
(1995) 02 MP CK 0059

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 180 of 1994

Chandrabhan Singh Sikarwar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304B, 306, 34, 498A

Citation : (1995) 2 DMC 204

Hon'ble Judges : Tej Shanker, J

Bench : Single Bench

Advocate : B.S. Chauhan, for the Appellant; Arun Pateria and D.D. Agarwal, for the Respondent

Judgement

Tej Shankar, J.—This Revision Petition has been preferred against the order dated 28.9.1994 passed by the Additional C.J.M., Gwalior.

2. It has arisen out of the following facts. One Smt. Rekha @ Guddi, the daughter of the petitioner, was wedded to Opposite Party No. 2, Ram Manohar Singh, on 16.2.1987. It was alleged that she was being harassed for bringing more dowry. There was a demand for a plot and a cooking gas and when it was not fulfilled she was tortured. She also wrote some letters in this connection. There was a litigation between the lady and her husband in the Court of Seventh A.D.J. initiated by the husband. In those proceedings there was a compromise between the parties and under the compromise the husband had taken the lady with him on 1.4.1992 and the Court fixed 10.4.1992. Certain directions were also given. The lady was not produced in Court thereafter. A Writ Petition No. 68/1993 was filed by the father of the lady in this Court and by order dated 19.1.1993 a Division Bench of this Court directed that an investigation be made immediately by a competent and Senior Police Officer and the Superintendent of Police, Gwalior was directed to entrust investigation to a Senior and Competent Officer not below the rank of Inspector. On the complaint a case u/s 498A was registered as Crime No. 457/93 against Ram Manohar and Jag Mohan Singh and

one Ram Kishore. One of the accused did not appear. An application for bail was moved on behalf of the accused Ram Manohar Singh which was rejected. Another application was moved which too was rejected and it was directed that the case of Ram manohar Singh be separated and tried. At the stage of framing charge it was contended on behalf of the prosecution that as the lady Rekha @ Guddi was not produced inspite of directions nor any intimation was given a charge Under Sections 304B, 306 and 201 I.P.C. be framed. On behalf of the accused it was contended that charge-sheet was submitted Under Sections 498A/34, I.P.C. alone, hence no other charge could be framed. The learned Trial Court considered the respective contentions of the parties as well as the material on record and concluded that both the accused persons facing trial could be charged u/s 498A and Sections 498A/34 I.P.C. respectively and it framed charges accordingly by the impugned order. Feeling aggrieved this revision petition has been preferred by the complainant.

3. The learned Counsel for the revisionist argued vehemently that in the present case there is sufficient material on record to show that the lady Rekha @ Guddi was not produced before the Court inspite of the directions of the Court and the Police was in league with the accused persons and it did not make proper investigation inspite of specific directions of Division Bench of this Court. Hence it should be taken that the lady has been done to death and a charge Under Sections 302, 306/34, I.P.C. should have been framed. The learned Trial Court committed an error in not framing a charge accordingly.

4. The learned Counsel for the accused-respondents contended that there was no material for framing a charge Under Sections 304B, 306, 201, I.P.C. as contended by the learned Counsel for the revisionist. The learned Trial Court was justified in framing a charge Under Sections 498A/34, I.P.C. alone. There is no illegality in the impugned order. A perusal of Sections 239 and 240, Cr.P.C. shows that the Magistrate has to take into consideration the police report and the documents sent with it u/s 173. After giving the prosecution and the accused an opportunity of being heard and if the Magistrate comes to the conclusion that the charge against the accused is groundless he has to discharge the accused. On the other hand, if in his opinion, there is ground for presuming that the accused has committed an offence triable by him and the accused could be adequately punished by him, he has to frame a charge against the accused. The learned Magistrate in the present case considered the entire material on record and also gave an opportunity to the parties to be heard. In his detailed order the learned Magistrate came to the conclusion, as said above that a charge u/s 498A against accused Ram Manohar and Under Sections 498A/34, I.P.C. against Jagmohan should be framed. He framed a charge accordingly. It has been observed that from the papers it was traspired that there was no material under which a case of murder or offence punishable Under Sections 304B, 306 and 201, I.P.C. was prima facie made out. After carefully considering the entire material and the impugned order it is apparent that there was no ground for presuming charge under the aforesaid Sections 304B, 306, 201, I.P.C. could be framed. The learned

Magistrate was, therefore, justified in passing the impugned order.

5. However, the matter does not end here. It is very unfortunate case where the record shows that there is prima facie material of torture and the whereabouts of the girl are not known. In a Writ Petition No. 68/1993, a Division Bench of this Court came to the conclusion that where about of the girl Rekha had become doubtful and it had become necessary for the Investigating Agency to ascertain if the girl is alive and if not whether any offence is committed in respect of her body which could not be produced in this habeas corpus petition. A direction was given to the Superintendent of Police, Gwalior, to entrust investigation to a senior and Competent Police Officer not below the rank of Inspector. During the course of argument the learned Counsel for the revisionist vehemently argued that this order has not been complied with. The learned Counsel for the State has not been able to show that the order was complied with for the reasons best known to the Superintendent of Police, Gwalior. It is, therefore, desirable that a show cause notice be issued to Superintendent of Police, Gwalior as to why contempt proceedings be not initiated against him for not complying with the order of this Court dated 19.1.1993 and be not punished. As the order has to be complied with and investigation has to be made, as directed by this Court on 19.1.93, the case out of which the present Revision Petition has arisen, should be stayed for a limited period to enable the prosecuting agency to complete the investigation within that period and submit its report to the Magistrate concerned. Thus, in this view of the matter, it is ordered that the order passed by the Magistrate framing charge u/s 498A and Sections 498A/34, I.P.C. against the accused persons does not call for any interference by this Court as no other charges could be framed on the basis of the material on record. However, it is ordered that the proceedings of this case shall remain stayed for a period of three months in order to enable the prosecuting agency to complete the investigation as directed by this Court on 19.1.1993. The investigation must commence immediately and must be completed within a period of three months from today. Let a show cause notice be issued to the Superintendent of Police, Gwalior as to why he be not punished for committing contempt of the order of this Court dated 19.1.1993. A separate case be registered. The Revision Petition is disposed of accordingly.