

Court No. - 11

Case :- APPLICATION U/S 482 No. - 9771 of 2023

Applicant :- Vikas Verma

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Civil Sectt. Lko And Another

Counsel for Applicant :- Rakesh Kumar Agarwal, Saksham Agarwal

Counsel for Opposite Party :- G.A., Girish Kumar Pande, Prashant Pandey

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Saksham Agarwal, learned counsel for the petitioner and Sri Aniruddh Kumar Singh, learned AGA-I for the State.

2. Learned counsel for the petitioner has informed that the learned counsels for the private opposite party have informed the learned counsel for the petitioner in writing that they shall not be appearing in the present case on behalf of the private opposite party.

3. By means of this petition, the petitioner has prayed the following reliefs:-

"The applicant most humbly and respectfully beg to submit that on the basis of facts mentioned in the accompanying affidavit this Hon'ble Court may graciously be pleased to quash the charge-sheet dated 14.02.2021, summoning order dated 04.03.2021 passed by Learned Judicial Magistrate Lucknow and also the order dated 27.04.2023 passed by Learned Additional Sessions Judge/ Special Judge-4 (Prevention of Corruption Act) Lucknow whereby charge had been framed under Section 498(A)/304(B)/302 IPC and 3/4 Dowry Prohibition Act 1961 (the certified copy of the charge-sheet dated 14.02.2021, summoning order dated 04.03.2021 and order dated 27.04.2023 is contained in ANNEXURE-1, 2 & 3 respectively) or to pass any other order in the interest of Equity, Justice and Good Conscience."

4. The question to be adjudicated in this petition is that as to whether the learned trial court can frame charge for Section 302 IPC as an alternative charge without having any clinching material/evidence in respect of Section 302 IPC in a case where charge relating to Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act has been framed by this Court on the basis of the FIR and the charge sheet, which has been filed only under those Sections, not under Section 302 IPC.

5. The precise facts of the case are that the FIR bearing FIR No.0949 of 2020, under Sections 498-A, 304-B of IPC and

Section 3/4 of Dowry Prohibition Act, 1961, Police Station-P.G.I., District- Lucknow has been filed by the father of the deceased against his son-in-law Vikas Verma and other family members, namely, Chandrabhan (father-in-law of the deceased), Rajani (mother-in-law of the deceased), Pushpendra (Devar) and Rupali (Nanad).

6. Pursuant to the aforesaid FIR, investigation has been conducted and after completion of investigation, charge sheet has been filed only against Vikas Verma (husband of the deceased) under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act and names of other co-accused persons have been dropped. Admittedly, no protest application has been filed on behalf of the complainant/ informant against the charge sheet whereby the names of other co-accused persons have been dropped. Learned trial court took cognizance of the charge sheet on 04.03.2021 and issued summons on the same date i.e. 04.03.2021 against the present petitioner only.

7. Learned trial court i.e. Additional Sessions Judge/ Special Judge, Special Court No.4, (Prevention of Corruption Act) Lucknow has passed an order dated 27.04.2023 (Annexure No.3) framing charges against the petitioner under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act. By means of the aforesaid order, learned trial court has framed alternative charge under Section 302 IPC also against the petitioner.

8. Learned counsel for the petitioner has submitted that undisputedly, this is the prerogative of the learned trial court to frame any charge on the basis of material/evidence available on record. Even the learned trial court may alter or add any charge at any time before pronouncement of judgment under Section 216 Cr.P.C. However, no alternative charge can be framed without having any material or evidence to that effect. In the present case, no allegation of any kind whatsoever has been levelled against the petitioner in respect of murder, even during the course of investigation, no cogent material or reliable evidence has been found by the prosecution to suggest that the petitioner may be charged under Section 302 IPC, therefore, the charge sheet has been filed under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act, not under Section 302 IPC. Even as per the prosecution story itself, at the time of incident in question, the petitioner was far away from the place of incident and *prima facie*, it was appearing that it was a case of suicide. He has further submitted that if there is any clinching evidence to suggest that the accused person has committed the offence of murder of his own wife within a period of seven years of the marriage and he along with his

entire family was coercing her by demanding dowry, the charge under Section 302 IPC could have been framed and in that case, the alternative charge under Section 304-B of IPC could have also been framed. In these circumstances, the charge under Section 302 IPC may not be treated as an alternative charge, rather it should be the main charge. The facts and circumstances of the present case are entirely different as argued above, therefore, in the present case, framing charge under Section 302 IPC as an alternative charge is nullity in the eyes of law.

