(2013) 07 DEL CK 0560

In the Delhi High Court

Case No : Criminal Revision Petition 305 of 2013

Aruna Chadha APPELLANT

Vs

State of Delhi RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 227, 228, 397
Evidence Act, 1872 — Section 106, 113A, 27
Information Technology Act, 2000 — Section 66
Penal Code, 1860 (IPC) — Section 107, 109, 120B, 228, 306

Citation : (2013) 3 JCC 1935

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : U.U. Lalit and Ms. Meghna Sankhla, for A-1 and Mr. Kapil Sankhla and Mr. Rajiv Sirohi, for the Appellant; Sidharth Luthra, Addl. Solicitor General, Mr. Mukul Gupta and Mr. Rajesh Mahajan, ASC for the State, Mr. P.K. Dubey, Mr. Aditya Singla Adv ., Mr. Shiv Pande, Mr. Rajat Agnihotri, Advocate, Mr. Nitin Saluja, Ms. Nidhi Makhija, Advocate, Dinesh Kumar, IO, Insp. and Mr. Kunwarjeet Singh, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—This petition under Sections 397 /399 /401 read with Section 482 of the Code of Criminal Procedure (the Code) has been filed by the Petitioner for setting aside of the order dated 10.05.2013 passed by the learned Additional Sessions Judge (ASJ) whereby the charge for various offences was ordered to be framed against the Petitioner Aruna Chadha (AC) and the co-accused Gopal Goyal Kanda (GGK). The deceased ''X'' (name withheld) committed suicide on the night intervening 4-5th August, 2012 at the residence, i.e. Flat No. 4-C, Block No. 1, Pocket B, Ashok Vihar, Phase-III, Delhi. She left two suicide notes purported to be dated 04.08.2012 and 04.05.2012 (two dates may have been put down by mistake) wherein she held the Petitioner and the co-accused responsible for compelling her to take the extreme step to end her life. For the sake of convenience it will be apposite to extract these two suicide notes hereunder:-

1st suicide note

''I''m ending myself today because I''m shattered inside. My trust has been broken and I am being cheated. Two people responsible for my death is Aruna Chadha and Gopal Goyal Kanda. Both of them have broken my trust and misused me for their own benefits. They have ruined my life and now they are trying to sabotage my family members. My family is very innocent. Aruna and Gopal Goyal are liars, cheaters and crook. They can hurt and ruin anyone for their own purpose. I have forgiven them number of times but it was my biggest mistake. Gopal Goyal before also did hurt me and my family but we still forgave him but he again misused our innocence and trust. He is a cheat, and a fraud man. These two should be punished for their wrong deed and malicious intentions towards me and my family. They have made my life abnormal. I love my mom, dad and my bai.

Sd/- (Geetika Sharma)

4.8.2012

2nd suicide note

Gopal Goyal is a fraud. He always keep his bad intentions towards girls. He is a man of no shame and no guilt. He always takes advantage of others. He has illegal relationship with a woman named "Ankita" and a girl child also with her. Still he keep on hitting on girls. He is a shameless and worst man I have ever seen in my life. In the name of relationship, trust, God he cheats people and harasses. He always lies. He lies to his family, kids, people around, everyone. Now this time Aruna is also helping him to hurt me, harass me, sabotage my family. She use to act as my well wisher but eventually she has shown her true colors. For the sake of her job she can stoop down to any level. My biggest mistake was I trusted them, which is now costing my life. I will never ever forgive them. They are the one who have separated me today from my mom, dad and bai. I hate dem, these two.

Sd/- (Geetika Sharma)

4.5.2012

2. The suicide notes led to the registration of the case FIR No. 178/2012 at Police Station Bharat Nagar. During the course of investigation the police inspected the spot and examined various witnesses including Anuradha Sharma X''s mother (now deceased), Dinesh Sharma (her father), Ankit Sharma (her brother) and various employees of MDLR Airlines Private Limited (MDLR) where X was employed since October, 2006. The family members of X informed the investigating officer (IO) regarding various acts committed by the Petitioner and the co-accused GGK in harassing the deceased in various ways and putting pressure upon her.

