

**IN THE COURT OF SHRI PAWAN KUMAR MATTO,
ADDITIONAL SESSIONS JUDGE (SPECIAL JUDGE NDPS),
NORTH EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

**SC NO. 357/2022
STATE Vs. PRADEEP AND OTHERS
FIR NO. 303 /2022
PS KARAWAL NAGAR
U/sec.304-B/498-A/34 of IPC**

24.02.2023

**ORDER ON THE APPLICATION UNDER SECTION 173(8)
Cr.P.C FILED BY THE COMPLAINANT SH. ARUN
KUMAR FOR SEEKING DIRECTION TO FURTHER
INVESTIGATE THE MATTER.**

1. This order of mine will dispose of the application under Section 173(8) of Cr.P.C filed by complainant Sh. Arun Kumar for seeking direction to further investigate the matter.
2. Briefly stating that the chargesheet has been filed under section 304-B/498-A read with section 34 of IPC. When the matter was fixed for consideration on charge and for filing report of FSL regarding nail clipping, learned counsel for the complainant has filed the present application under Section 173(8) of Cr.P.C for seeking direction to further investigate the matter.
3. Notices of the said application were issued to the Investigating Officer and all the accused. Copies thereof were also supplied to the counsel for the accused and Ld. APP for the State. All the accused did not file any reply to this application and Investigating Officer has filed the status report.

4. I have heard Sh. Sukhbeer Singh, learned Additional Public Prosecutor for the state, Sh. Narvir Dabas, learned counsel for all the accused and Sh. Firoz Khan, learned counsel for the complainant.

5. Sh. Firoz Khan, learned counsel for the complainant has submitted that in the case in hand, chargesheet has been filed under section 304-B/498-A read with section 34 of IPC, but, during the investigation the Investigating Officer did not record the statements of uncle and Aunt, namely, Sh. Sanjeev (Chacha) and Smt. Reena (Chachi) of the deceased Beauty and submitted that deceased used to make frequent talks with her said Chacha and Chachi and used to tell them that how the accused persons were harassing her and submitted that during the investigation Sh. Sanjeev (Chacha) and Smt. Reena (Chachi) met to the previous Investigating Officer of the present case, but, he did not record their statements and submitted that since Sh. Sanjeev (Chacha) and Smt. Reena (Chachi) are the material witnesses and their testimonies are essential for proper adjudication of the present case. He has further submitted that even the broken LED and broken bangles of the deceased were also visible in the photographs filed with the chargesheet, which shows the marks of violence in the house of the accused prior to the murder of the deceased Beauty and submitted that accused have claimed that the deceased had committed suicide by way of hanging herself with a handle of an Almirah in the said room and submitted that handle of the said Almirah is not broken and the said handle of Almira is fixed at the height of 140 cm, from the ground,

whereas, the height of the deceased was about 155 cm, so, it was not possible for the deceased to hang herself with the handle of Almirah, which was fixed at the height of 140 cm and submitted that it is the case of murder and accused had tried to give it colour of case of suicidal death and submitted that further investigation of the present case, may be ordered to obtain subsequent opinion of an Expert that whether the deceased could hang herself with the handle of Almirah, which was fixed at the height of 140 cm from the ground and submitted that statements of Sh. Sanjeev (Chacha) and Smt. Reena (Chachi) may also be ordered to be recorded by the Investigating Officer.

6. Sh. Sukhbeer Singh, learned Additional Public Prosecutor for the state has also supported the submissions made by the learned counsel for the complainant and submitted that since the LED in the said house of the accused was found to be broken and broken bangles were seen in the same room of the house of the accused, wherein the deceased was allegedly found dead, from which, it may be inferred that some violence was done and further submitted that further investigation is required on the points, which are argued by learned counsel for the complainant.

7. Sh. Narvir Dabas, learned counsels for all the accused has submitted that prior to the committal of the present case, the complainant did not file any such application in the court of learned Metropolitan Magistrate for further investigation and further submitted that this is the case of suicidal death and submitted that since the deceased had suspected that her husband/accused Pradeep was having illicit relation with some

girl,so, she had committed suicide and submitted that IO had mentioned the names of 31 witnesses in the list of witnesses of the prosecution and submitted that postmortem report also reveals that cause of death of deceased is 'Asphyxia' as a result of antemortem hanging and submitted that, the deceased could commit suicide by way of standing at her knees with the handle of the said Almirah and if the complainant has apprehension that investigation is not properly done, the complainant is having remedy to file a complaint and to lead evidence and to get it clubbed with the present file, but, the complainant has not availed the said remedy and he has further submitted that this application is not maintainable and no ground is made out for further investigation of the present case U/s 173(8) of Cr.P.C and prayed for dismissal of the present application under consideration.

8. I have given thoughtful consideration to the submission made by Sh. Sukhbeer Singh, learned Additional Public Prosecutor for the state, Sh. Narvir Dabas, learned counsels for all the accused and Sh. Firoz Khan, learned counsel for the complainant and perused the record.

