

(2018) 03 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.CR.C.NO. 2436 OF 2017

Smt. Megha Singh Sindhe

APPELLANT

Vs

State Of M.P. & Anr

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 113B
Indian Penal Code, 1860 — Section 34, 304B, 323, 342, 498A
Code Of Criminal Procedure, 1973 — Section 160, 164, 482

Citation : (2018) 03 MP CK 0022

Hon'ble Judges : SHEEL NAGU, J

Bench : Single Bench

Advocate : J.P. Mishra, Shiraz QuraishiRajesh Shukla

Judgement

1. The inherent powers of this court are invoked u/S. 482 Cr.P.C. to assail the FIR dated 5/10/16 registered at Police Station Maharajpur District

Gwalior inter alia against the petitioner who happens to be sister-in-law (Nanad) of the deceased who died due to hanging.

2. Learned counsel for the petitioner and respondent are heard on the question of admission and final disposal.

3. The prosecution story unfolded is that on 9/7/13, the deceased got married to accused Gaurav Bhatt. The father of the deceased gave dowry

comprising of about 80 grams of gold and cash of Rs. 1,55,000/- to Gaurav Bhatt. The mother-in-law and the husband of the deceased after about 23

months of marriage started taunting the deceased that in case Gaurav had been married with someone else than the deceased, then much larger

quantum of dowry would have been received. While doing so, the in-laws started imposing unnecessary restrictions on the movements of the

deceased and subjecting her to cruelty. It is alleged that on 13/12/14, the deceased lodged a written complaint against her husband and mother-in-law at police station Maharajpur, Gwalior which led to registration of Crime No. 230/14 alleging offences punishable u/S. 498 A, 342, 323 and 34 of IPC. It is further alleged in the FIR that after lodging of the said report, the petitioner (Nanad) Smt. Megha Santosh Shinde joined the husband and mother-in-law of the deceased in the process of inflicting cruelty. The FIR further alleges that the deceased got fed up with the persistent infliction of mental and physical cruelty and therefore, on 7/6/16 at about 12 Noon ended her life by hanging herself leaving behind a two year old son. The impugned FIR was lodged based upon the inquest commenced vide information provided by mother-in-law on 7/8/16. The statement of the father, mother, sister and brother of the deceased namely Ravi, Savitri, Seema and Kuldeep respectively were recorded on three occasions i.e. the first during the inquest, the second u/S. 160 Cr.P.C. and the third u/S. 164 Cr.P.C.

4. After completion of investigation, charge-sheet was filed whereafter cognizance was taken, the trial Court framed charges against the three accused Smt. Meena (mother-in-law), Gaurav (husband) and the petitioner (Nanad) of the deceased u/Ss. 498 A, 304 B and 34 of IPC whereafter trial commenced where statements of two eye-witnesses have already been recorded.

5. At this juncture, learned counsel for the respondent has raised the question of maintainability on the ground that at this late stage when the trial has begun and testimony is being recorded, it would not be appropriate to interfere u/S. 482 Cr.P.C.. For this purpose, this court may revert to decision of the Apex Court in the case of Sathish Mehra Vs. State of N.C.T. of Delhi and Anr. reported in AIR 2013 SC 506 where it was held that the power u/S. 482 Cr.P.C. is inherent and plenary in nature which can be exercised at any stage of the criminal prosecution i.e. right from the earlier stage of grievance of non filing of the FIR till any time during pendency of trial in cases where manifest injustice is palpable. The relevant portion of the said Apex Court decision is reproduced below:-

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint,

as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused.....â??

6. In view of above law laid down by the Apex Court, this court rejects the primarily objection of the State and the victim and proceeds to decide the matter on merits.Â Â

7. Learned counsel for the petitioner, sister-in-law of the deceased has primarily raised two grounds in support of challenge to the prosecution. First being that a bare reading of the allegations contained in the charge-sheet do not constitute the offence of dowry death and the second being that of malice that the petitioner being sister-in-law and despite staying away from Gwalior since her marriage in the year 2009 has been wrongly arrayed as an accused merely to wreck vengeance and to give vent to the feelings of hatred and animosity in the mind of the parents and relatives of the deceased arising out of the unfortunate incident in which the petitioner has no role to play.

8. After hearing learned counsel for the rival parties, this court is of the considered view that there is sufficient ground in the present case calling for interference in the prosecution against the petitioner so far as it relates to the offence punishable u/S. 304 B of IPC for the reasons infra.

8.1. The FIR and the statement recorded u/S. 161 Cr.P.C. of the relatives of the deceased merely allege omnibus allegations against the petitioner of subjecting the deceased to harassment and cruelty for dowry demand. As regards the FIR, the only allegation against the petitioner is that the

petitioner alongwith her mother (mother-in-law of the deceased) used to subject the deceased to dowry demand related cruelty, physical and mental in

nature and therefore, the petitioner deserves to be criminally prosecuted. The nature of allegations, the time and date of occurrence of any incident of

cruelty, or the bare minimum details of the kind of cruelty inflicted, are totally missing from the allegations in the FIR. Vague, non-specific and

omnibus allegations are made in the FIR which do not satisfy the pre-requisites of the offence of dowry death as defined u/S. 304 B of IPC, which for

ready reference and convenience is reproduced below:-

304B. Dowry death.

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of

her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for,

or in connection with, any demand for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have

caused her death. Explanation-"For the purpose of this sub-section, dowry shall have the same meaning as in section 2 of the Dowry

Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to

imprisonment for life.]

8.2. A plain reading of the above provision reveals the following pre-requisites which are necessary to be cumulatively satisfied to enable launching of

a valid criminal prosecution u/S. 304 B of IPC:(1) Death of a woman due to burn or bodily injuries otherwise than in the normal circumstances.

