

Neutral Citation No. - 2025:AHC-LKO:4671

**Court No. - 12**

**Case :-** APPLICATION U/S 482 No. - 562 of 2025

**Applicant :-** Shashi Kant Bajpai

**Opposite Party :-** State Of U.P. Thru. Its Home Secy. Lko. And  
Another

**Counsel for Applicant :-** Prabhat Kumar

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

**Hon'ble Saurabh Lavania,J.**

1. Heard Sri Prabhat Kumar, learned counsel for the applicant, learned State counsel for the opposite party and perused the record.

2. Present application has been filed for the following main reliefs:-

*"Wherefore, it is respectfully prayed that this Hon'ble Court may kindly be pleased to set-aside order dated 10.12.2024 passed by Additional District and Sessions Judge Court No.5, Lucknow in Session Trial No.938 of 2018, arising out of case Crime No. 213 of 2018, under Sections 498-A, 304-B, 328, 504 & 506 I.P.C. and Section 3/4 D.P. Act, Police Station-Aashiana, District Lucknow (State vs. Shashikant Bajpai) and direct the court below to make compliance of the order dated 25.01.2019, 06.02.2019, 20.02.2019 and 03.03.2020 and decide the discharge application thereafter."*

3. The facts, in short, which are necessary for disposal of present application, are as under:

(i) The marriage of applicant and deceased was solemnized on 23.02.2014 according to Hindu rites and rituals. Out of the wedlock of applicant and deceased, a female child was born on 03 October, 2015.

(ii) As per the case of prosecution, the deceased died on 13 April, 2018 in the premises of the applicant. Thus, the deceased expired within a period of seven years of marriage. Therefore on written complaint an FIR registered as Case Crime No. 213 of 2018 under Sections 498-A, 304-B, 328, 504 & 506 I.P.C. and Section 3/4 D.P. Act, was lodged at Police Station Aashiana, District Lucknow.

(iii) According to the postmortem report, the cause of death is Asphyxia due to antemortem hanging. The postmortem report also indicates that Viscera was preserved for chemical examination vide Viscera No.309/2018.

(iv) During investigation, Investigating Officer (In short I.O.) found suicide note as appears from the Annexure No.5 to the present application and this suicide note was sent to Forensic Science Laboratory, Lucknow.

(v) The I.O. after completing of investigation filed the chargesheet.

(vi) After taking note of the evidence available on record the Magistrate took cognizance on 21.08.2018, and thereafter, the matter was committed to the court of Sessions on 19.09.2018 where it was registered as Sessions Trial No.938 of 2018.

(vii) At the stage of framing charge an application was preferred from the side of defence on 10.12.2018 for summoning call details report related to mobile Nos.9336449352 & 7985694025. The contents of application are extracted herein under:

"अभियुक्त का निम्न निवेदन है :-

1. यह कि तारीख घटना दिनांक- 13.04.2018 को अभियुक्त के मोबाईल सं0- 9336449352 व 7985694025 के कॉल डिटेल् तथा लोकेशन व उसी दिन का नत्था तिराहा चौकी का जिसमे विडियो फुटेज भी चार्ज पर बहस सुनने के लिए आवश्यक है।

अतः प्रार्थना है कि सम्बन्धित पुलिस को आदेश दिया जाये, कि वह उपरोक्त सामग्री न्यायालय के सम्मुख उपस्थित करे।"

(viii) At this stage, it would be apt to indicate that as per the settled principle of law, at the stage of framing of charge/discharge, the evidence submitted by the I. O. can only be considered and the call details report was not the part of report submitted by the Investigating Officer.

(ix) On pointing out the discrepancies related to the F.S.L. report, supplementary chargesheet etc. while pressing the aforesaid application by the counsel for the accused-applicant of the Presiding Officer was of the view that a letter be sent to Commissioner of Police, Lucknow and I. O. of the case and ACP Cantt. be called for and therefore passed the following order on 03.03.2020; which is as under:

*"Part argument heard on behalf of accused.*

*During course of argument certain discrepancies viz. FSL report, supplementary chargesheet etc. have been pointed out by the learned counsel for the accused. A letter be issued to worthy C.P./*

*Lucknow and IO of this case and ACP, P.S. Cantt. be called for NDOM.*

*Put up for remaining arguments on 12.03.2020."*

(x) Thereafter, on the administrative side the then Presiding Officer on 03.03.2020 written a letter to the Commissioner of Police, Lucknow. The purpose of passing of order dated 03.03.2020 is apparent from the letter dated 03.03.2020 which is extracted herein under:

*" The present case is pending trial in this court. The case pertains to year 2018. Charges could not be framed in this case due to want of F.S.L. report. After filing the charge sheet, the Investigating Officer had not intimated this Court about the status of F.S.L. report till date.*