3. The prosecution collected evidence to show that whenever ''X'' left MDLR she was compelled to rejoin the company. The family of the deceased (Anuradha Sharma (X''s mother) the complainant, now deceased, Dinesh Sharma her father and Ankit Sharma, her brother) informed the IO that ''X'' left MDLR for good and proceeded to Dubai to join Emirates Airlines (Emirates) where she had been selected. She (the deceased) was harassed for issuance of the No Objection Certificate (NOC) needed to join Emirates. After various attempts, she was issued NOCs. The Petitioner and the co-accused got issued a forged NOC dated 22.05.2010 purported to be signed by Mr. Rajeev Prashar, Senior Vice President of MDLR so as to put obstacles in the deceased''s employment with Emirates, by showing the NOC to have been forged by the deceased, if she was successful in joining the same.

4. The prosecution alleges that ''X'' joined Emirates on 29.06.2010. Co-accused GGK started pressurizing the deceased to return to India and to join MDLR. The present Petitioner also helped the co-accused in putting pressure on the deceased to leave Emirates. It is the prosecution case that co-accused GGK visited Dubai twice so as to compel ''X'' to come back. In his second visit, GGK was accompanied by the Petitioner AC. GGK adopted various means to meet ''X'' in spite of her refusal to meet him. The prosecution alleges that since ''X'' did not agree to leave Emirates and return to MDLR, the Petitioner and GGK employed one Chanshivroop Singh (CSS). The present Petitioner and co-accused GGK sent said CSS to Dubai with a complaint to Emirates that the NOC dated 22.05.2010 submitted by ''X'' to Emirates was not genuine. During the investigation, CSS in his statement u/s 164 Cr. P.C. recorded by the Metropolitan Magistrate (MM) informed that the Petitioner AC had given him instructions as to what was to be done by him in Dubai in connection with putting pressure on ''X'' and getting her to leave Emirates. The Petitioner arranged for the visa, tickets and all other documents required for his visit to Dubai. CSS also informed the MM that he used to update Petitioner ''AC'' regarding all developments which took place in Dubai during his visit there.

5. It is the case of the prosecution that co-accused GGK sent an email to CSS along with a copy of the complaint, addressed to the SHO, Police Station City, Gurgaon. CSS gave the copy of the complaint to Mr. Shirish Thorat of Emirates which led to an inquiry being conducted against the deceased. During the course of investigation the police collected the record of inquiry conducted by Emirates. On account of the tactics adopted by co-accused GGK who was assisted by Petitioner ''AC'' Emirates asked ''X'' to resign and leave the company (Emirates) and to obtain fresh NOC.

6. ''X'' resigned from Emirates and returned to India but she did not join MDLR. According to the prosecution co-accused GGK through his employee CSS managed to send a fake email to the deceased from a fake email account created by CSS in the name of Sheikh Basir Al Bhoram, Director, Emirates Group, Dubai which stated that proceedings will be undertaken in Dubai for her extradition. A

fake letter purported to be written to Mr. Sanjeev Verma, Counsel General of India was also attached with the fake email sent to the deceased.

7. On account of the pressure put by co-accused GGK in conspiracy with Petitioner, ''X'' had to rejoin MDLR as Director on 13.01.2011. The prosecution alleges that ''X'' again resigned from MDLR on 22.12.2011 and handed over the charge to Petitioner ''AC'' and one Ms. Khusboo Sharma on 24.12.2011. In spite of her resignation from the company she was repeatedly called to the MDLR''s office.

8. After resigning from MDLR ''X'' joined MBA. It is alleged that the co-accused GGK again pressurized ''X'' to join MDLR and also stated that he will sponsor her MBA programme. The prosecution alleges that the process of admission in the MBA programme was facilitated by the present Petitioner. The Petitioner used to call ''X'' on behalf of co-accused GGK and asked her to attend MDLR''s office daily after her classes.

9. The prosecution alleges that on 03.08.2012 Petitioner ''AC'' called the deceased''s mother and compelled her to send ''X'' to MDLR office for signing some documents. After receiving this call Anuradha Sharma on 04.08.2012 spoke to GGK who also compelled her to send ''X'' to MDLR''s office and if she (''X'') did not come he (GGK) will lodge an FIR against her. It is alleged that GGK made serious allegations against X''s character to her mother.

10. According to the prosecution on X''s complaint a case of theft had been registered against Ankita Singh and Nupur Mehta who were very close to GGK. On 03.08.2012 while ''X'' was at the Mumbai Airport for her flight to Delhi she (''X'') was instructed to speak to an Advocate of MDLR, who had given a message earlier to X''s brother wanting to speak to her, and she was pressurized by him to withdraw the earlier said theft case. On account of her conversation with Mr. Ankit Aluwalia, the Advocate of MDLR, ''X'' became very tense. She missed her flight to Delhi and was able to return to Delhi only on the next day, that is, on 04.08.2012.

