

(2005) 05 RAJ CK 0043

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 330 of 2005

Sita Ram Pareek

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 304B, 306, 397

Evidence Act, 1872 — Section 113A, 113B

Penal Code, 1860 (IPC) — Section 161, 173, 307, 326

Citation : (2005) 3 ALT(Cri) 4 : (2005) CriLJ 4307 : (2005) 4 RCR(Criminal) 756 : (2005) 4 RLW 2420 : (2005) 4 WLC 142

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : Sandeep Mehta, for the Appellant; J.P.S. Choudhary, Public Prosecutor and G.R. Punia, for non-Petitioners Nos. 2 to 5, for the Appearing Parties

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant criminal revision u/s 397/401 of the Code of Criminal Procedure, 1973 (for short "the Code" hereinafter), the petitioner has challenged the order dt. 6.4.2005 passed by Additional Sessions Judge (Fast Track), Parbatsar (for short "the Trial Court" hereinafter) in Sessions Case No. 05/2005 arising out of FIR No. 116/2004, Police Station, Chitawa whereby the Trial Court framed the charges against non-petitioners No. 2 to 5 for the offences under Sections 498-A and 306 IPC instead 498-A and 304-B IPC. Aggrieved by order impugned, whereby the Trial Court declined to frame the Charge for the offence u/s 304B IPC, the petitioner- complainant has filed the instant revision petition.

2. I have heard learned Counsel for the parties and carefully gone through the order impugned and challan papers.

3. The facts and circumstances giving rise to the instant revision petition are that

on 12.10.2004, the petitioner- complainant lodged a first information report No. 116/2004 at Police Station, Chitawa, Distt. Nagaur against non-petitioners No. 2 to 5, inter alia, alleging therein that his daughter Maya married to non-petitioner No. 3 Vinod Kumar son of non-petitioner No. 2 Gyanchand on 9.3.2003. It was further alleged that according to his capacity, he has given dowry to his daughter, however, his daughter's in-laws were not satisfied with the dowry and, therefore, his daughter Maya was harassed by her husband Vinod Kumar, father-in-law Gyan Chand, mother-in-law, brother-in-law and sister-in-law etc. Not only this, for demand of dowry, she was harassed to the extent of not providing meals to her. In the month of July, 2004, non-petitioner No. 3, husband of Maya demanded a sum of Rs. 50,000/-, which was paid through his elder daughter Urmila residing at Delhi. It was further stated that on 12.10.2004 at 7.45 A.M., he received a telephonic message from his nephew that Maya has expired, though Maya's in-laws did not inform him of the occurrence; on reaching at her in-laws house, it was noticed that she has been killed. On this report, police ensued investigation. The statements of prosecution witnesses u/s 161 of the Code were recorded; autopsy on deceased Maya was conducted. Post mortem was conducted by Medical Board comprising three Doctors, who opined that the cause of death of Maya is asphyxia as a result of hanging. After usual investigation, police filed the challan against non-petitioners No. 2 to 5 for the offences under Sections 498-A, 406 and 304B IPC. Case was committed to the Trial Court. The Trial Court, by order impugned, came to the conclusion that there is no evidence to presume that there was any criminal breach of trust and therefore, discharged non-petitioners No. 2 to 5 for the offence u/s 406 IPC, noticed that there is no proof regarding cruel treatment and framed charges against them for the offences under Sections 498A and 306 IPC.

4. From perusal of the order impugned that the Trial Court has discharged non-petitioners No. 2 to 5 for the offence u/s 406 IPC but it nowhere appears that the Trial Court has discharged them for the offence u/s 304B IPC. After filing of challan for the offences under Sections 498A, 406 and 304B IPC, cognizance of these offences was taken.

5. Learned counsel appearing for non-petitioners No. 2 to 5 raised a preliminary objection regarding maintainability of the instant revision petition u/s 397/401 of the Code on the ground that the case before the Trial Court is prosecuted by the State and the State has not challenged the order impugned dt. 6.4.2005 and, therefore, a revision by the complainant is not maintainable. Learned counsel has relied on a decision of this Court in *Amirchand Ahir and Anr. v. Krishna Kumar and Anr.* 1997 Cr.L.R. 48.

