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**(2010) 03 JH CK 0090**  
**In the Jharkhand High Court**

Pradeep Kumar Ojha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 15-03-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156, 227  
Penal Code, 1860 (IPC) — Section 306, 34, 467, 468, 498A

**Citation :** (2010) 03 JH CK 0090

**Hon'ble Judges :** Dilip kumar sinha, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

D.K. Sinha, J.—This criminal revision is directed against the order impugned dated 3.6.2009 passed by the 5th Additional Sessions Judge, Jamshedpur in S.T. No. 434 of 2008 by which the petition filed on behalf of the petitioner for his discharge u/s 227 of the Code of Criminal Procedure was dismissed for the alleged offence under Sections 498A/306 of the Indian Penal Code.

2. Prosecution story in short was that the complainant/informant Ramakant Tiwari had lodged a compliant vide C.P. Case No. 610 of 2007 before the Chief Judicial Magistrate, Jamshedpur against four named accused persons including the petitioner Pradeep Kumar Ojha herein alleging inter alia, that he had married his daughter Maya Kumari with the brother of the petitioner Sanjay Ojha in the year 1997 and he had given gifts according to his capacity on the eve of their marriage. At that time, the husband of his daughter Maya Kumari, namely, Sanjay Ojha was an employee of TISCO and her in-laws had been always teasing her by extending mental and physical torture. However, on the persuasion of the informant and other witnesses, his son-in-law Sanjay Ojha shifted to residential accommodation at Bistupur where Maya Kumari delivered two children. Misery of his daughter started when Sanjay Ojha died in a motor accident on 10.11.2005. On the death of her husband, she started living with her in-laws in their house and it was alleged that all the in-laws including the petitioner unleashed all kind

of torture mental and physical. After the death of Sanjay Ojha, the TISCO management offered service to Maya Kumari on compassionate ground, but all the accused persons forced her to forgo her claim and offer such service in favour of her younger brother-in-law (Devar) Ajay Ojha. She succumbed to the demand upon duress and undue pressure made by her in-laws. Informant was communicated that there was a salary account of late Sanjay Ojha in the Bank of Baroda but in spite of that, a new Joint Account was opened in IDBI in the name of her mother-in-law Jaleshwari Devi, brother-in-law (Devar) Ajay Ojha and his daughter Maya Ojha and the accused fraudulently transferred the entire amount without the knowledge of Maya from Bank of Baroda to IDBI. When the entire money was transferred to the Joint Account, the accused persons in furtherance of common intention created such a situation and frequently asked his daughter Maya to commit suicide, almost within a month of the transfer of the said amount resulting her strangulated on 25.12.2005 at her matrimonial home. The complaint petition which was filed after a reasonable interval was referred u/s 156(3) of the Code of Criminal Procedure and accordingly, police case was registered against the accused persons under Sections 498A/306/467/468/34 of the Indian Penal Code.

3. Learned counsel Mr. Sen submitted that the petitioner was innocent, admittedly he was the elder brother of the husband of the deceased, not at all concerned with the entire episode. No specific overt act was attributed against him either of extending torture mental or physical except omnibus allegations against all the members of the family of the matrimonial home of the deceased daughter of the informant including the petitioner. Advancing his argument Mr. Sen further submitted that Maya Kumari, during the lifetime of her husband started living separately in the quarter allotted by the TISCO and during such stay, her husband succumbed injury in a motor accident. She had come to her matrimonial home with her parents and brother only to perform Shardh ceremony of her husband and then returned back. Allegation was against the mother-in-law and younger brother-in-law (Devar) Ajay Ojha that a Joint Account was opened with the deceased Maya Ojha in IDBI. It was not the allegation that the account of Sanjay Ojha was transferred at the behest of this petitioner Pradeep Kumar Ojha at any point of time. Yet, the informant implicated the petitioner by making a general and omnibus allegation against him.

4. Mr. Sen pointed out that it was no where alleged that Maya Ojha was compelled to forgo her claim of compassionate appointment in TISCO in favour of the petitioner and therefore, the petitioner, could be in any manner treated as beneficiary or that he had ever abetted her to commit suicide either individually or shared common intention with the co-accused.

5. Finally, Mr. Sen submitted that there was no material at all on record to indicate that the petitioner was responsible for harassment and cruelty allegedly attributed against the deceased Maya Ojha or of demanding dowry at any point

of time and therefore, he cannot be charged for the alleged offence under Sections 498A/306 of the Indian Penal Code, as proposed by prosecution. The petition filed on behalf of the petitioner for his discharge u/s 227 of the Code of Criminal Procedure was dismissed without considering these aspects and also without application of judicial mind which needs interference.

6. Mr. Hatim, the learned A.P.P. opposed the contention and submitted with reference to the impugned order dated 3.6.2009 that the learned Additional Sessions Judge after having been prima facie satisfied with the materials as contained in paragraphs-2, 3, 6, 7, 38, and 39 of the case diary, dismissed the discharge petition of the petitioner which indicated his complicity. It was the subjective satisfaction of the court that he did not find it to be a fit case to consider the discharge of the petitioner, who shared equal responsibility with the co-accused in perpetrating torture to Maya Ojha and creating such a situation and thereby abetting her by their conduct to commit suicide.

7. Having regard to the facts and circumstances of the case, I find that the petitioner is admittedly the elder brother of the husband of the deceased daughter of the informant against whom no specific allegation or overt act has been attributed for the proposed charge under Sections 498A/306 of the Indian Penal Code. His name appeared in the case diary as Bhaisur of the deceased but there appears substance in the contention of the learned defence counsel that he was neither the ultimate beneficiary of the Account left out by his brother Ajay Ojha nor the deceased Maya Ojha left her claim of compassionate appointment in favour of the petitioner. I do not find any material in the case diary that the petitioner at any point of time or in any manner abetted Maya Ojha to commit suicide and no external violence was found on the person of the deceased in her post mortem examination. In that manner, offence u/s 306 of the Indian Penal Code is not attracted against the petitioner. Similarly, as there was no material at all in the case diary that the petitioner shared common intention with the co-accused in perpetrating mental or physical torture in any manner to the deceased Maya Ojha asking for dowry or more money from her parental home, I find that Section 498A of the Indian Penal Code is also not attracted against him. There appears a general tendency that whenever similar nature of incidence occurs, the family members of the parental home of the deceased used to implicate all the members of the family of the matrimonial home of the deceased and I find that the case of the petitioner comes in that category and the petitioner has been implicated only because he was the elder brother of the predeceased husband of the deceased and therefore, in such situation, when prima facie material was lacking against him, dismissal of the petition of the petitioner for his discharge from his criminal prosecution, in my view, tantamount to denial of justice to him. I further find that in a given situation discussed hereinbefore, there would be no chance of his conviction for the alleged charge and his criminal trial would be an exercise in futility. I find it to be a fit case and accordingly, the petitioner Pradeep Kumar Ojha is discharged from his criminal prosecution in S.T. No. 434 of 2008, pending before the 5th Additional Sessions

Judge, Jamshedpur, arising out of Bistupur P.S. Case No. 163 of 2007, corresponding to G.R. No. 1206 of 2007.

8. This criminal revision is allowed, accordingly the order impugned is set aside.