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SLP(Crl.)No. 4325 OF 2000

ITEM No.4

Court No. 5

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 4325/2000

(From the judgement and order dated 25/07/2000 in CRLR 410/99
of The HIGH COURT OF DELHI AT N. DELHI)

GOVT. OF N.C.T. DELHI

Petitioner (s)

VERSUS

NAGESH TYAGI

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for staytaking additional document on record)
(For Final Disposal)

Date : 17/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s) Mr. BA Mohanti, Sr.Adv.
Ms. Mamata Tripathi, Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent (s) Mr. PS Misra, Sr.Adv.
Mr. Maninder Singh,Adv.
Mr. Ankur Talwar, Adv.
Mr. Vishnu Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.
Appeal disposed of.

.SP1

Hemalatha

(HK Bhatia)
Court Master

(signed order is placed on file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.503 OF 2001@@
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(Arising from SLP(Crl) No.4325 of 2000)

GOVT. OF N.C.T.DELHI

... APPELLANTS

VS.

NAGESH TYAGI

... RESPONDENT

O R D E R@@
CCCCCCCC

.PL55
.SP2

Leave granted.

Anupama, wife of the respondent, committed suicide on 24.12.1997. On a complaint lodged by her father an FIR was registered and subsequently a case was charge-sheeted against the respondent for offences under Section 498-A and 306 of the Indian Penal Code. The Sessions Court framed a charge after hearing both sides as required under Section 227 of the Code of Criminal Procedure. The charge contained the aforesaid offences. At the said stage respondent moved the High Court for quashing the said charge. By the impugned order learned single judge of the High Court quashed the charge.

It is contended on behalf of the appellant State that quashing the charge at this stage was uncalled for and that the High Court went wrong in reading the suicide note with a particular interpretation at a too premature stage. At any rate it was contended that the sifting of evidence at this stage was not permitted by law.

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Mr. PS Misra, learned senior counsel contended that the impugned order was passed by the High Court after reading the suicide note in a comprehensive manner and the only inference which can be drawn from such a reading is that respondent is in no way responsible for the suicide committed by the deceased wife.

The main reasoning which apparently persuaded the learned single judge in adopting the course of quashing the charge is the following:-

.....L.....I.....T.....T.....T.....J
.SP1

"Admittedly Anupama and Nagesh were living separately from Anupama's in-laws. The suicide note shows constant disputes and differences on trivial issues. Her main grievance against the petitioner was that he did not help her in day to day household work and she was finding it difficult to cope with the work along with her job. A comprehensive reading of FIR and suicide note does not lead to the conclusion that the petitioner is guilty of cruelty to an extent which would drive Anupama to commit suicide. Normal trivial household differences and disputes cannot always be brought within the meaning of Section 498-A."

.SP2
.....L.....I.....T.....T.....T.....T.....T.....J

A copy of the suicide note left behind by the deceased is produced for our perusal. The same was in Hindi but the English rendering of that is also supplied. Shorn of the details of the note, we may extract some

portions of it which can have bearing on the question to be considered by the trial court. Those portions read thus:-

.....L.....I.....T.....T.....T.....J
.SP1

"Nagesh,

It had happened many times that you gave me beatings but all the time I cannot bear the beatings. Despite your so many promises that you will not beat me but I know that you would beat me again. Till you will not help me in the house hold work till then the affray will continue. You are not born in king's house so that after the meal I may carry utensils to the kitchen. If you do not get water with meals it does not mean that you took quarrel with me. If i do not pack your lunch box ten you will threaten me that you would not carry the lunch box if i do not pack it. If I tell you to cut the vegetables, I have to give it in the bed. Give me knife, give me plate, give me newspaper, then I have to collect all these things and even then you use to say that you have done this work.

xxxxxxx

After thinking whole night I have come to the conclusion that neither I can live separately nor I can change you or I can change myself. I cannot bear the taunts of my parents and if I say anything regarding your parents then I have to bear your beatings. That is why I have decided that I should not live anymore, perhaps all this will end with my life."

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Mr. PS Misra, learned senior counsel submitted that the English rendering on the first sentence of the suicide note can also be read as this:-

L.....L.....I.....T.....T.....T.....J
.SP1

"It had happened many times that

you gave me beatings but I will not take further beatings."

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

We do not want to enter into an exercise as to which of the two different renderings would be more authentic or appropriate. The original of the suicide note would be available for the court to read and understand what it contained.

We are at the question of examining whether a pre-trial discharge is warranted in this case. After the introduction of Section 113A in the Evidence Act permission is given to the Court to draw a presumption that such suicide had been abetted by her husband in certain conditions. One of the conditions is that the suicide should have been committed by the wife within a period of seven years from the date of her marriage. The other condition is that it should be shown that the wife was subjected to cruelty. If these conditions are available then "having regard to all other circumstances of the case" the court is given the discretion to presume that such suicide had been abetted by her husband.

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We agree with the contention of the learned counsel for the appellant that it is too premature a stage for the court to sift the evidence to separate chaff from the corn. For coming to the definite conclusion that the suicide note is not enough for enabling the court to draw the said presumption, the case should have been allowed to go to the trial. If the trial court opts to draw the presumption the accused must have the right to rebut the presumption. At this stage we do not say that it is obligatory on the part of the trial court to draw the presumption as Section 113-A of the Evidence Act deals with only factual or discretionary presumption as against the compulsory presumption contemplated in Section 113-B of the Evidence Act. Be that as it may, the stage has not reached for the court to reach a final decision with or without the help of presumptions.

Hence we upset the impugned order and direct the trial court to proceed with the trial. None of the observations made in this judgment or in the impugned judgment shall have any influence on the trial court

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while reaching the final decision in the matter. We also make it clear that respondent was already released on bail and hence he would continue to be on the same bail till the disposal of the case by the trial court. The bail bond executed by him already will hereby revive.

Appeal is disposed of.

.SP1

.....J
(K.T. Thomas)

New Delhi
17 April, 2001

.....J
(R.P. Sethi)