

(2007) 08 AHC CK 0047
In the Allahabad High Court
Case No : Criminal M.A. No. 17413 of 2007

Smt. Madhuri alias Madhvi and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2008) 1 ACR 298

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Dilip Kumar and Arun Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—This application has been filed by the applicants Smt. Madhuri alias Madhvi and Smt. Madhur and Anr. with a prayer to quash the charge-sheet dated 17.6.2007 in Case No. 268 of 2007 under Sections 498A and 304B, I.P.C. and Section 3/4 of the Dowry Prohibition Act, P. S. Kavi Nagar district Ghaziabad, pending in the court of learned C.J.M., Ghaziabad vide Criminal Case No. 11620 of 2007.

2. The facts of the case in brief are that the F.I.R. of this case has been lodged by O. P. No. 2, Subhash Chandra Singh at P.S. Kavi Nagar on 12.5.2007 under Sections 498A and 304B, I.P.C. and Section 3/4, Dowry Prohibition Act, in Case Crime No. 268 of 2007, against the applicant and co-accused Dheman Singh and Balwant Singh alleging therein that due to non-fulfilment of the demand of dowry, the deceased Shobhna Singh was subjected to cruelty, ultimately she was killed by throwing on railway track under a train. After investigation, the Investigating Officer has submitted the charge-sheet dated 17.6.2007 in the court of learned C.J.M., Ghaziabad on which the learned C.J.M., Ghaziabad has taken cognizance and summoned the applicants and other co-accused persons to face the trial on 29.6.2007. Being aggrieved from the charge-sheet submitted by

the Investigating Officer and the order of cognizance dated 29.6.2007, the present application has been preferred before this Court with a prayer to quash the proceedings arising out of charge-sheet submitted against the applicants.

3. Heard Sri Dilip Kumar, assisted by Sri Arun Srivastava, learned Counsel for the applicants, learned A.G.A.

4. It is contended by the learned Counsel for the applicants that the marriage of the deceased Shobhna Singh was solemnized with the co-accused Dheman Singh on 15.2.2004 according to Hindu rites. The deceased has died on 10.5.2007, her dead body was found on a railway track, it was a case of train accident, inquest report of the dead body was prepared on 10.5.2007 in which the cause of death is mentioned as due to train accident. Its post-mortem examination was done on 11.5.2007, according to the post-mortem examination report the cause of death was due to accident with train, the deceased has committed suicide and no material has been collected by the Investigating Officer. The body of the deceased was put before the train and the distance of the house of the deceased was 3.5 km. from the place of occurrence and there is no eye-witness to prove that the deceased was killed by the applicants and other co-accused persons. The deceased herself has left the house of her in-laws, her in-laws made their best efforts to search her out. They have given the application before the S.H.O. P.S. Kavi Nagar. The Investigating Officer has not properly investigated the matter but under the influence of O. P. No. 2 has submitted the charge-sheet whereas applicant No. 1 Smt. Madhuri alias Madhvi, the Nand of the deceased was married with Dr. Kundendu Arya on 10.12.2005. On the date of the alleged accident, she was not at her parents house, after marriage she was living with her husband at C.H. 191 R.N.E. Quarters, Light House Hill Road, Manglore D. K. district Karnataka State, she has got admission in P.G.D.G.A. Programme from I.C.F.A.L. National College, Monipal Udupi main road Indrall Udupi and she was regularly attending the college, she was undergoing summer internship from 15.3.2007 to 10.5.2007. On 11.5.2007 she has informed the Principal of the said college that she was leaving with her native place on some urgent work. Thereafter with the permission of the Principal she left for Ghaziabad. She came from Manglore to Delhi by Air, which shows that the applicant No. 1 was not present at the place of occurrence. Applicant No. 2 is also an old lady suffering with Spondylitis they have been falsely implicated in the present case whereas the deceased has committed suicide due to her own reason. There was no demand of dowry and the deceased was never subjected to cruelty to fulfil the demand of dowry. Applicant No. 1 is on bail. There is no material to show that any offence under Sections 498A and 304B, I.P.C. and Section 3/4 of D.P. Act is made out. In such circumstances, the proceedings of this case may be quashed.

5. In reply to the above contention it is submitted by the learned A.G.A. that the deceased has died within seven years of her marriage, according to the allegations made against the applicants and other co-accused persons, there was

demand of dowry for which the deceased was subjected to cruelty and the deceased has been thrown under the train consequently, she died.

6. It is further contended that for the sake of argument if it is accepted that the deceased has committed suicide even then the offence u/s 304B, I.P.C. is constituted. The plea of alibi taken by applicant No. 1 shall be considered at the stage of trial, whereas applicant No. 2 is the mother-in-law of the deceased, being mother-in-law she was having responsibility to maintain her daughter-in-law in a cool and calm atmosphere, even on the basis of material collected by the Investigating Officer prima facie offence under Sections 498A and 304B, I.P.C. is made out. There is no illegality in filing the charge-sheet and there is no reason to quash the proceedings against the applicants. The present application is devoid of merits, the same may be dismissed.

7. Considering the facts, circumstances of the case, submissions made by the learned Counsel for the applicants and the learned A.G.A. and from the perusal of record it appears that the death of the deceased is unnatural, the allegation in respect of demand of dowry and subjecting the deceased to cruelty have been made and on the basis of material collected by the Investigating Officer a prima facie offence under Sections 498A and 304B, I.P.C. and Section 3/4 of D. P. Act is made out. So far as the plea of alibi in respect of applicant No. 1 is concerned, it may be taken by the applicant No. 1 at the stage of the trial. On these grounds the proceedings cannot be quashed. The learned C.J.M. has not committed any error in taking the cognizance and summoning the applicants and other co-accused persons on the basis of the charge-sheet dated 17.6.2007, submitted by the Investigating Officer in Case Crime No. 268 of 2007, P. S. Kavi Nagar, district Ghaziabad and there is no ground to quash the proceedings arising out of the above mentioned charge-sheet submitted in the court of learned C.J.M., Ghaziabad. Therefore, the prayer for quashing the proceedings or Case No. 11620 of 2007 under Sections 498A and 304B, I.P.C. and Section 3/4 of D.P. Act, pending in the court of learned C.J.M., Ghaziabad arising out of the charge-sheet submitted in Case Crime No. 268 of 2007, P.S. Kavi Nagar, district Ghaziabad is refused.

8. However, considering the facts and circumstances of the case and the fact that the applicant No. 1 is married Nand of the deceased, it is directed that her personal attendance is dispensed with till the framing of the charges, till then her appearance shall be noted through her counsel. In case, before framing of the charge, applicant No. 1 moves a discharge application through her counsel, the same shall be heard and disposed of in accordance with the provisions of law.

9. With this direction, this application is finally disposed of.