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

+ CRL.REV.P. 74/2010

STATE

..... Petitioner

Through: Mr. Arvind Kr. Gupta, APP.

versus

NEETU

..... Respondent

Through: Mr. K.S. Singh and Mr. Madhur
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **30.09.2010**

Crl. M.A. No.1560/2010 (for delay)

1 There is a delay of 72 days in filing of the present petition by the State against the order of discharge dated 25th August, 2009. It is pointed out that the delay has occasioned as due to personal reasons the Additional Public Prosecutor could not process the file in his office and file the revision petition. For the reasons stated in the application, the application is allowed and the delay is condoned.

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2 This revision petition is directed against the order dated 25th August, 2009 discharging the respondent Ms. Neetu holding inter alia that no case is made out against her and as no specific role is assigned or attributed by her.

3 The State had filed charge sheet in FIR No.136/2009 Police Station Gokalpuri under Section 306/498-A/34 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC).

4 The law as to when charge should be framed has been lucidly laid

down by the Supreme Court in *Union of India Vs. Prafulla Kumar Samai and Another*, 1979 (3) SCC 4, the relevant portion of which reads as under :-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 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 under Section 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.”

5 The Supreme Court in a number of judgments has held that if material and evidence collected by the prosecution shows presumptive opinion as to existence of factual ingredients constituting an alleged offence it would be appropriate to frame charge. At this stage the learned trial court does not appreciate and examine evidence as at the stage of final judgment.

6 It may be noticed as per the prosecution case that the deceased Komal had committed suicide on 17th April, 2009 at about 8.35 PM at night. Ms. Sushma, mother of deceased has stated that she came to know about her death only when she received a telephonic call from the Police Station at about 9.00 a.m. on 18th April, 2009. Learned APP has drawn my attention to the statement of Ms. Sushma, mother of deceased Komal recorded on 18th April, 2009 by the S.D.M. In her statement she has specifically named Neetu as one of the persons who used to constantly trouble Komal and treat her with cruelty. She has stated that the respondent Neetu used to call upon Komal for getting more dowry in form of money. The name of Neetu has been again mentioned by Ms. Sushma in a subsequent statement dated 2nd May, 2009. However, in this statement Ms. Sushma has specifically named Rajeev, husband of Komal and Leela mother-in-law of Komal with the demand of dowry. My attention has also been drawn to the statement of Kishan Chand, father of the deceased Komal, Sudhir and Sonu, both brothers of deceased Komal. In their statements name of Neetu and the allegation that she used to treat deceased Komal with cruelty is mentioned. It is also noted that the deceased Komal was residing in the same premises with respondent Neetu, her husband and mother-in-law.

7 In these circumstances, I think the learned trial court has erred of not framing charge under Section 498-A IPC against the respondent, Neetu. Accordingly, the impugned order dated 25th August, 2009 discharging the Neetu under Section 498-A IPC is set aside. The respondent Neetu will appear before the learned trial court on 5th October, 2010, when charge will be framed against her under Section 498-A IPC.

8 The respondent Neetu was granted regular bail before she was discharged. The respondent Neetu will furnish fresh bail bond or re-validate the earlier bail bond.

9 It is clarified that observations made in this order are for the purpose of disposal of the present petition and will not be construed as observations on merit binding on the trial court. Nothing said in this order will prevent the trial court from modifying the charge under Section 216 Criminal Procedure Code.

Petition is disposed of.

SANJIV KHANNA, J.

SEPTEMBER 30, 2010
J