
(2018) 08 MP CK 0241

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 215 Of 2018

Pramod Mishra & Ors

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 30-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B, 323, 498A, 506
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2018) 08 MP CK 0241

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Sharad Verma, B.D. Singh

Final Decision : Disposed Off

Judgement

1. This Criminal Revision has been filed against the order dated 21.11.2017 whereby the learned trial Court has framed charges against the petitioners for commission of offences punishable under Section 498-A read with Section 34 I.P.C and Section 3/4 of Dowry Prohibition Act.

2. It is argued by the counsel for the applicants that deceased Pooja Mishra was married with co-accused Vinod Mishra in May 2014. She was living in her parental house. On 23.8.2015 she had consumed Harpic and was admitted in Medical College, Jabalpur wherein her dying declaration was recorded in which she added three more names i.e. Pramod (applicant No.1), Supriya (applicant No.3) and Manorama Pathak (other co-accused) on the allegations that all of them threatened her to enter into compromise. During the course of treatment, she succumbed to death. Her dead body was sent for postmortem and Autopsy Surgeon opined that the cause of death could not be ascertained. Viscera is preserved for chemical analysis. Thereafter the trial Court framed charges for offences punishable under Section 304 B read with Section 34 and 498-A read with 34 of the I.P.C. Against the order dated 25.05.2016 whereby charges were framed, the applicants preferred Cr.R No.1500/2016 (Pramod Mishra and others

v. State of M.P.) before this Court. A Division Bench of this Court vide order dated 09.11.2016 observed that "No charges is made out against the petitioners for commission of offence punishable under Section 304-B of the IPC. Copy of the aforesaid order is annexed here. The learned trial Court again framed the charges under Section 498-A read with Section 34 I.P.C and also under Section 3/4 of Dowry Prohibition Act, 1961 against the applicants. It is argued that the learned Court below has completely overlooked as to the role played by present applicants for commission of said offence. The impugned order framing charge against the applicants is patently unwarranted, unsustainable and deserves to be quashed. He submits that the deceased was residing in her parental house at the time of incident, therefore, it cannot be said that the applicants gave cruel treatment to her, due to which the deceased committed suicide. The dying declaration has been recorded by the Teshildar on 28/8/2015. Thereafter, she was discharged from the hospital and after a period of three months of the incident i.e. on 23.11.2015 she again consumed poisonous substance and she died.

3. It is further argued that the prosecution implicated applicants on the basis of her dying declaration recorded by Tahsildar, but after recording the dying declaration she was discharged from hospital and was completely cured. Thereafter, since 26.8.2015 she was living with her parents wherein she was completely cured. According to dying declaration, sister-in-law and Jethani met her in a Crèche on 23.8.2015 for pressurizing for compromise and hence she consumed poisonous substance (Harpic).

4. It is further argued that prima facie there is no evidence against the petitioners/applicants to frame the charges raised under Section 498-A read with Section 34 of the IPC and Section 3/4 of the Dowry Prohibition Act, 1961. Once this Court considered the case of the petitioner/applicants and discharged them under Section 304-B read with Section 34 of the IPC and gave findings in favour of the petitioners/applicants, the same fact and grounds are applicable in the present case also. The entire story of the said demand made by the complainant is an afterthought and self-created. There was neither any demand of dowry nor ill-treatment to the deceased and the said fact is amply proved from the prosecution story itself. Looking to the entirety to the facts and circumstances of the case, it would be clearly revealed that not a single ingredient of the said offence can even by remotely rules-out against the present applicants. So, the framed charges against the applicants is liable to be quashed.

5. Learned counsel for the respondent/State opposes the application by submitting that there is a prima facie case. So, this petition deserves to be dismissed.

6. Heard both the parties and perused the record. It is evident from the record and case diary that it is not disputed that the deceased Pooja Mishra was married with the co-accused Vinod Mishra on 11.05.2014. After that, the deceased Pooja Mishra lodged a First Information Report on 14.07.2014. The FIR was registered

under Section 498-A, 506 read with Section 34 and 323 of the IPC.

7. Both the parties admitted this fact that the charge-sheet has been filed on the basis of the FIR dated 14.07.2014 and the deceased Pooja Mishra was living with her parents at that time or she is living separately from her husband and other relatives. It is also not disputed that the deceased Pooja Mishra consumed poisonous substance on 23.08.2015. Thereafter, the First Information Report was lodged by the deceased's father under Section 304-B read with Section 34, 498-A read with Section 34 of the IPC and the learned trial Court framed the charges against the applicants/petitioners. Thereafter, the petitioners/applicants preferred the revision against the order dated 25.05.2016 in which the Division Bench of this Court, vide order dated 09.11.2016, observed that "Looking to the facts of the case, it would not be just and proper to frame charge against the petitioners of a particular section. However, the petitioners are at liberty to canvass before the trial Court at the time of framing the charge. However, it is hereby clarified that no charge is made out against the petitioners for commission of offence punishable under Section 304-B of the IPC."

8. After passing this order, in compliance of that the learned trial Court framed charges for the offence punishable under Section 498-A read with Section 34 of the IPC and Section 3/4 of the Dowry Prohibition Act, 1961.

9. It is revealed from the record that the learned trial Court has framed the charges against the petitioner, in respect of offences which were committed during the period from 11.05.2014 to 23.11.2015 pertaining to present case. It is also evident from the record that the charges have been framed prior by the trial Court in respect of offences committed during the period from 11.05.2014 to 14.07.2014 pertaining to FIR which was lodged by the deceased Pooja Mishra on 14.07.2014 and charge-sheet has also been filed for that. It is natural that once the charges have been framed in respect of offences committed during the period from 11.05.2014 to 14.07.2014. So, charges cannot be framed again for the said period i.e. 11.05.2014 to 14.07.2014. The incident which can be taken into consideration were only took place during the period from 14.07.2014 to 23.11.2015.

10. In this view, the order of learned trial Court again framing the charges for during the period (11.05.2014 to 14.07.2014) is perverse or illegal. So interference to this extent is warranted in the order of learned trial Court order dated 21.11.2017.

11. Apart from that the Division Bench of this Court has ordered that the trial Court shall pass a reasoned order at the time of framing of charges but the learned trial Court failed to do so.

12. Therefore, this petition is disposed of with the following directions :-

1. The impugned order of framing of charges is hereby quashed.

2. The matter is remanded back to the trial Court to consider the case in regard

to the incident took place during the period from 14.07.2014 to 23.11.2015.