*Perusal of the record reveals that the investigation qua co-accused Satyam Bajpai is pending since last two years, the status of co-accused Satyam Bajpai is not clear. Perusal of the report also reveals that on 10.12.2018 an application had been moved by the learned counsel for the accused for providing call details report, mobile location of accused Shashi Kant Bajpai, and C.C.T.V. footage of the relevant time and place to argue this case. The learned counsel for the accused has submitted that Investigating Officer had been summoned on this application. However, I.O. had not reported to the Court till date for proper disposal of the aforesaid application of the accused. The nature of documents which have been sought are perishable in nature and any undue delay may cause prejudice to the accused. It is lackadaisical approach of the investigating agency that investigation in such case is pending since last two years for co-accused and F.S.L. report has not been filed and even I.O. had not reported to this Court for proper disposal of the application of the accused dated 10.12.2018.*

*Investigating Officer of this case and A.C.P. Police Station Cantt. may kindly be directed to appear before the Court on 12.03.2020 without fail and to apprise and explain about the latches in this matter for proper adjudication of the case."*

(xi) From the above quoted letter dated 03.03.2020, it is apparent that Police Officers were called upon by the Presiding Officer, to explain about the latches related to the investigation including the filing of FSL report.

(xii) The second letter of the then Presiding Officer dated 12.03.2020 also indicates the aforesaid. The letter dated 12.03.2020 is extracted herein under:

*"The present case is pending trial in this court. By the letter dated 03.03.2020 the Investigating Officer of this case and A.C.P., Police Station Cantt. was directed to appear before this Court to apprise and explain about the latches in this matter and case is fixed for today.*

*But surprisingly the above I.O. did not appear today before Court and a report has been submitted by the Reader of the office*

*of A.C.P., Police Station Cantt. that **I.O. is busy** in auction proceedings in circle, held by Bank so unable to appear before the court and another date may be fixed. It is noteworthy to say that the above matter relates to dowry death which is serious matter.*

*Therefore, keeping this fact Investigating Officer of this case and A.C.P. police station Cantt. may kindly be directed to appear before the Court on 20.03.2020 to apprise and explain about the latches in this matter for proper adjudication of an application dated 10.12.2018 of the accused."*

(xiii) At this stage, it is to be noted that the instant case related to death of a female was committed to the court of sessions on 19.09.2018 and till date the same is at the stage of framing of charge.

(xiv) The accused at the stage of framing of charge preferred an application dated 25.02.2022 praying therein regarding disposal of the application dated 10.12.2018 and also making compliance of the order dated 06.02.2019, which ought to be indicated as order dated 25.01.2019 passed on the application of the order dated 10.12.2018, whereby the Investigating Officer (in short I.O.) was summoned and thereafter the above indicated letters were sent by the then Presiding Officer. The contents of the application are extracted herein under:

"न्यायालय के अनुसार आंशिक बहस हो चुकी है जबकि माननीय न्यायालय से मात्र अनुरोध किया गया था कि मा० न्यायालय के आदेश दिनांक 6-2-19 का अनुपालन सुनिश्चित करा कर ही प्रार्थना पत्र अन्तर्गत धारा-227 दण्ड प्रक्रिया संहिता का निस्तारण किये जाने की कृपा की जाए।

यह कि अभियुक्त के प्रार्थना पत्र दिनांक 10-12-18 का निस्तारण न किया गया तो उसे न्याय नहीं मिल सकेगा और उसे अपूर्णनीय क्षति होगी और उसका सुनवाई का अधिकार बाधित होगा।"

(xv) The trial court, based upon the material on record, passed the impugned order dated 10.12.2024, the relevant portion of the same reads as under:

"पत्रावली के अवलोकन से विदित होता है कि मु०अ०सं० 213/18 अंतर्गत धारा 498 ए, 304 बी, 323, 504, 506 भा०दं०सं० व धारा 3/4 डी०पी० एक्ट के मामले में विवचक द्वारा बाद विवेचना अभियुक्त शशिकान्त बाजपेई पति के विरुद्ध आरोपपत्र प्रस्तुत किया गया तथा सह अभियुक्तगण जनार्दन बाजपेई ससुर, व शकुन्तला बाजपेयी सास, की अपराध में संलिप्तता नहीं पायी गयी तथा सह अभियुक्तगण सत्यम बाजपेई पुत्र जनार्दन बाजपेई के विरुद्ध विवेचना प्रचलित होने का उल्लेख किया गया। उक्त आरोप पत्र पर विद्वान मुख्य न्यायिक मजि० लखनऊ द्वारा दिनांक 21.8.2018 को संज्ञान लिया गया तथा मुख्य न्यायिक मजि० द्वारा दिनांक 19.9.2018 को पत्रावली को सत्र सुपुर्द की गयी। माननीय सत्र न्यायालय द्वारा पत्रावली को दिनांक 10.12.2018 को पारित आदेश के द्वारा ए०डी०जे० कोर्ट नं० 5 के न्यायालय में स्थानांतरित कर दिया गया। पत्रावली के परिशीलन से विदित होता है कि दिनांक 6.2.2019 को पारित आदेश में तत्कालीन विद्वान पीठासीन अधिकारी द्वारा यह उल्लिखित किया गया है कि " पुकार कराया