11. The prosecution says that when ''X'' arrived at Delhi she noticed a number of calls on her mother''s mobile received from co-accused GGK and Petitioner ''AC'' She insisted to her mother to disclose the details of the conversation. On account of the incident which took place at Mumbai Airport and on account of the receipt of these calls on her mother''s mobile from GGK and AC, ''X'' got very distressed. On the fateful night intervening 4-5th August, 2012 ''X'' spoke to her brother Ankit Sharma at 1:16 A.M. and informed him that she was very disturbed because of GGK and AC''s behaviour.

12. On 05.08.2012 Anuradha Sharma got up at 7:00 A.M. and knocked at the door of X''s room as it was bolted from inside. The door was not opened for a sufficiently long time so Anuradha Sharma and her husband reached the window of X''s room and noticed that ''X'' had hanged herself on the ceiling fan with the help of her Chunni. The complainant and her husband went inside the room

through the window and took ''X'' down. ''X'' was found dead. The complainant informed the police whereupon DD No. 8-A was recorded in Police Station Bharat Nagar. Inspector Dinesh Kumar reached the spot and recorded statement of the complainant Anuradha Sharma. The complainant leveled serious allegations of harassment meted to the deceased at the hands of the co-accused GGK and Petitioner AC. Two suicide notes were recovered from a spiral notebook lying on the left side of X''s bed wherein also ''X'' held the Petitioner and co-accused GGK responsible for her suicide. On the statement of the complainant Inspector Dinesh Kumar, made an endorsement for registration of a case u/s 306 /34 of the Indian Penal Code (IPC).

13. The charge for the offences punishable under Sections 120-B IPC, under Sections 466 /471 /120-B IPC, Sections 468 /469 /120-B IPC and Sections 306 /120-B IPC was ordered to be framed against the Petitioner and co-accused GKK. A further charge for the offence punishable under Sections 376 and 377 IPC was framed against co-accused GGK. The Petitioner was charged for abetment of the offence of rape and carnal intercourse against the order of nature u/s 376 read with Section 109 IPC and u/s 377 read with Section 109 IPC.

14. It may be noted that although the police did not prefer to prosecute the co-accused under Sections 376 and 377 IPC and the Petitioner for abetment of these offences, the learned ASJ referred to the postmortem report which indicated that ''X'' was habituated to vaginal and anal penetration, the learned ASJ took exception to the role of the investigating agency in not carrying out a proper investigation into the aspect of X''s sexual exploitation by co-accused GGK. He referred to and took assistance from the statement of Dr. Vishaka Munjal who had allegedly been approached by the deceased in company of the present Petitioner on 09.03.2012 as she had an early pregnancy which she wanted to abort. The Trial Court also took assistance from the supplementary disclosure statement dated 10.08.2012 purported to be made by the Petitioner wherein she had stated about illicit relationship between co-accused GGK and ''X''. She also disclosed that as a result of said relationship the deceased had multiple pregnancies and she (the deceased) had undergone medical termination of such pregnancies.

15. I have heard Mr. U.U. Lalit, learned senior counsel for the Petitioner, Mr. Siddharth Luthra, learned ASG and Mr. Mukul Gupta, learned senior counsel for the State and have perused the record.

16. Mr. U.U. Lalit, learned senior counsel urges that the learned ASJ erred in framing charges against the Petitioner in as much as prosecution had not collected any material to presume (as envisaged u/s 228 IPC) that the accused, that is the Petitioner herein had committed any offence. Relying on Sajjan Kumar Vs. Central Bureau of Investigation, ; Dilawar Balu Kurane Vs. State of Maharashtra, ; and Union of India (UOI) Vs. Prafulla Kumar Samal and Another, ; the learned senior counsel urges that the material collected by the prosecution simply raised a suspicion against the Petitioner. He contends that it is well settled

that if two views are equally possible, the Sessions Judge is bound to discharge the accused as in the circumstances the charge has to be treated as groundless.

17. The learned senior counsel urges that at the stage of framing of the charge the material collected by the prosecution is not to be meticulously examined nor the Sessions Judge is expected to make any roving inquiry. He is expected to see probative value of the material collected and to apply his judicial mind to find out whether the commission of the offence by the accused is probable.

18. The learned senior counsel argues that although the learned ASJ referred to the earlier stated reports in Sajjan Kumar (supra), Dilawar Balu Kurane (supra) and Prafulla Kumar Samal (supra) but failed to apply the test laid down therein and thus erred in framing the charge against the Petitioner.

