
(2003) 08 MP CK 0065

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 276 of 2003

Subhadrabai and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 227, 319, 482
Penal Code, 1860 (IPC) — Section 107, 120B, 306, 376, 498A

Citation : (2004) 1 JLJ 383

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

Bench : Single Bench

Advocate : S.K. Vyas and P.K. Saxena, for the Appellant; Girish Desai, D.A.G. and A. Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

1. Both these revisions have been filed against the order dated 19.3.2003 thereby framing charge against the applicants under sections 306 and 498A of the Indian Penal Code by the learned Addl. Sessions Judge, Shajapur in Sessions Trial No. 188/2002.

2. A pithy description of the prosecution case against the applicants/accused in the charge sheet is that the deceased Mamta was married with the applicant Suresh Saxena in the year 1993. After the marriage, she lived for about a year with Suresh. She was ill-treated for demand of dowry. Thereafter, she was left with her mother by the husband. Though the applicants and deceased were having strained relations, but from time to time, the husband was visiting her mother's house and she also came to the house of the husband. Out of their wedlock, one son and daughter had born. In the year 1998, husband-applicant Suresh filed a suit for divorce and the same was dismissed. At that time, she was living with her mother and brOrs. . Her both children were also residing with her. The deceased-wife filed an application for grant of maintenance u/s 125 of the Code of Criminal Procedure against the husband Suresh and the same was

allowed by order dated 13.8.1999 thereby granting maintenance at the rate of Rs. 1,600/- per month in favour of wife Mamta. The maintenance amount was not paid by the husband Suresh and, therefore, Mamta filed an application for execution. In these execution proceedings, last date was fixed by the Court as 8.3.2002. In the month of January, 2002, the father and husband of accused applicants Suresh, Indra Devi alias Savitri and Subhadrabai respectively had expired. Thereafter, the deceased Mamta was persuaded by the husband Suresh to come to attend the last ritual ceremony of her father-in-law. She succumbed to their persuasion and came to the house of the husband-applicant Suresh who was living with his mother Subhadrabai.

The deceased was also assured for proper and cordial behaviour in future and she was not allowed to go back. On 7.3.2002, the deceased Mamta phoned her mother regarding hatching of conspiracy by all the applicants for finishing her. She also requested for sending her brother Alok. After this phone, mother and brother of Mamta, the same day received telephonic message by Bank Manager Joshi that the deceased has died because of consuming poison. On this information, the brOrs. , sister and mother of the deceased reached at Shajapur hospital where they found Mamta dead. They noticed blood oozing from her nose and some injury at her neck. The police, during investigation, registered the offence and recorded the statements of Rajendra Kumar, Alok Saxena, Arti Saxena, Kavita and Asha Saxena who were the brOrs. , sister and mother respectively of the deceased. Police also recorded the statements of independent witnesses who are the neighbours of the applicants/accused persons namely Mahendra Singh, Ramcharan and Giriraj. The sum and substance of the statements of all these witnesses is that the deceased was not pulling on well with the applicants and they started ill-treating her after the marriage for demand of dowry. She was brought to the house of the husband just to avoid the payment of maintenance amount and arrears? of Rs. 60,000/-, for which, execution proceedings were fixed on 8.3.2002 before the learned Judicial Magistrate First Class and she died because of consuming poisonous substance a day earlier at the house of the applicants on 7.3.2002. The independent witnesses have specifically mentioned presence of both the sisters-in-law Indira alias Savitri and Prabha on 7.3.2002. They have also stated that on 7.3.2002, the applicant had a quarrel with the deceased Mamta and all were harassing her and also picking up quarrel with her. The mother, brOrs. and sisters of the deceased have also deposed against the applicants. The police also seized some letters written by the deceased to her mother, and brOrs. , complaining about ill-treatment and other things. These letters were sent to Hand Writing Expert and positive reports have been received.

In lieu of payment of maintenance amount, the husband applicant Suresh gave a cheque of Rs. 7,000/- to the deceased wife, but ultimately the same could not be honoured because of the instructions given by the applicant to the Bank to stop payment.

The learned Trial Court, after hearing the prosecution as well as the counsel for the applicants, passed a detailed order. Before the trial Court, the applicants have filed some documents which were relating to the events occurred before 26.2.2002. The learned Trial Court did not consider these documents on the ground that the circumstances and events which have emerged in the statements of the prosecution witnesses were of the period of 26.2.2002. Therefore, at the stage of framing of the charge, the documents filed by the applicants, could not be considered.

3. I have heard learned Counsel for the parties in both the revisions and perused the entire material placed before this Court.

4. Learned Counsel for the applicants in both the revisions have vehemently argued that a false case has been concocted by the brOrs. and relations of the deceased. Before this Court also, the documents were filed relating to the divorce proceedings and some letters showing the fact that deceased Mamta did not level any allegation with regard to all these documents about demand of dowry. After consideration of these extraneous materials out of the charge-sheet, the learned Counsel have placed reliance on a judgment passed by the Supreme Court in Satish Mehra Vs. Delhi Administration and Another, . Learned Counsel have also cited following judgments in support of their arguments :

B.S. Joshi and Others Vs. State of Haryana and Another, , K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, , Ramesh Kumar v. State of Chhattisgarh (2001(2) BLJ 113 : 2001(11) MPJR 443), Raj Kumar alias Mansukh v. State of M.P. (2001(11) MPJR SN 27, Anurudh Prasad Tiwari v. State of M.P. (1999(1) MPJR 360), Jagdish Prasad Agrawal v. State of M.P. (1996(H) MPJR 142), State of M.P. v. Ganesh Ram (1997(11) MPJR 163), Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, , Girdhar Shankar Tawade Vs. State of Maharashtra, , Kamlesh and Ors. v. State of M.P. (2002 CriLJ 523) and Ramesh Kumar Vs. State of Chhattisgarh, .