6. In *Amirchand Ahir and Anr. v. Krishna Kumar and Anr.* (supra), relying on a decision of the Hon'ble Supreme Court in *Thakur Ram Vs. The State of Bihar*, and a decision of this Court in *Ganga Ram and Anr. v. Prabhu Dayal and Anr.* 1987 RCC 81 : 1987 RLW 482 this Court held that the revision petition filed by Amirchand, the complainant-petitioner therein is not maintainable particularly for

the reason that the State, which is a prosecutor in the case, has also challenged the order made by learned Sessions Judge under Sections 227/228 Cr.P.C. in this case. From the facts noticed in the judgment of Amirchand's case (supra), the Magistrate discharged the accused therein of the offence u/s 307 IPC and directed the Chief Judicial Magistrate to frame a charge for the offence u/s 326 IPC. That order came to be challenged before the High Court by way of criminal revision u/s 397-401 of the Code by the complainant as also by the State of Rajasthan. This Court held that revision petition by the complainant is not maintainable particularly for the reason that the State, which is prosecutor in the case has also challenged the order made by the Sessions Judge. The facts of the instant revision are not identical as in this case, State, who is prosecutor, has not chosen to challenge the order impugned for the reasons known to it and, therefore, the complainant has filed the revision challenging the order. Thus, the decision in Amirchand's case (supra), relied on by the learned Counsel for the petitioner turns on its own facts. In that case, since the State being prosecutor has challenged the very order against which the complainant filed the revision and, therefore, the revision petition by the complainant was held not maintainable.

7. Per contra, learned Counsel for the petitioner has relied on a recent decision of the Hon'ble Supreme Court in K. Pandurangan v. S.S.R. Velusamy and Anr. 2004 SCC 48. While examining the question as to maintainability of the revision at the instance of the complainant, the Hon'ble Supreme Court observed as under:

"So far as the first question as to maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an outsider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court."

8. In Nadir Khan Vs. The State (Delhi Administration), the Hon'ble Supreme Court observed as under:

"The High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to suo motu act where there is flagrant abuse of the law."

In view of the aforesaid decision of the Hon'ble Supreme Court, the preliminary objections raised by the learned Counsel for non- petitioners No. 2 to 5 cannot be accepted and therefore, rejected.

9. The second question that has come up for consideration in the instant revision

is as to whether from the material placed on record by the police u/s 173 of the Code i.e., challan papers, there is a ground for presuming that non-petitioners No. 2 to 5 have committed the offence u/s 304B I.P.C. In his statement u/s 161 of the Code, the petitioner has stated that his daughter Maya married to non-petitioner No. 3 Vinod Kumar, the son of non-petitioner No. 1 on 9.3.2003. He has also stated that according to his capacity, dowry was given at the time of marriage; whenever his daughter used to come, she used to complain that her in-laws are harassing her; she categorically informed that her father-in-law Gyanchand, mother-in-law, sister-in-law and husband Vinod Kumar have been harassing and subjected her to cruelty. At one occasion, non-petitioner No. 3 demanded a sum of Rs. 50,000/- from the deceased and the failure to make good of demand, threatened to her life, upon which deceased Maya informed the petitioner and therefore, the petitioner requested his elder daughter Urmila, who has been living at Delhi, to pay a sum of Rs. 50,000/- to non-petitioner No. 3, upon which she agreed and non-petitioner No. 3 was informed to collect the amount from Urmila, which he collected. On 14.10.2004, he was informed by his relative telephonically regarding death of Maya at her in-laws house. He categorically stated that deceased Maya was regularly harassed for dowry. Ratni, mother of deceased also made a similar statement and categorically stated that her daughter Maya was harassed for dowry by her in-laws more particularly father-in-law, mother-in-law and husband. She has categorically stated that her daughter was harassed to the extent that she was not providing sufficient meals. She has also made statement regarding the demand of dowry in the sum of Rs. 50,000/- by non-petitioner No. 3 and stated that in order to save the life of her daughter Maya, they requested her elder daughter Urmila, who has been residing at Delhi to pay a sum of Rs. 50,000/- to non-petitioner No. 3, upon which non-petitioner No. 3 took the same from Urmila, the elder sister of deceased Maya. There are other statements of Radhey Shyam, Sanwermal, Radha, Kumari Krishna, Bhanwer Lal and Urmila. From perusal of statements of these witnesses, prima facie there is a sufficient evidence that deceased Maya was subjected to cruelty and harassment by non-petitioner No. 2 to 5 for demand of dowry and from the statement of Urmila, it is more than clear that her sister deceased Maya told her that her mother-in-law, husband Vinod Kumar and father-in-law used to harass her for dowry right from the marriage. She further stated that on demand by non-petitioner No. 3, she has paid Rs. 50,000/- to him in order to save the life of her sister since deceased.

