police on 22.09.2018 at 2 p.m. regarding admission of Anchal Rajbharas suspected case of poison and its G.D. entry no.048 on 22.09.2018 at 7:01 hrs. Thereafter, she was brought to SSPG, District Hospital, Varanasi on 22.09.2018 at 06:50 hrs where it was endorsed that she was brought dead. Her inquest was done on 23.09.2018 at 1:17 pm - 1:35 pm at SSPG Hospital, Varanasi and thereafter, her autopsy was done on 23.09.2018. Her dead body was brought at 3:30 pm whereas post mortem report was done at 1:35 pm to 2:00 pm on 23.09.2018. From all these facts and figures, learned counsel for the revisionists tried to raise his castle of arguments on these anomalies.

Since, the Court is deciding this revision at the admission stage itself, it is not proper on my part to make comment upon these alleged inconsistencies. Moreover, when the third or fourth agency intervened into the matter, their perception should not come into the way while adjudicating the discharge

application. The Court is not supposed to hold a mini trial at the stage of deciding the discharge application.

Besides this, it was argued that the Investigating Officer of the case erroneously charge-sheeted the revisionists without examining the evidences on record in its correct prospective and have done a perfunctory investigation. There is no parallel between the material collected during the investigation and the charge sheet.

I have carefully gone through the impugned order dated 28.02.2022 passed by learned Trial Judge, Varanasi while rejecting the application 31-Kha under section 227 of Cr.P.C. The relevant paragraphs of the impugned orders are paras 7, 8, 9 and 10.

In para 7 of the impugned judgment, it is culled out that since the deceased was not his legally wedded wife and as such Section 498A IPC would not be attracted. This submission was dealt with by the learned trial Judge.

In para 8 of the order, it is mentioned that revisionist and the deceased were residing as husband and wife and from this "relationship", son Ayush was born, who is two years old now. It is alleged that a sweeping allegation of alleged atrocities were made in the FIR against her in-laws and the date-wise harassment has not been narrated. This aspect of the issue was dealt with by the learned trial Court.

In para 9 of the order, it was argued by the learned counsel that there is nothing on record to show that revisionist at any point of time, abetted or goaded the deceased to take this extreme step as contemplated in Section 107 IPC.

All these issues were raised by the revisionists and learned trial Judge, after considering all these aspects of the issue, has passed an order on 28.02.2022 which is under challenge.

#### **LEGAL ANALYSIS :-**

I have keenly perused the order under challenge and submissions advanced by learned counsel for the revisionists.

Before coming to the legal aspect of the issue, it is imperative to spell out the provision of Section 227 Cr.P.C., which reads thus :-

*"**Section 227.** - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

#### **228. Framing of charge.**

*(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion*

that there is ground for presuming that the accused has committed an offence which-

*(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;*

*(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*

*(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.*

Thus, from the above, it is absolutely clear that the purpose and the object of Section 227/228 Cr.P.C. is to ensure that the Court should be satisfied that the accusation made against the accused are not frivolous and that there is some material for proceedings against him.

It would be hazardous to act on the discrepancies unless they are so fatal and glaring as to affect the credibility of the prosecution case without affording reasonable opportunity to the prosecution to substantiate the allegations.

In the instant case where the deceased herself has lodged the FIR, gave vivid details of the atrocities faced by her from her own husband and his other family members. She states that, both of them got married in Durgakund Temple in the year 2010 and remained as husband and wife, given birth to a baby boy who is now of two years. This was husband's second marriage with the informant with whom she has given birth to a baby boy, now without divorcing her, Sushil Kumar was going to marry third time. The cumulative effect of all these factors lead the poor girl to commit suicide.

Learned counsel for the revisionists has drawn the attention of the Court to the latest judgment of Hon'ble the Apex Court in the case of **Sanjay Kumar Rai VS. State of U.P.** (Criminal Appeal No.472 of 2021) decided on 07.05.2021, whereby, the Court has opined, paragraph no.16 of which is quoted hereinbelow :-

**"Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. [Union of India V. Prafulla Kumar Samal]. Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be.**

Learned A.G.A., per contra, has emphasized on the following citation of Hon'ble the Apex Court, which deserves the attention of the Court while deciding the instant revision :

**(i) *Tarun Jit Tejpal Vs. State of Goa and anr. reported in 2019 SCC Online SC 1053;***

**(ii) *Sajjan Kumar Vs. CBI reported in (2010) 9 SCC 368;***

**(iii) *Kanti Bhadra Shah Vs. State of West Bengal reported in (2000) 1 SCC 722;***

In support of his submissions that factors to be taken into account while deciding the DISCHARGE application.