गया। अभियुक्त शशिकान्त हाजिर। पत्रावली दिनांक 20.2.2019 को, आई०ओ० तलब हो।" उक्त आदेश के अवलोकन से विदित होता है कि तत्कालीन विद्वान पीठासीन अधिकारी द्वारा बिना न्यायिक मस्तिष्क का प्रयोग करते हुए सरसरी तौर पर आदेश पारित किया गया है। जहाँ तक उक्त आदेश के अनुपालन के बावत अभियुक्त शशिकान्त द्वारा प्रस्तुत प्रार्थनापत्र दिनांकित 25.5.2022 का संबंध है, कथित सुसाईट नोट व सीसीटीवी फुटेज व अन्य अभिलेखीय साक्ष्य बचाव के स्तर पर प्रस्तुत करने का अवसर अभियुक्त के पास उपलब्ध रहेगा। अभियोजन पक्ष द्वारा विवेचक को साक्षी के तौर पर प्रस्तुत किये जाने की दशा में बचाव पक्ष को विस्तृत जिरह कर उक्त विन्दुओं के संबंध में स्थिति स्पष्ट करने का अवसर उपलब्ध रहेगा। विवेचनाधिकारी द्वारा प्रस्तुत आख्या में कथन किया गया है कि अभियुक्त द्वारा प्रार्थनापत्र दिनांकित 25.5.2022 में किये गये कथन अपने को बचाने के लिए मनगढ़ंत ढंग से किये गये हैं। यह विधि का स्थापित सिद्धान्त है कि जांच के स्तर पर / उन्मोचन प्रार्थनापत्र के निस्तारण के स्तर पर न्यायालय को अभियोजन साक्ष्य के आधार पर अभियुक्त की प्रथम दृष्टया दोषी होने या निर्दोष होने के संबंध में निष्कर्ष निकालना होता है। इस स्तर पर न्यायालय को उभय पक्ष के साक्ष्य का विश्लेषण करने का क्षेत्राधिकार नहीं है। न्यायालय द्वारा इस स्तर पर विवेचक से किसी प्रकार की आख्या आहूत करने या तलब किये जाने का कोई औचित्य नहीं है। अतैव न्यायालय के विचार में अभियुक्त शशिकान्त बाजपेई द्वारा प्रस्तुत प्रार्थनापत्र दिनांकित 25.5.2022 बलहीन होने के कारण खारिज किये जाने योग्य है।"

4. In the aforesaid facts and circumstances of the case, the instant application has been filed before this Court.

5. Impeaching the impugned order dated 10.12.2024, Sri Prabhat Kumar, learned counsel for the applicant submitted as under:

(i) The presence of I.O. in view of earlier Presiding Officer was necessary for framing of charges and as such the trial court committed an error of law in rejecting the application, which was filed with a prayer to summon I.O. in terms of the order dated 25.01.2019,

(ii) The suicide note, CCTV footage and other documents are also relevant for framing of charge.

(iii) The suicide note would be relevant for coming to the conclusion as to whether the offence under Section 304-B IPC would be attracted or under Section 306 IPC would be attracted.

(iv) The observation in the impugned order dated 10.12.2024 which are to the effect that the earlier Presiding Officer passed the order without application of mind are not proper.

6. Sri Ajay Kumar Srivastava, learned AGA opposed the instant application that impugned order is just and proper as the presence of I.O. at the stage of framing of charge is not required as per law:

7. Considered the aforesaid and perused the record.

8. Upon due consideration of the aforesaid facts and circumstances of the case and also material available on record, this Court finds no force in the instant application. It is for the following fact(s)/reason(s):-

(i) The presence of IO is not required at the stage of framing of charge.

(ii) The Police Officer/ I.O. was called upon only to explain the latches in the investigation and also for the reason that FSL Report could not be filed before the trial court, which is apparent from the letter(s) dated 03.03.2020 and 12.03.2020 of the Presiding Officer. In this view of the matter, the trial court, vide order impugned, has not committed any error of law in not summoning the I.O..

(iii) From the evidence available at this stage of the proceedings before the trial court, it is apparent that (a) the deceased was in the premises of the applicant, (b) the death was within the period of seven years from the date of marriage i.e. on 23.02.20214 and (c) the death was unnatural. Thus, presumption would be against the applicant and based upon the material available on record, the charges under Sections 498-A & 304-B IPC can be framed.

(iv) Based upon the evidence adduced by the prosecution including the FSL report, if the trial court finds that the offence under Section 304-B IPC is not made out then the trial court would certainly either acquit the applicant or punish the applicant for the offence under Section 306 IPC.

(v) The charges have to be framed only on the basis of the evidence collected during investigation and submitted by the IO alongwith report/charge sheet.

(vi) The charge sheet has not been filed before this Court though ought to be filed to ascertain as to whether some evidence is available or not and in absence of the same, the adverse inference shall be drawn against the applicant.

9. For the forgoing reasons, the instant application is hereby **dismissed**. Cost made easy.

10. Before parting it would be apt to indicate that "It is well settled principle/proposition of law that a coordinate Bench cannot comment upon the discretion exercise or judgment rendered by the another coordinate Bench of the same strength" and in this view of the matter the observations made in the impugned order against earlier Presiding

Officer are hereby expunged and the Presiding Officer who has passed the impugned order is cautioned in this regard.

**Order Date :- 23.1.2025**

Reena/-