5. In oppugnation, learned Dy. Advocate General Shri Desai has submitted that at the stage of framing of charge, by the Sessions Court u/s 227 of the Code of Cr. Procedure, the Court is not required to appreciate the evidence on record as if deciding the case after completion of trial. The Court has also no jurisdiction to appreciate any material foreign to the charge-sheet. The Court is required to see only as to whether a prima facie case is made out, against the accused persons, on the basis of the material available in the charge-sheet or not. He has also submitted that Satish Mehra's case (supra) has been referred to the Larger Bench.

6. Learned Counsel took this Court to the relevant portions of the statements of the prosecution witnesses and submitted that the deceased was brought to her matrimonial house only to avoid heavy payment of arrears of maintenance amount as well as future amount. There was a quarrel one day prior to the date fixed before the Magistrate i.e. 8.3.2002 and she (Mamta) died because of

consumption of poisonous substance on 7.3.2002. In the charge-sheet, there are statements of independent witnesses apart from the relations of the deceased. Thus, according to the learned Counsel for the Respondent, there is enough material for making out a prima facie case and the learned trial Court while passing the impugned order, acted well within the four corners of law.

7. Having heard learned Counsel for the parties and after perusing the entire record of both the cases as filed by the parties, it would be apt to consider the revisional scope of this Court for interference against the order of framing of charge. The Apex Court, in the case of Munna Devi Vs. State of Rajasthan and anr, has held as under :

We find substance in the submission made on behalf of the Appellants. The Revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate Courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. This Court in Kanti Bhadra Shah v. State of W.B. has held that there is no legal requirement for the trial Court to write a reasoned or lengthy order for framing the charge.

8. In the case of State of M.P. v. S.B. Johari and Ors. (2000(1) J.L.J. 142 : 2000(2) M.L.J. 322 (S.C.)), it has been held as under :

In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge u/s 120B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances it was for the prosecution to lead necessary evidence at the time of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Further, again non-joining of two remaining members to the Purchase Committee cannot be a ground for quashing the charge. After framing the charge and recording the evidence, if the Court finds that other members of the Purchase Committee were also involved, it is open to the Court to exercise its power u/s 319 of the Criminal Procedure Code. Not only that, the Court erroneously considered the alleged statement of the manufacturing company that quotations given by M/s Allied Medicine Agency, Indore were genuine without there being any cross-examination. The High Court ignored the allegation that many of the items have not been purchased and the amount is

paid on bogus vouchers. Hence, there was no justifiable reason for the High Court to quash the charge framed by the trial Court.

* * * 9. In the light of the abovementioned both decisions of the Supreme Court regarding scope in revision against the order of framing of charge and having regard to the facts and circumstances of the present case, this Court is of the opinion that there is sufficient material available to make out a prima facie case for putting the applicants to trial. The decisions cited by the learned Counsel for the applicants are mostly the decisions passed by the Courts in appeal filed by the parties against judgment passed after full trial. The scope in appeal is wide enough. Therefore, these judgments are not helpful to the applicants in this revision against framing of charge. Ofcourse one judgment relied upon by the applicants passed in the case of Anurudh Prasad Tiwari (supra) is relevant to the stage of framing of charge and in this case, this High Court (Single Judge of Principal Bench) has set aside the order of framing of charge, but the facts of this case are not at all comparable with the case on hand. In Anurudh Prasad Tiwari's case (supra), the prosecutrix of the offence of Section 376 of the IPC was threatened by the accused persons to withdraw the first information report. She wrote some letter to the concerned Superintendent of Police. On the basis of such letter, the offence u/s 376 IPC was registered by the police against the accused persons. On these facts, this Court has held that the basic ingredients of Section 107 IPC were not present and that could be the reason for committing suicide, but the same cannot be considered for abetment to commit suicide, punishable u/s 306 IPC.

10. So far as the question of consideration of documents filed by the applicants in their favour at the stage of framing of charge in their defence is concerned, firstly, this legal question is now pending for consideration before the Larger Bench of the Supreme Court and secondly, all these documents are not at all affecting the events which took place after passing the order of maintenance in favour of the deceased Mamta till her death. Learned Counsel for the applicants Indra Devi alias Savitri and Prabha has also submitted that they are the married sisters-in-law of the deceased and were residing away from the co-accused Suresh and Subhadrabai. They have been falsely implicated. This Court is unable to appreciate this argument at this stage, because all the witnesses especially three independent witnesses in their case-diary statements have stated that they were present on 7.3.2003 in the house where the quarrel took place between the accused persons and the deceased and thereafter, the deceased died because of consumption of poisonous substance.

11. Learned Counsel for the applicant Suresh has also submitted that this Court has wide power u/s 482 CrPC to quash the proceeding at any stage. There is no dispute on this legal proposition, but as discussed above, the facts and material on record are not sufficient to attract inherent powers of this Court for quashing the proceedings against the applicants. Inherent powers can be used by this Court in the rarest of rare cases when there is clear abuse of process of Court of

law. Such circumstances are not available in the present case.

12. In the wake of the aforesaid factual and legal analysis, there is no substance in both these revisions. Therefore, the same are hereby dismissed. Any observation made in this order shall not be taken into consideration during the course of trial by the trial Court in favour of the either party.