19. Elaborating his arguments, Mr. U.U. Lalit urges that the offence with which the Petitioner has been charged can be broadly divided in three categories, that is, (i) the offence of forgery under Sections 468 /469 /471 IPC and Section 66 of the Information Technology Act, 2000 read with Section 120-B IPC, (ii) the offence of abetment to suicide u/s 306 IPC and (iii) the offence of abetment to rape and abetment to carnal intercourse against the order of nature under Sections 376 /109 IPC and 377/109 IPC.

20. Mr. U.U. Lalit contends that the learned ASJ culled out the circumstances (a) to (y) in Para 73 of the impugned order and opined that the circumstances by itself may not be sufficient to impel the deceased to end her life. The learned senior counsel argues that the learned ASJ opined that there was sufficient material to indicate that the deceased was sexually exploited by the co-accused GGK. Although, the Petitioner being a lady cannot commit an offence under Sections 376 /377 IPC but according to the learned ASJ, she (the Petitioner) facilitated and abetted the commission of the offence by the co-accused and thus she was charged u/s 376 /109 IPC and 377/109 IPC. The learned senior counsel contends that once the offence punishable under Sections 376 /109 and 377 /109 IPC are taken out which he would demonstrate, the material collected by the prosecution in the estimation of the learned ASJ fell short of the offence of abetment to suicide.

21. The learned senior counsel urges that the offence relating to forgery is not made out in as much as the deceased herself was aware that the NOC dated 22.05.2011, which she used to get employment in Emirates, was not signed by Mr. Rajeev Prashar. Thus, the prosecution cannot be permitted to contend that the NOC was forged by the co-accused or for that matter the present Petitioner. The learned senior counsel states that the learned ASJ himself opined that the blank affidavits alleged to be recovered from the co-accused have been found to be of no consequence in view of Sheonandan Paswan Vs. State of Bihar and Others, , as the same was not used for any purpose by the co-accused. Thus, the charges for the forgery must fail.

22. Learned senior counsel urges that CSS''s statement u/s 164 Cr. P.C. alleging

various acts of harassment and forgery purported to have been committed by CSS at GGK''s behalf cannot be relied upon by the Court even for framing charges as statement of a witness who is in the nature of an accomplice is not a substantive piece of evidence and can be used only for the purpose of corroboration. In support of his contention, the learned senior counsel places reliance on Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, and Kashmira Singh Vs. State of Madhya Pradesh, .

23. On the other hand, Mr. Siddharth Luthra, learned ASG for the State argues that the learned ASJ was fully justified in framing charges not only under sections 120-B IPC, sections 466/471/120-B IPC, sections 468/469/120-B IPC and sections 306/120-BIPC but also under sections 376/109 IPC and 377/109 IPC in spite of the fact that in the charge sheet the commission of the offence under sections 376/109 and 377/109 IPC was not specifically stated.

24. Relying on a three Judge Bench decision in State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., , another three Judge Bench decision in State of Orissa Vs. Debendra Nath Padhi, , and the latest judgment in State of Madhya Pradesh Vs. Sheetla Sahai and Others, he urges that at the time of framing of the charge as envisaged u/s 228 of the Code, the Sessions Judge is expected to take a tentative view of the matter on the basis of material produced by the prosecution. The learned ASG urges that if on the basis of material on record, the Court could come to the conclusion that commission of the offence is probable consequence, the Court will be justified in framing the charge against the accused. Mr. Sidharth Luthra contends that at the stage of framing of the charge 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, at the initial stage of framing of charge even strong suspicion will be sufficient to frame charge and to proceed further with the trial.

25. Mr. Luthra contends that the learned ASJ ought not to have gone into a detailed discussion while ordering framing of the charge against the petitioner as probity of evidence cannot be judged at the stage of framing of the charge. He argues that it is a matter of satisfaction of the judicial conscience on the basis of the material placed before the court whether there are grounds for presuming that the accused had committed an offence. It is contended that there is sufficient material produced by the prosecution to uphold the charge as framed by the learned ASJ. From the two suicide notes and the evidence collected by the investigating agency it was borne out that the deceased was subjected to consistent course of harassment and mental torture by the Petitioner and co-accused GGK, resulting in her taking the extreme step of ending her life. He urges that the circumstances (a) to (y) as culled out in Para 73 of the impugned order, particularly, circumstances (p), (s), (t), (u), (v), (w), (x) and (y) and the two suicide notes were sufficient to frame the charge u/s 306 IPC de hors the charge of sexual exploitation.