In the case of Tarun Jit Tejpal (supra) and Sajjan Kumar's (supra), following points were reduced after trashing number of decisions viz :-

In Sajjan Kumar Vs. CBI [Sajjan Kumar V. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 37677, para 21)

***"(i) The Judge while considering the question of framing the charges under section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.***

***(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.***

***(iii) The court cannot act merely as a 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, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.***

***(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***

***(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.***

*(vi) At the stage of sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

*(vii) 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."*

If we read carefully the provisions of Section 227 and 228 of Cr.P.C. in conjointly, it would be clear that at the beginning and the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce and not to be meticulously judged at the stage of discharge.

Now in any weight to be attached to the probable defence of the accused, it is not obligatory for the judge at the stage of trial to consider in any detail and weigh over a sensitive blame whether, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 of Cr.P.C. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the stage, if there is a story suspicion which leads, the Court may well within in his power to frame the charge and put that person for trial.

It would, under such circumstances, not open for the Court to say that there is there is no sufficient ground for proceeding against the accused person.

Thus, thrashing all above principles of law mentioned above, the Court is of the considered opinion, that there shall be more than prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused. The alleged anomalies or inconsistencies during investigation (a third agency) would not be of much relevance at the stage of discharge. The nature of accusation in the FIR and during investigation material collected by the Investigating Officer and its cumulative effect in its nascent form is the material on which discharge has to be decided.

Learned counsel for the revisionists have laid excessive emphasis that there is no material on record which attracts Section 306 IPC against revisionist no.1. It is urged that for prima facie attracting Section 306 IPC, the prosecution has to collect sufficient material which falls within the four corners of Section 107 IPC.

Ostensibly, the arguments advanced seems to be lucrative one, but analysing the same with attending facts of the instant case, it hollowness become apparent.

Thus, to attract Section 306 IPC which prescribes abetment to commit suicide. Abetment to commit suicide is provided under section 107 IPC which reads thus :-

"107. Abetment of a thing.—A person abets the doing of a thing, who

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***(First) — Instigates any person to do that thing; or***

***(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or***

***(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."***

Now, if we test these essentials of basic feature qua the facts in hand, it is clear that deceased during her lifetime has lodged the present FIR against her husband and other in-laws for atrocities. Admittedly, the deceased was his second wife allegedly, married in 2010 and she has got one son with the revisionist. Abruptly, the deceased came to know that her husband is going to marry with third lady Abhilasha on 11.09.2018 in Sarang Nath Temple and had applied for the registration of marriage. This fact, came to the knowledge of deceased on 13.09.2018 for which deceased herself lodged an FIR on 22.9.2018 against Sushil Kumar and his family members for the alleged atrocities upon her.

The Court is of the considered opinion that the FIR for all the practical purposes could be considered as her dying declaration as the deceased herself is the author of the FIR. After lodging of the FIR, she has committed suicide just next day after its lodging.

Admittedly, the deceased comes from rural background from whom her husband as her saviour. No Indian lady is ready to share her husband at any cost. They are literally possessive about their husband. It would be biggest jolt for any married woman that her husband is being shared by some other lady or he is going to marry some other lady. In such awkward situation, it would be impossible to expect any sanity from them. Exactly, same thing happen in this case too, where soon after coming to know that her husband got married in

clandestine way with some other lady, by itself is more than sufficient reason to commit suicide. Sushil Kumar, the husband seems to be the main culprit at least to be tried for the offence under section 306 IPC. It is the deceased herself who lodges the FIR against all the revisionist for committing atrocities upon her, could be tested at the time of the trial and as such, no good ground for discharge.

Learned counsel for the revisionist strenuously pointed out various loop holes in the investigation, time in the FIR, post mortem report and other documents, thereafter urges that if all are lined up, the prosecution case goes haywire. As mentioned above, at the stage of DISCHARGE, the Court are not expected to have roving inquiry about the material collected during investigation or its impact on the trial. The Court is not supposed to hold a mini trial at the stage of deciding the DISCHARGE application.

I have carefully heard the submissions advanced and the Court cannot appreciate these arguments at the stage of discharge on the account that at this juncture, a prima facie satisfaction is required to be recorded. The Court is not required to hold a mini trial at the stage of discharge nor meticulous examination of these alleged loop holes or shortcomings during investigation or its ultimate impact on the success or failure of the trial are required to be appreciated. The learned trial Judge, after reading the order dated 28.02.2022 and judging the same on the parameters laid by Hon'ble the Apex Court, I do not find any shortcomings in it, which requires interference in the revisional jurisdiction of this Court.

This revision is devoid of merit and thus, DISMISSED as such.

The trial Court is hereby directed to frame the charge as early as possible and initiate the trial of the accused persons.

**Order Date :- 7.4.2022**

Sumit S