10. Learned counsel for the non-petitioners No. 2 to 5 has relied on a decision of this Court in *Bhagwan Sahai v. Raju @ Rajendra Kumar and Ors.* 1995 Cr.L.R. 806 wherein this Court held that during investigation, it transpired that respondent, Motilal, father-in-law of the deceased had kept a concubine for which the deceased has protested. Even Smt. Savitri, mother of the deceased, has not stated that Smt. Savitri was subjected to cruelty or harassment by the accused respondents in connection with any demand of dowry soon before her death. There is not an iota of evidence collected by the Investigating Officer that

from October, 1990 till the unnatural death of Savitri, which occurred on 17.9.1991, the latter was subjected to cruelty or harassment by the accused-respondents.

11. Learned counsel for non-petitioners No. 2 to 5 has further relied on a decision of this Court in *Mishriya and Ors. v. State of Rajasthan* 1995 Cr.L.R. 542 : 1995(2) RLW 30 wherein this Court held that from the evidence collected by investigating officer, there is no material to even prima facie show that soon before her death deceased was harassed or subjected to cruelty by the petitioners therein for or in relation to any demand of dowry. Therefore, one of the basic ingredient to constitute offence u/s 304B I.P.C. is clearly, missing in this case. And in such circumstances, the charge u/s 304B I.P.C. is groundless. On the strength of decision in *Mishiriya's* case (supra), learned Counsel for non-petitioners No. 2 to 5 submits that there is no evidence that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband.

12. Learned counsel further relied on a decision of Hon"ble Supreme Court in *Dilawar Balu Kurane v. State of Maharashtra* 2002 Cr.L.R. 118 : RLW 2002(1) SC 157 wherein the Apex Court held that in exercising powers u/s 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction u/s 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

13. Both the cases relied on by the learned Counsel for non- petitioners No. 2 to 5 turn on their own facts and are of no help for the reasons that in the instant case, there is strong evidence of the witnesses noticed above that right from the marriage, non-petitioners No. 2 to 5 were not happy with the dowry and, therefore, the deceased was subjected to cruelty and harassment for demand of dowry, to some extent, the demand was made good by making payment of Rs. 50,000/- to non-petitioner No. 3, which is evident from the statements of witnesses discussed hereinabove.

14. To construe the offence u/s 304B I.P.C., essential ingredients of the offence are that the death of a woman was caused by burns or bodily injury or had

occurred otherwise than under normal circumstances; such death occurred within 7 years of her marriage; the deceased was subjected to cruelty or harassment by her husband or any relative of husband; such cruelty or harassment was in connection with the demand of dowry; and such cruelty or harassment was meted to her soon before her death.

15. In the instant case, admittedly, deceased Maya married to petitioner No. 3 on 9.3.2003 and her death occurred otherwise than under normal circumstances on 12.10.2004 almost about after a year of her marriage. Thus, the death of deceased Maya occurred otherwise than under normal circumstances in her in-laws house within seven years of the marriage. From the statements of the witnesses noticed above, it appears that right from the marriage, her husband non-petitioner No. 3 and father-in-law, mother-in-law and sister-in-law, no petitioners No. 2, 4 and 5 respectively were not satisfied with the dowry given to her and, therefore, she has been subjected to cruelty and harassment in connection with the dowry. There is an evidence that in the month of July, 2004, few months before her unnatural death, non-petitioners demanded dowry a sum of Rs. 50,000/- cash and threatened her with dire consequences on failure to fulfill the demand. The deceased requested the petitioner, who is the father of the deceased to make good of demand. The petitioner finding himself unable to arrange and pay, requested his elder daughter Urmila residing at Delhi to fulfill the demand by making payment of Rs. 50,000/- in order to save the life of deceased. The similar is the statement of the mother of deceased as well as of Urmila. Soon before death would mean in close proximity. In the instant case, the demand of cash dowry was made in the month of July, 2004 and it was fulfilled by making good of Rs. 50,000/- and the occurrence took place on 12.10.2004 and, therefore, prima facie it cannot be said that there is a wide gap between the demand and causing suicidal death. From the evidence noticed above, prima facie all the essential ingredients to construe the offence u/s 304B I.P.C. are made out. It cannot be said at this stage that the suicidal death of Maya was not on account of cruelty and harassment in connection with the demand of dowry. Where there is unnatural death of a woman at her in-laws house within seven years of her marriage, presumption of dowry death can be raised if there is an evidence that she was subjected to cruelty or harassment by the husband or his near relatives in connection with the demand of dowry.