26. Mr. Luthra strenuously urges that the statement of a witness (CSS) in the

nature of an accomplice is admissible in evidence, but the value to be attached to it has to been seen only at the final stage. Reliance is placed on Chandran @ Manichan @ Maniyan Vs. State of Kerala, . CSS in his statement u/s 164 of the Code not only stated about the Petitioner''s and co-accused GGK''s role in causing harassment to deceased but also informed about the acts of forgery committed by him at their behest for the same.

27. It is argued that although there was no direct evidence with regard to commission of offence under Sections 376/377 IPC by co-accused GGK and its abetment by the present Petitioner yet, on the basis of the postmortem report, Dr. Vishaka Munjal''s statement u/s 161 of the Code and the supplementary disclosure statement of the Petitioner, the Court was justified in framing the charge under Sections 376/109 and Sections 377/109 IPC against the Petitioner and putting the burden on the Petitioner to prove the facts, especially those within her knowledge as provided u/s 106 of the Evidence Act.

28. Mr. Sidharth Luthra contends that the investigating agency made all efforts to unearth the truth by eliciting the evidence from all the sources whatever were available, that is, X''s family and her former colleagues in MDLR, yet even if there was any defect in the investigation, the same will not enure for benefit of the accused.

29. The Supreme Court considered the reports in Dilawar Balu Kurane (supra), Prafulla Kumar Samal (supra) and its various other previous decisions in Sajjan Kumar (supra). Paras 17 to 19 of the report in Sajjan Kumar are extracted hereunder:-

17. In Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the scope of Section 227 CrPC was considered. After adverting to various decisions, this Court has enumerated the following principles:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

18. In Dilawar Balu Kurane Vs. State of Maharashtra, , the principles enunciated in Prafulla Kumar Samal have been reiterated and it was held:

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers u/s 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction u/s 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India (UOI) Vs. Prafulla Kumar Samal and Another,).

***

14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.

19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt

of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

30. In Som Nath Thapa (supra) relied upon by the learned ASG for the State a three Judge Bench of the Supreme Court referred to a Constitution Bench decision in R.S. Nayak Vs. A.R. Antulay and Another, and examined the meaning of the word ''presume'' in Black''s Law Dictionary, etc. and opined that if on the basis of material on record the court thinks that the commission of offence by the accused is a probable consequence it can frame the charge though for conviction the conclusion is required to be that the accused has actually committed the offence. Paras 30 to 32 of the report reads as under:-

30. In Antulay case Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word ''presume''. In Black''s Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law ''presume'' means "to take as proved until evidence to the contrary is forthcoming", Stroud''s Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

31. In Praveen Pradhan (supra) relied upon by the learned ASG after referring to the various earlier decisions in Chitresh Kumar Chopra (supra); and Ramesh

Kumar (supra) it was opined that a tentative view would evoke the presumption referred to u/s 228 of the Code.

32. Thus, on the basis of the judgments relied upon by the parties and noting the language used in Sections 227 and 228 of the Code it can very well be stated that if on the basis of material placed before the Court the commission of offence appears to be probable, the Court shall be duty bound to frame the charge against the accused. To put it differently, if two views are possible and there is strong suspicion against the accused again the Court would be justified in framing the charge. As against this, if there is only a mere suspicion and two views are possible, the Court on the basis of mere suspicion should not proceed to frame the charge against an accused and should in the circumstances discharge him without making him undergo the ordeal of the trial.

OFFENCE UNDER SECTIONS 376/109 & SECTIONS 377/109 IPC

33. It is frankly conceded by the learned ASG that there is no direct evidence of commission of rape or unnatural offence by co-accused GGK or its abetment by the Petitioner. The learned ASG challenges the observation of the trial court whereby the learned ASJ observed that the investigation carried out by the investigating agency was tainted or that the investigating agency intentionally did not go into the aspect of sexual exploitation of the deceased by the accused persons. It is argued that the investigating agency in its quest for truth examined various employees of MDLR as also the family members of the deceased ''X'' yet no direct evidence with regard to the sexual exploitation was available. He states that in this case no direct evidence was possible, except the disclosure of any incident relating to the offence by the deceased to any co-employee or to the family members. But none of the witnesses examined during investigation came forward with any such disclosure. Albeit, the learned ASG urges that in view of the statement u/s 161 of the Code of Dr. Vishaka Munjal, the postmortem report and the supplementary disclosure statement of the Petitioner dated 10.08.2012 recorded by the IO it can be inferred that deceased ''X'' was being subjected to sexual exploitation and thus, the Trial Court was justified in framing the charge under Sections 376/109 and 377/109 IPC.