(2) Death having occurred within seven years of marriage.

(3) Soon before death she was subjected to cruelty or harassment by husband or any relative of her husband for or in connection with demand for dowry.

8.3. Taking up the first ingredient, it is seen that the same appears to be prima facie satisfied as deceased died an unnatural death due to hanging.

As regards the second ingredient, the same also prima facie appears to be satisfied as marriage took place on 9/7/13, whereas death occurred on

7/8/16 which was well within seven years of the marriage. However, as regards the third ingredient of allegations against the petitioner of dowry

demand related cruelty (mental or physical) inflicted soon before death, the same appears to be totally absent for the reasons infra:-

(i) The FIR, the inquest statements, the statements recorded u/S. 161 and 164 Cr.P.C. contain allegations which are of an omnibus nature with non

specification of time, nature, details of cruelty inflicted on the part of the petitioner against the deceased mentioned therein. A general sweeping

statement has been made that petitioner along with husband and mother-in-law inflicted cruelty.

(ii) More so, the factor which weighs heavily in favour of the petitioner is that since her marriage in 2009, she was either resided at Agra or at Shirdi

her matrimonial home which is far away from Gwalior. It is obvious that petitioner must be visiting her parents place at Gwalior and if she inflicted

any mental and/or physical cruelty, then the least that was required by the parents and the relatives of the deceased while recording the statements

was to disclose the time, place and nature of cruelty inflicted by the petitioner upon the deceased. Not having done so, in any of the material collected

by the prosecution in the charge-sheet, the presumption that can very well be drawn in favour of the petitioner is that having married in 2009, having

left her parental house at Gwalior since then she was not residing at Gwalior and therefore, the allegations made against petitioner in the FIR and in

the statements recorded by the prosecution do not reflect the reality and have been made with malafide intention to falsely implicate the petitioner only

because she is related to the main accused i.e. the husband and the mother-in-law of the deceased.

(iii) Another factor which persuades this court to take a view in favour of the petitioner is that the first complaint made by the deceased regarding

cruelty in the year 2014, was made on 18/6/14 (Annexure P/3) where the allegations of mental and physical cruelty were only against the husband

Gaurav and the mother in law. The said complaint has not even named the petitioner much less making any allegation against her.

(iv) More so, it is surprising to note that if the deceased could make a written complaint to the police on 18/6/14 within one year of marriage against

her husband and mother-in-law which led to registration of offence bearing crime No. 230/14 alleging offence punishable u/Ss. 498 A, 342, 323 and 34

of IPC, then what prevented the deceased from making another complaint against the petitioner. If the deceased was being subjected to cruelty by the petitioner between the period from (June-2014 to October-2016) and yet no complaint was made either to the police or to the court, it is a clear indicator that in actuality, the grievance of the deceased was only against her husband and mother-in-law. However to give vent to their pent up feelings against the husband and her mother-in-law, the relatives of the deceased appear to have falsely implicated the petitioner without any supportive allegation. Thus the prosecution of the petitioner clearly appears to be malicious rather than truthful.

9. From the above, it is crystal clear that one of the ingredients of infliction of dowry demand related cruelty soon before death is not made out against the petitioner (sister-in-law of the deceased).

10. A feeble attempt was made by the learned Public Prosecutor by contending that the prosecution against the petitioner can not be quashed in the

face of the statutory presumption u/S. 113 B of the Evidence Act. It is now well settled and it is also evident from bare reading of Section 113 B of

Evidence Act that the statutory presumption prescribed therein arises only when the basic three aforesaid ingredients of Section 304 B of IPC are

prima facie made out, and not otherwise. If any of the said basic three ingredients are missing as is the case herein where there is no evidence

whatsoever about the petitioner having inflicted dowry demand related cruelty soon before death, the said statutory presumption can not be resorted to

by the prosecution. In this respect the decision of Apex Court in the case of Suresh Kumar Vs. State of Haryana reported in (2014) 1 Cr.L.J 551 is

worthy of reference and relevant portion of which is reproduced below:-

48. We are, of course, bound by the decision of a larger Bench of this Court in Multtani (AIR 2001 SC 921 : 2001 AIR SCW 532). Following that

decision, we must hold that the initial burden of proving the death of a woman within seven years of her marriage in circumstances that are not normal

is on the prosecution; such death should be in connection with or for a demand of dowry which is accompanied by such cruelty or harassment that

eventually leads to the woman's death in circumstances that are not normal. After the initial burden of a deemed dowry death is discharged by the

prosecution, a reverse onus is put on the accused to prove his innocence by

showing, inter alia, that the death was accidental.â??

11. From the above conspectus of factual and legal assertion, this court is of the firm view that the prosecution launched against the petitioner is hit by

the vice of malice and the bare reading of the allegations in the charge-sheet desperately falling short of the minimum prima facie requirement of

satisfying the basic ingredients of dowry demand contained in section 304 B of IPC. The celebrated decision of Apex Court in the case of State of

Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. reported in AIR 1992 SC 604 comes to the rescue of the petitioner, the relevant portion of which is

reproduced below:-

â??108. (1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in

their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section

155 (2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by

a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.â??

(Emphasis Supplied)

12. Consequently, this court has no hesitation to invoke its inherent powers u/S. 482 Cr.P.C. and quashes the prosecution launched against the

petitioner u/S. 304 B of IPC. However, the prosecution of the petitioner for the remainder charge punishable u/S. 498 A and 34 of IPC shall continue

and the trial court shall proceed against petitioner in accordance with law.