16. Section 113A of the Indian Evidence Act, 1872 provides that when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

17. Section 113B of the Indian Evidence Act, 1872 contains that when the

question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

18. The expression "dowry" provided u/s 304B I.P.C. should mean any property or valuable security given or agreed to be given in connection with the marriage. More so, at the stage of framing of charge, the Court is required to see as to whether from the material placed on record by the police i.e., challan papers, there is a ground to presume that the accused has committed an offence, then charge has to be framed. The Trial Court is not to examine and assess in detail the material placed on record by prosecution nor it is for the court to consider the sufficiency of the material to establish the offence alleged against the accused persons. The court is to examine the material only with a view to be satisfied that prima facie a case of commission of offence alleged has been made out. At the stage of framing the charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

19. In *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.*, the Hon''ble Supreme Court held that if on the basis of material on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charges 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 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.

20. In *Umar Abdul Sakoor Sorathia v. Intelligence Officer, Narcotic Control Bureau* 1999 Cr.L.R. 499 the Hon''ble Apex Court held that at the stage of framing the charge, the court is not expected to go deep into the probative value of the materials on record and if on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial.

21. In *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, , the Apex Court held that even on the basis of strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them.

22. In *State of Delhi v. Gyan Devi and Ors.* JT 2000 (Suppl.2) SC 635 the Hon''ble Supreme Court held that at the stage of framing of charge, the Trial

Court is not to examine and assess in detail the materials placed on record by prosecution nor it is for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. The Court further held that at the stage of framing the charge, the court is to examine the materials only with a view to be satisfied that prima facie a case of commission of offence alleged has been made out against the accused. It was further held by the Hon''ble Apex Court that the High Court's power to quash the charge should not be exercised except for strong reasons like interest of justice and avoiding abuse of process of the Court.

23. In *State of Maharashtra Vs. Priya Sharan Maharaj and Others*, the Hon''ble Supreme Court held that at the stage of framing the charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. It was further held by Their Lordships that at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

24. In *Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others*, the Hon''ble Supreme Court held that the High Court should not interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons.

25. At the stage of framing of the charges, roving and fishing inquiry is impermissible as has been held by the Hon''ble Supreme Court in *State of Orissa Vs. Debendra Nath Padhi*, , wherein the Apex Court held as under:

"At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

26. In *State of Bihar Vs. Ramesh Singh*, the Hon''ble Supreme Court, while considering the provisions of Sections 227 and 228 as also Section 401 of the Code, held as under:

"Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial

to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. 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 the stage of deciding the matter u/s 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

In the instant case, the Trial Court has neither discussed the evidence nor assigned any cogent reason for not framing charge against non petitioners No. 2 to 5 for the offence u/s 304B I.P.C. Not only this, even no specific order has been made by the Trial Court discharging non-petitioners No. 2 to 5 for the offence u/s 304B I.P.C. and the Trial Court proceeded to frame the charge u/s 306 I.P.C. instead of Section 304B I.P.C. I am constrained to notice that the Trial Court declined to frame charge against the non-petitioners for the offence u/s 304B IPC only on the ground that there is no proof of cruel treatment in connection with demand of dowry. It is settled law that at the stage of framing of charge, court has to be satisfied whether there is sufficient ground to presume that accused has committed an offence and not whether there is sufficient proof for conviction. In the circumstances, therefore, in my view, the Trial Court fell in error in not considering the material placed before it in right perspective while framing the charge and, therefore, the impugned order deserves to be modified to the extent framing of charge u/s 306 I.P.C. instead of Section 304B I.P.C.

27. Consequently, the revision petition is allowed. Order impugned to the extent framing charge u/s 306 I.P.C. is set aside and instead the charge u/s 304B I.P.C. is directed to be framed. The matter is remanded to the Trial Court to frame the charge against non-petitioners No. 2 to 5 for the offence u/s 304B I.P.C. The order discharging non- petitioners No. 2 to 5 for the offence u/s 406 I.P.C. calls for no interference. The stay petition also stands disposed of.