9. Learned counsel for the petitioner has submitted that though the Apex Court in re; **Rajbir alias Raju and Another v. State of Haryana, (2010) 15 SCC 116**, directed all the trial courts in India to *ordinarily* add Section 302 IPC to the charge of Section 304-B IPC, so that death sentences can be imposed in such heinous and barbaric crimes against women, but while considering the aforesaid judgment, the Apex Court in re; **Jasvinder Saini and Others v. State (Government of NCT of Delhi), (2013) 7 SCC 256**, has held that mechanical addition of charge under Section 302 IPC, when *prima facie* evidence did not support the case of murder, would not be appropriate. The Apex Court further clarified that since the learned trial court has got power under Section 216 Cr.P.C. to alter or add the charge before pronouncement of the judgment, therefore, if the learned trial court finds any cogent or reliable material during the course of the trial to the effect that Section 302 IPC should be added with Section 304-B IPC, such exercise may very well be undertaken by the learned trial court.

10. Therefore, learned counsel for the petitioner has submitted that in view of the facts and circumstances of the present case, since charges under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act have been framed and no clinching or cogent material/ evidence is on record to show that the offence under Section 302 IPC has been committed by the petitioner, so the impugned order dated 27.04.2023 passed by the learned trial court may be set aside/ modified to the extent of framing of alternative charge under Section 302 IPC.

11. On the other hand, Sri Aniruddh Kumar Singh, learned AGA-I, has submitted that there is no dispute on the findings and direction of the Apex Court in re; **Jasvinder Saini** (supra) wherein all relevant judgments on the subject including **Rajbir alias Raju** (supra) has been considered but he has submitted that the Apex Court in re; **Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577**, having coram of three Judges has held that if the trial court finds that the prosecution has failed to make out the offence under Section 302 IPC but the offence under Section 304-B IPC has been made out, the

court has to call upon the accused to enter on his defence in respect of said offence and after affording ample opportunity to the accused, conviction under Section 304-B IPC may be granted but if such person is convicted under Section 304-B IPC without affording an opportunity of hearing, it would lead to serious miscarriage of justice.

12. On being confronted Sri Aniruddh Kumar Singh, learned AGA-I, on his aforesaid submission to the effect that the facts and circumstances of the present case are such wherein only alternative charge under Section 302 IPC was framed whereas the main charge under Section 304-B IPC has also been framed, on that point, Sri Aniruddh Kumar Singh has stated that he wanted to say that any charge may be framed against the accused persons on the basis of material available on record by affording an opportunity of hearing and this prerogative of the Trial Court may not be questioned. However, so far as the facts and circumstances of the present case are concerned, he has submitted that on the basis of material available on record, it is not clear at this stage as to how an alternative charge under Section 302 IPC has been framed by the learned trial court but during the course of the trial, if any clinching material/evidence is recovered or emerged, the learned trial court may very well add charge under Section 302 IPC against the petitioner strictly in accordance with law.

