
(2008) 09 DEL CK 0194

In the Delhi High Court

Case No : Criminal Revision Petition 132 of 2007

Sh. Kartar Singh and Others

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 228, 239, 240
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2008) 09 DEL CK 0194

Hon'ble Judges : S.L. Bhayana, J

Bench : Single Bench

Advocate : O.P. Saxena, for the Appellant; Ashiesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—This revision petition is directed against an order on Charge dated 19.1.2007 by learned Metropolitan Magistrate. By that order petitioners were charged with commission of offence punishable u/s 498-A Cr.P.C read with Section 34 IPC.

2. The facts necessary to decide this revision petition are that the petitioners herein are in-laws of the deceased/Shobha. The said Shobha had committed suicide by hanging herself in the matrimonial home on 01.03.2000, after eight years of her marriage. Her husband also with whom she got married on 23.1.1991 tragically committed suicide in the year 2001.

3. The prosecution case is that in the night intervening 1st and 2nd March 2000, the deceased/Shobha had committed suicide at about 2.00 a.m. by hanging herself from the ceiling of a room in the matrimonial home. It is the case of the prosecution that after her marriage, Shobha was being taunted for bringing insufficient dowry and was being harassed on account thereof. A sum of Rs. 50,000/- is alleged to have been given by her father few days after her marriage to her husband/ Mangal Singh. The prosecution also alleges that Shobha was ill-

treated and harassed by the petitioners as she was not able to give birth to a child and her harassment continued till 1999 when she gave birth to a girl child and since Mangal Singh, who was paralysed, shortly after the birth of the girl child, the deceased Shobha was again being taunted that she gave birth to a girl child which brought bad luck to the petitioners. On the basis of these allegations, learned Metropolitan Magistrate, ordered to frame a Charge against the petitioners u/s 498-A IPC.

4. Learned Counsel appearing on behalf of the petitioners, submitted that this is the sum total of the allegations that can be garnered against the petitioners. He submitted that first of all, Section 498-A IPC is not attracted because there are no allegations of cruelty as such. He referred to definition of "cruelty" as given in the explanation of Section 498-A IPC and submitted that even if all the statements of witnesses are believed to be true and all documents collected during investigation are deemed to be proved against the petitioners, the essential elements of Section 498-A IPC are not made out in this case.

5. On the other hand, learned Counsel who appeared on behalf of the State entirely supported the impugned order and submitted that on the facts of the case the charge has been correctly framed. He submitted, with reference to the statements of the father of the deceased/Shri Bhagwan Das, Tarun Thakur, Ramesh Devi, Jaipal, Smt. Kaushalya, that there was a clear allegation of abusing and maltreatment of the deceased at the hands of the petitioners. He submitted that there is a mention of demand of dowry. He submitted that once there are allegations, which give an indication that offence u/s 498-A IPC are made out then a charge ought to be framed and it has correctly been framed in this case.

6. I have heard counsel for both the parties. In the present case there is sufficient material in the form of the statements of the witnesses recorded by the police u/s 161 Cr.P.C pointing out towards cruelty of the deceased and harassment for the demand of dowry, torture etc. The end of the girl came on 1.3.2000 and two months prior to the said incident she informed her parents about the harassment and demand of dowry. Her parents were not allowed to meet her. It is alleged in the statement of her father that after two years of marriage Shobha's in laws started demanding dowry, they used to ill-treat and harass her by calling names like "barren" and "kambakht" etc. According to him there is continuous, persistent harassment and cruelty on one pretext or the other, which has driven /impelled Shobha to commit suicide. Explanation to Section 498-A IPC provides that any willful conduct, which is of such a nature, as is likely to drive a woman to commit suicide would constitute cruelty. Such conduct which is likely to cause grave injury or damage to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty. So far as the offence u/s 498-A

IPC is concerned, it is not every kind of cruelty which constitutes an offence u/s 498-A IPC, it is difficult to enumerate acts amounting to cruelty or to put cruel conduct into a straight jacket formula or to make cruel conduct considerable to any inflexible standard. Cruelty is not a fact isolated from the environment and background of the spouses and each case ought to be decided individually.

7. During the course of investigation, the statements of the father and some other persons with regard to the allegations of harassment and cruelty were recorded. Alleged act of maltreatment/ cruelty of the deceased were brought to the notice of the police during investigation. In his statement, u/s 161 of Cr.P.C, the father of the deceased stated that whenever his daughter used to come home, she used to complain that her in-laws are harassing her for dowry. He categorically stated that she informed him that her father-in-law and mother-in-law have been harassing her and subjected her to cruelty and at one occasion her father-in-law demanded two lakh rupees. Can such conduct be termed as "cruelty" within the meaning of explanation of Section 498-A IPC. In my opinion, prima facie, these allegations are sufficient for the purpose of framing a Charge because charge can be framed even where there is a grave suspicion. The answer to question as to whether the alleged conduct of the petitioners was sufficient to drive the deceased for committing suicide would also depend upon psychological status of the deceased besides the surrounding circumstances in which she committed suicide which may be proved by the prosecution during trial.

8. The question as to what consideration should weigh with the court at the time of considering the question of framing of Charge u/s 227 Cr.P.C has repeatedly engaged the attention of Apex court on different occasions. It is bromidic that at the stage of framing of Charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients Constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material, which leads the court to form a presumptive opinion as to the existence of the factual ingredients Constituting the offence, alleged would justify the framing of Charge against the accused in respect of the commission of that offence.

9. In State of Karnataka Vs. L. Muniswamy and Others, , a three Judges Bench of Apex Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasized.

10. Then again in State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., a three judge Bench of Supreme Court, after noting three pairs of sections viz.

(i) Sections 227 and 228 insofar as sessions trial is concerned; (ii) Sections 239 and 240 relating to trial of warrant cases; and (iii) Sections 245(1) and (2) relating to trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus:

if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

11. In a later decision in *State of Madhya Pradesh Vs. Mohanlal Soni*, Supreme Court while referring to several previous decisions held that the crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

12. Again recently in *Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others*, the Apex Court while referring to its earlier decision on the point in the cases of *Kanti Bhadra Shah and Another Vs. The State of West Bengal*, *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, *State of Bihar Vs. Ramesh Singh*, *Supdt. S. Remembrancer of legal affairs W.B. v. Anil Kumar Bhunja AIR 1989 SC 52* and *Satish Mehra Vs. Delhi Administration and Another*, held that at this stage the truth, veracity and the effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of framing Charge. Even a strong suspicion on the basis of the material before it can lead the court to form a presumptive opinion regarding existence of factual ingredients Constituting the offence alleged and in that case, the court will be justified in framing Charge against the accused. Obviously the consideration, which will weigh with the court at the stage of final decision of case, will not be the same as those at the stage of charge.

13. Furthermore, I have come to the conclusion that applying the guidelines prescribed in *Union of India (UOI) Vs. Prafulla Kumar Samal and Another*, a prima facie case has been made out for the framing of charge. She was a young girl of 28 years, had a female child of about one year for whom she had great love and affection. If everything was fine then why would she have committed suicide and leave the child at the mercy of her in-laws? Suicide in normal circumstances is against the natural course of life.

14. I find no justification in interfering with the impugned order.

15. In the result, this revision petition fails and is dismissed.
16. Trial Court record be sent back forthwith.
17. Parties are directed to appear before the trial Court on 22nd October 2008.