34. On the other hand, Mr. U.U. Lalit learned senior counsel urges that even if the material collected by the prosecution and as relied upon by the learned ASJ is taken on its face value still it cannot be inferred that any offence under Sections 376/377 IPC was committed by co-accused GGK and thus there could not be any question of abetment of these offences by the present Petitioner. In her statement u/s 161 of the Code Dr. Vishaka Munjal informed the IO that deceased ''X'' visited her clinic with Petitioner ''AC'' on 09.03.2012, ''X'' informed her about her early pregnancy and that she wanted to get it terminated by pills as she was unmarried. In her statement, Dr. Vishaka Munjal informed the IO that she gave abortion pills to the deceased with which she (the deceased) aborted successfully. According to Dr. Vishaka Munjal deceased ''X'' visited her again alone on 14.05.2012 for a routine check-up. She last visited her alone on

19.06.2012 for a routine check-up.

35. Relying on the statement of Dr. Vishaka Munjal, the learned senior counsel argues that through Dr. Vishaka Munjal''s statement what can be inferred is that the Petitioner simply accompanied the deceased to her own (AC''s) gynecologist as a help to her. On the next two subsequent visits the deceased visited the doctor alone (without AC''s company) and thus there was nothing to indicate from Dr. Vishaka Munjal''s statement that she (the Petitioner) had abetted the commission of any offence under Sections 376 and Section 377 IPC.

36. Referring to the observations in the post mortem report, e.g.,

Vaginal Orifice: Remnants of hymen present as tags of epithelialisation at the rim of vaginal orifice, signs of old hymen rupture with healing. Recent mucosal excoriations with reddened base in an area of 0.3 cm x 0.4 cm were present at the vaginal introitus....

Anal orifice: ...The anal orifice appears dilated and patulous with keratinisation of the mucosal wall beyond the anal verge. A healing mucosal tear sized about 0.6 cm x 0.4 cm with areas showing grayish white fibrosis admixed with area of reddening were present at the posterior part of anal orifice....

The findings suggest that the deceased was habituated to vaginal and anal penetration.

the learned senior counsel contends that it nowhere points out the role of the co-accused GGK in the commission of these offences or its abetment by the Petitioner.

37. Referring to the early pregnancy (of five weeks) noticed on 09.03.2012 by Dr. Vishaka Munjal, the learned senior counsel urges that admittedly the deceased was not in GGK''s employment since December 2011 till May, 2012. Thus, the pregnancy if any, on 09.03.2012, could not have been on account of any illicit sexual intercourse by GGK or its abetment by the Petitioner.

38. Relying on the Privy Council decision in (1948) ILR 1 (Privy Council) the learned senior counsel urges that the disclosure statement made by the Petitioner was totally inadmissible and cannot be looked into at all for any purpose being a statement made to the police, as u/s 27 of Evidence Act only that portion of the confessional statement is admissible which relates to any fact discovered in consequences of the information received from a person accused of any offence. Since there was no discovery of any fact, the learned senior counsel argues that the ASJ erred in taking aid of the disclosure statement.

39. Apart from the supplementary disclosure statement of the Petitioner ''AC'' there is nothing to indicate that co-accused GGK had illicit relations with ''X'' or that she had multiple pregnancies. In the absence of discovery of any fact in pursuance of the disclosure statement, the same is clearly inadmissible in evidence and has to be kept out of consideration. The statement of Dr. Vishaka

Munjal nowhere leads to the conclusion that the pregnancy carried by the deceased was due to any illicit relationship with co-accused GGK particularly when she was not even in employment of MDLR during the period of expected pregnancy. All the more, there is not even a shred of evidence to indicate that co-accused GGK committed sexual intercourse with deceased ''X'' or had carnal intercourse against the order of nature with her or that the same was against her (the deceased) will or without her consent or that the Petitioner facilitated in any act of rape or unnatural offence alleged to have been committed by GGK. Similarly, what could only be inferred from the postmortem report was that the deceased was habituated to vaginal and anal penetration, but there was nothing to indicate that it was co-accused GGK who was responsible for the same and that the Petitioner had abetted the alleged vaginal and anal penetration against the deceased''s will and without her consent. It is apparent that the learned ASJ unjustly admitted into evidence the confessional statement made by the Petitioner and illegally put the burden to prove the same on the co-accused and the Petitioner which is not permissible. The learned ASJ fell into gross error in framing the charge under Sections 376/377 against the co-accused GGK which cannot be sustained. Since no charge against co-accused under these Sections could have been framed, the Petitioner could not have been guilty of abetting these offences.