13. Heard learned counsel for the parties and perused the material available on record.

14. At the very outset, I would like to refer Two Hundred and Second Report on Proposal to Amend Section 304-B of Indian Penal Code of October, 2007 submitted by the Law Commission of India, Government of India wherein vide Item No.2.11, aspect of framing of charge - whether under Section 302 IPC or 304-B IPC has been discussed. Notably, after referring the judgment of the Apex Court in re; **Shamnsaheb M. Multtani (supra), Lakhjit Singh Vs. State of Punjab, 1994 Supp. 1 SCC 173, Shanti v. State of Haryana, (1991) 1 SCC 371**, as well as the provisions of Sections 302, 304 & 498-A IPC as well as Sections 221, 222 & 464 Cr.P.C. and Section 113-B of the Evidence Act and throwing some light upon Sections 216 & 217 Cr.P.C., the Law Commission of India while summing up has opined as under:-

"... The Evidence Act too was amended to provide for certain presumptions in this regard. The offence of dowry death as provided in Section 304-B is not the same offence as murder in terms of Section 302. A case may or may not fall under both the sections. Where an accused is charged for one offence, he can be convicted for another offence if the charged offence is failed to be made out but the ingredients of another

offence are satisfied on available evidence, provided it does not lead to miscarriage of justice. In spite of such provisions in the law, the incidents of dowry deaths are not showing any significant decline or abatement. Hence the demand for more stringent punishment of death for the offence of dowry deaths."

15. Now, I shall deal the aspect as to whether the alternative charge under Section 302 IPC has been framed properly or framing of such charge was absolutely unwarranted in view of the facts and circumstances of the present case. Perusal of the FIR clearly reveals that death of the daughter of the complainant/ informant has taken place within seven years of marriage inasmuch as the daughter of the informant/ complainant got married with Vikas Verma, the petitioner, on 28.11.2016 and she died on 12.12.2020. The general allegations of demanding dowry and cruelty have been levelled against Vikas Verma (husband) and other family members. The cause of death is hanging and as per material available on record, except ligature mark, no other injury was found on the body of the victim. During the course of the investigation, it was found that on the date of incident, Vikas Verma was far away from the place of incident. Further, during the course of investigation, involvement of other accused persons, namely, Chandrabhan (father-in-law), Rajani (mother-in-law), Pushpendra (Devar) and Rupali (Nanad) has not been found, therefore, their names have been dropped from the charge sheet and charge sheet under Sections 498-A, 304-B IPC and Section 3/4 of Dowry Prohibition Act has been filed only against the present petitioner. No protest application of any kind whatsoever has been filed by the complainant/ informant against the investigation in respect of deleting the names of other accused persons from the charge sheet.

16. Therefore, *prima facie*, it is clear that no material of any kind is available at this stage to suggest the prosecution to file charge sheet against the present petitioner under Section 302 IPC, therefore, in absence of cogent material against the petitioner regarding charge under Section 302 IPC, the alternative charge may not be framed against him by the learned court below.

17. Hence, following the observation of the Apex Court in re; **Jasvinder Saini** (supra), wherein the Apex Court has held that the mechanical addition of charge under Section 302 IPC, when *prima facie* evidence available on record did not support the case of murder, framing alternative charge under Section 302 IPC is absolutely unwarranted. Relevant paragraphs no.10, 11, 14 & 15 of the aforesaid judgment are being reproduced herein below:-

"10. Section 216 of the Code of Criminal Procedure deals with alteration or addition of any charge and empowers the court to do so at any time before the judgment is pronounced. The section runs as follows:

"216. Court may alter charge.—(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.

14. Be that as it may, the common thread running through both the orders is that this Court had in Rajbir case [Rajbir v. State of Haryana, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without advertent to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir case* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] . The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in *Rajbir case* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] , but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court."

18. It is needless to say that during the course of the trial, if the learned trial court finds that there is any clinching or cogent material convincing the learned trial court that the trial of the present petitioner should be conducted under Section 302 IPC also, the same charge may be added by the learned trial court under Sections 216 & 217 Cr.P.C.

19. Accordingly, the order dated 27.04.2023 passed by learned Additional Sessions Judge/ Special Judge, Special Court No.4, (Prevention of Corruption Act) Lucknow is hereby set aside/ modified so far as the alternative charge under Section 302 IPC has been framed against the petitioner. However, the trial against the petitioner may be conducted and concluded under Sections 498-A, 304-B of IPC and Section 3/4 Dowry Prohibition Act strictly in accordance with law.

20. Accordingly, the present petition is **partly allowed**.

21. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 18.1.2024

kkv/RBS/-