9. The perusal of the record reveals that in the case in hand, the chargesheet has been filed under section 304-B/498-A read with section 34 of IPC and when the matter was fixed for consideration on charge and also for filing the report of FSL regarding the nail clippings of the deceased. The learned counsel for the complainant has filed the present application U/s. 173(8) of Cr.P.C for seeking direction for further investigation.

10. The perusal of the record also reveals that the

complainant had earlier filed a Writ Petition in the Hon'ble High Court of Delhi bearing W.P.(CRL) 2748/2022 & CRL. M.A. 23857/2022 under Article 226 of the Constitution of India r/w Sec. 482 of Cr.P.C. for seeking direction to re-investigate the case registered, vide, FIR No. 303/2022, under section 304-B/498-A/34 of IPC, but, on dated 23.12.2022, the said petition was disposed of with liberty to file an application under section 173(8) of Cr.P.C. for further investigation in this court coupled with the prayer to change the Investigating Officer, thereafter, the present application was filed in the this court on dated 31.01.2023.

11. Since, the perusal of the record further reveals that in the case in hand, the chargesheet has been filed under section 304-B/498-A read with section 34 of IPC. The claimant claims that it is case of murder of the deceased, but, the accused claim that this is the case of suicidal death. The counsel for the complainant has submitted that this is a case of homicidal death and accused have tried to set up a case of suicidal death. As the counsel for the complainant has submitted that deceased used to make frequent talks with her Chacha Sanjeev and Chachi Reena and during the investigation, they met to the previous Investigating Officer, but, said Investigating Officer did not record their statements and submitted that marks of violence are also visible on the body of the deceased as ligature mark and blood is also seen on the hand of the deceased and broken LED and broken bangles of the deceased are also visible in the photographs and submitted that since the height of the handle of the Almirah, with which the deceased is alleged to have hanged

herself is fixed on the height of 140 cm and the height of the deceased is stated to be about 155 cm in the postmortem report, so in the given circumstances, the complainant claims that it was not probable for the deceased to hang herself with the handle of Almirah, which was fixed at the height of 140 cm.

12. The learned counsel for the complainant has also submitted that at the time of postmortem report, the weight of the deceased could be done, as weighing machine in the hospital was not in working order and the deceased was a healthy lady and it was not probable for her to hang herself with the handle of Almirah, which was fixed at the height of 140 cm and since the injury on the neck and blood is also seen on the hand of the deceased in photographs and Investigating Officer Inspector Rahul was present in the court at the time of arguments on this application, who had submitted that earlier investigation was done by some one else, but, he has filed the chargesheet and he has also told to the court that if the complainant desires for recording statements of Chacha and Chachi of the deceased, he is ready to record the same. Investigating Officer Inspector Rahul has also submitted that he is ready to take subsequent opinion of an Expert regarding possibility of hanging by the deceased with the handle of Almirah fixed at the height of 140 cm, as the height of deceased was about 155 cm.

13. Since, the complainant has sought further investigation on these two points, and perusal of order dated 23.12.2022 passed by their Lordship of High Court of Delhi in Writ Petition in W.P.(CRL) 2748/2022 & CRL. M.A. 23857/2022

reveals that the complainant was granted liberty to file the present application U/sec. 173(8) of Cr.P.C. in this court and to make prayer for change of Investigating Officer, but, at the time of argument on this application, learned counsel for the complainant has submitted that he has no objection, if the further investigation is carried out by Inspector Rahul and no such prayer has been made in this application U/sec. 173(8) of Cr.P.C. No doubt, that learned counsel for the accused has vehemently opposed this application on the ground that no such application was moved by the complainant in the court of learned Metropolitan Magistrate before committal of the present case and submitted that this application is not maintainable, but, as the complainant had filed a Writ Petition in Hon'ble High Court of Delhi and in the said petition, the Hon'ble High Court of Delhi was pleased to grant liberty to the complainant to file such application in this court. So, this court does not find any force in such submission of the learned counsel for the accused.

14. In view of the above discussions, the **Investigating Officer is directed to record the statements of of uncle Sh. Sanjeev(Chacha) and Aunt Smt. Reena (Chachi) of the deceased Beauty and to obtain subsequent opinion of an Expert about the possibility of hanging of deceased with the alleged handle of the Almirah** and to file the supplementary chargesheet expeditiously, so that the trial may not be delayed, as the accused Pradeep is behind bars for a considerable period.

15. In the above terms, application under Section 173(8) of Cr.P.C filed by complainant Sh. Arun Kumar for seeking

direction to further investigate the matter stands disposed of.

16. Attested copy of this order be sent to the concerned SHO for compliance.

(PAWAN KUMAR MATTO)
Addl. Sessions Judge [Special Judge (NDPS)]
North-East District, Karkardooma Courts, Delhi
24.02.2023