OFFENCE OF FORGERY

40. There is no dispute about the proposition of law which is well settled and as laid down in Kashmira Singh (supra) and Hari Charan Kurmi Jogia Hajam (supra) that confession of co-accused can be used only as a corroborative evidence. But, at the time of framing of the charge, the court is not go into the probative value of the evidence adduced. Once the evidence of a witness who is in the nature of an accomplice is considered admissible in evidence, the Trial Court was justified in relying on the same. CSS in his statement u/s 164 of the Code gave a detailed account of creating a fake email account and sending a fake email to the deceased at the behest of the Petitioner and the co-accused. The prosecution collected evidence with regard to forgery of the NOC dated 22.05.2010 purported to be signed by Mr. Rajeev Prashar (employee of MDLR) in order to use the same to put pressure on the deceased. Although, Mr. U.U. Lalit referred to the statement of the deceased purported to have been given by her in the enquiry conducted by Emirates yet this will be in the realm of considering the probative value of the respective statements which cannot be done at the stage of framing of the charge. Thus, statement of Mr. Rajeev Prashar to the effect that the NOC dated 22.05.2010 was not signed by him and the prosecution case that this certificate was given with the forged signature of Mr. Rajeev Prashar at the behest of the accused in order to put pressure on the deceased in case he needs to recall her back from Dubai, cannot be brushed aside. The Trial Court was, therefore, justified in framing the charge for the offences punishable under Sections 468/469/471 IPC and Section 66 of the Information Technology Act, 2000 read with Section 120-B IPC.

ABETMENT TO SUICIDE

41. I have already observed above and the law is well settled that even where two views are possible and there is strong suspicion against the accused the Court will be justified in framing the charge against an accused.

42. I have gone through the circumstances (a) to (y) culled out in Para 73 of the impugned order, particularly circumstances (p), (s), (t), (u), (v), (w), (x) and (y).

43. It is urged by the learned senior counsel for the petitioner that the present Petitioner was not in MDLR''s employment for the period from 30.08.2008 to 09.07.2010. Thus, the acts allegedly done by the co-accused GGK cannot be said to have been abetted by the present Petitioner. The learned senior counsel urges that since the suicide in the instant case is not by a married woman and the husband of such woman or any relative of her husband is not an accused the presumption envisaged u/s 113-A of the Evidence Act is not attracted. The learned senior counsel urges that the acts attributed to the Petitioner by no stretch of imagination can be said to have instigated, urged or goaded the deceased to take the extreme step of taking her own life. There is no live link or proximity in the acts attributed to the Petitioner and the deceased''s death and thus the Petitioner cannot be said to have abetted the suicide allegedly committed by the deceased. In support of his contention, the learned senior counsel relies on the report of the Supreme Court in Madan Mohan Singh Vs. State of Gujarat and Another, , particularly Paras 12 and 13 which are extracted hereunder:-

12. In order to bring out an offence u/s 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence u/s 306 IPC. We are of the clear opinion that there is no question of there being any material for offence u/s 306 IPC either in the FIR or in the so-called suicide note.

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution u/s 306 IPC, much more material is required. The courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and material of definite nature (not imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai

Dutta Vs. State of West Bengal, , this Court had quashed the proceedings initiated against the accused.

44. On the other hand, Mr. Sidharth Luthra learned ASG contends that the two suicide notes coupled with the circumstances culled out by the learned ASJ in the impugned order sufficiently establish that the deceased was being consistently harassed by the Petitioner and the co-accused making the deceased''s life so miserable that she was left with no choice except to commit suicide. The Petitioner and the co-accused GGK would be prima facie liable for the same and thus, the impugned order so far as it orders framing of the charge u/s 306 IPC has to be sustained. The learned ASG referred to a recent judgment of the Supreme Court in Amit Kapoor Vs. Ramesh Chander and Another, , in which the report of Chitresh Kumar Chopra (supra) was considered, and also Praveen Pradhan (supra).

45. In Madan Mohan Singh (supra) one Deepakbhai Krishnalal Joshi was serving as a driver in the Microwave Project Department of Ahmedabad Bharat Sanchar Nigam Ltd. He had undergone a bypass heart surgery in the year 2002 and he was asked by the doctor to avoid lifting heavy weights. Said Deepakbhai Krishnalal Joshi was working as a driver of a Tata Sumo car provided to the Petitioner Madan Mohan Singh who was working as DET in the project. Deceased Deepakbhai Krishnalal Joshi committed suicide and her widow Harshida Ben raised an accusing finger towards the Petitioner. She had informed the IO that even after Madan Mohan Singh was transferred out of the project he (Madan Mohan Singh) went on continuously using the services of her husband. She stated that in the year 2007 said Madan Mohan Singh came back to Microwave Project as DET and had got angry with the deceased on the matter of not keeping the keys of the vehicle on the table. She further stated that said Madan Mohan Singh had allegedly threatened her husband of suspending him. He had also rebuked her husband that if he did not listen to him, he would create difficulties for him. Deceased Deepakbhai Krishnalal Joshi left for his duty on 21.02.2008 not to return back in the evening. His absence was reported to the police on 22.02.2008 and 23.02.2008. Ultimately, Harshida Ben came to know that her husband''s dead body was lying in vehicle No. GJ 1G 3472 at Kiran Park. It was in these circumstances that the Supreme Court observed that there was no intention on the part of accused to aid or to instigate or to abet the deceased to commit suicide. Para 13 of the report is extracted hereunder:-

13. It is absurd to even think that a superior officer like the appellant would intend to bring about suicide of his driver and, therefore, abet the offence. In fact, there is no nexus between the so-called suicide (if at all it is one for which also there is no material on record) and any of the alleged acts on the part of the appellant. There is no proximity either. In the prosecution u/s 306 IPC, much more material is required. The courts have to be extremely careful as the main person is not available for cross-examination by the appellant-accused. Unless, therefore, there is specific allegation and material of definite nature (not

imaginary or inferential one), it would be hazardous to ask the appellant-accused to face the trial. A criminal trial is not exactly a pleasant experience. The person like the appellant in the present case who is serving in a responsible post would certainly suffer great prejudice, were he to face prosecution on absurd allegations of irrelevant nature. In the similar circumstances, as reported in Netai Dutta Vs. State of West Bengal, , this Court had quashed the proceedings initiated against the accused.

46. In the instant case, in the two suicide notes the deceased clearly held the Petitioner and co-accused GGK responsible for her death. She wrote down that both of them had ruined her life and were now trying to sabotage his family. In the suicide note ''X'' stated that her family is innocent and the Petitioner and the co-accused are liars and crooks. The deceased further added that co-accused GGK is a fraud, he cheats and harasses people in the name of relationship and trust. She had also stated that Petitioner ''AC'' is also helping him to hurt her and that she could stoop very low for the sake of her job. It is not only these two suicide notes but there is consistent course of harassment by the co-accused and Petitioner as stated in the various circumstances (a) to (y) narrated by the learned ASJ in his impugned order, including the visits made by Petitioner and co-accused to Dubai to pressurize her to quit her job with Emirates and to return to India to join MDLR; the Petitioner and co-accused used CSS to create false documents and used these to pressurize her to leave the job with Emirates; forcing her to resign from her job in Emirates by creating fake documents; they pressurized the deceased through Ankit Ahluwalia (Advocate of MDLR) on 03.08.2012 to withdraw the theft case against Ankita Singh and Nupur Mehta (who were close associates of GGK); the Petitioner had a telephonic conversation with ''X''s'' mother on 03.08.2012 so as to compel ''X'' to come to the office of MDLR to sign some documents; the Petitioner in her telephonic conversation with ''X''s'' mother also leveled allegations against deceased''s character; and the telephonic conversation between GGK and ''X'' on 04.08.2012 where he again leveled allegations against her character and supported what had been said by the Petitioner to X''s mother. The fact that the Petitioner was not in employment of the co-accused for some time is not relevant as there is immigration record to show that even during that period the Petitioner and co-accused GGK travelled abroad together.

47. This evidence, in view of the judgment of the Supreme Court in Amit Kapoor (supra), Praveen Pradhan (supra) and Chitresh Kumar Chopra (supra) was sufficient to form an opinion at this stage that the Petitioner abetted the commission of suicide by the deceased. A charge for the offence punishable u/s 306 IPC was, therefore, made out against the Petitioner even without the allegations of abetment of rape or sexual exploitation.

48. The circumstances relied upon by the prosecution and the evidence collected also show conspiracy to commit these offences by the accused persons.

49. In view of the foregoing discussion, the petition is partly allowed to the

extent that the framing of the charge for the offence punishable u/s 376/109 and Section 377/109 IPC is set aside. The Petition is allowed in above terms. The Trial Court record be returned back through special messenger along with a copy of the order.