



① Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION No. 542 OF 2013

UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE, 1973

PETITIONERS: 1. Vishwanath Sahu, s/o Ram Sahai Sahu, aged 31 years, r/o-Lakhanpur, District-Sarguja (C.G.)
2. Ram Sahai Sahu, s/o late Rupan Sahu, aged 58 years,
3. Sumitra Sahu, w/o Ram Sahai Sahu, aged 55 years
Both residents of Lakhanpur ward No. 2, P. S. Lakhanpur District Sarguja (C.G.)

R. No. 542/13
Presented by Smt. Vishwanath Sahu
22/8/13

VERSUS

RESPONDENT:

State of Chhattisgarh, through the
Station House Officer, Police Station
Udaipur District Sarguja Chhattisgarh

Police Station :- Udaipur
Revenue District :- Sarguja
Civil District :- Sarguja

Arising out of the orders

Passed by the Court of Second Additional Sessions Judge Sarguja (Ambikappur) Chhattisgarh presided over by Smt. Suman Ekka in Sessions Trial No. 109/2012, on 03/06/2013, ordering framing of charge of offence punishable under section 304 B/34 of the Indian Penal Code, 1860 (for short IPC) and the charges actually so framed.



S. Verma.

(2)

(6)

Being aggrieved by the order detailed in the title of this petition (hereinafter referred to as the impugned order), the petitioners beg to make this petition for revision thereof, under the following facts and circumstances and on the grounds following thereafter:-



APR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Single Bench: Hon'ble Shri Justice P. Sam Koshy****Criminal Revision No.542 of 2013****Applicants**

Vishwanath Sahu and others

VERSUS**Non-applicant**

State of Chhattisgarh

Present: Shri Pramod Kumar Verma, Sr. Advocate with Shri Sumit Verma, counsel for the applicants.
Shri Sudhir Bajpai, Dy. G.A for the State.

Oral Order
(26.02.2014)

By way of the instant revision, the applicants have challenged the order dated 3.6.13 passed by the 2nd Additional Sessions Judge, Surguja (CG) in Sessions Trial No.109/12 whereby, the court below had framed charge against all the applicants for the offence punishable under Sections 304-B/34 IPC.

2. Case of the prosecution is that deceased Abha Sahu was the wife of applicant No.1 – Vishwanath Sahu. Marriage between deceased Abha Sahu and applicant No.1 was solemnized on 27.4.09. Immediately after the marriage, the relationship between the husband and wife got strained on account of demand of dowry being raised by the applicants and his family members and for which the deceased was also harassed. On 5.1.12, applicant No.1 – Vishwanath Sahu took deceased Abha Sahu along with their two children on motorcycle from village Uproda Podi to Lakhanpur. En route, it is alleged by the applicant No.1 that they met with an accident on account of which, deceased Abha Sahu received serious injury and initially, she was taken to Primary Health Center, Udaipur from where immediately after the first aid, she was referred to District Hospital and later from the District Hospital, she was referred to Raipur where she was admitted in Ram Krishna Care Hospital and on 7.1.13, the deceased died. However, on postmortem being conducted, the doctor opined that the death of the deceased took place on account of poison. Thereafter, FIR was lodged and after investigation, challan was filed against the the applicants for offence punishable under Section 304-B/34 IPC in



Sessions Trial No.109/12.

3. Subsequently, vide impugned order dated 3.6.13, the trial court i.e. the court of 2nd Additional Sessions Judge, Ambikapur vide the impugned order has framed the charges against the applicants for offence punishable under Section 304-B/34 IPC.

4. It is this order which has been assailed by the applicants in the instant case.

5. Learned Sr. Advocate for the applicants submitted that accepting the prosecution story as it is, according to him, two propositions could have been possible. Firstly, once when the medical evidence has come that the cause of death was due to intake of poison, then it would have been a case of clear murder. Secondly, even if the entire story of the prosecution has been accepted, the charge framed under Section 304-B IPC is not made out as according to the counsel for the applicants, at best it could have been a case of 498-A IPC and not 304-B IPC. He tried to emphasize that from the materials available in the court there is nothing by which it could be established that soon before the death of the deceased, there was a demand of dowry or even an act of cruelty on the part of the applicants so as to establish the offence under Section 304-B IPC. Thus, for all these reasons, the charge framed against them is not made out and that the order dated 3.6.13 deserves to be set aside and the applicants are liable to be discharged for the offence punishable under Section 304-B/34 IPC.

6. Opposing the submissions made on behalf of the applicants, Shri Bajpai, Dy. G.A for the state submits that the case of 304-B/34 IPC has been framed by the court below on account of *prima facie* materials available on record. He took the Court through the statements of Kabutari Bai (PW-3) – mother, Jagdish Prasad Sahu (PW-2) – father, Santosh Kumar Sahu (PW-1) – brother and Rakesh Kumar Sahu (PW-4) – brother-in-law of the deceased all of whom have stated that deceased Abha Sahu immediately after about 5-6 months from her marriage (which took place on 27.4.09), was subjected to cruelty and harassment on account of demand of dowry. He has further stated that there was no need for framing a charge under Section 498-A IPC against the present

applicant for the reason that the very fact that the applicants have been charged for offence under Section 304-B IPC itself includes the offence under Section 498-A IPC. State counsel has further submitted that while framing of the charge, the court has to look into as to whether from the available materials in the challan, a *prima facie* case is made out or not. That in the instant case, there are sufficient materials on the part of the prosecution which was in fact placed before the court below and the court below after due consideration of all these facts had *prima facie* reached to the conclusion that the applicants were found to have *prima facie* committed an offence punishable under Section 304-B IPC and in the said circumstances, there is no scope of interference at this stage, against the framing of charge.

7. Having considered the rival contentions put forth by either side, it is trite to refer to a decision recently decided i.e. **Shoraj Singh Ahlawat and Ors. vs. State of U.P and Anr** reported in **AIR 2013 SUPREME COURT 52** wherein Hon'ble the Supreme Court has categorically held that the Magistrate, on the basis of the material available on record, only has to see whether there is a ground to presume that the accused/applicant has committed an offence. The Supreme Court has further held that at the stage of framing of charge, the Court is only required to evaluate the material documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

8. Similarly, in the case of **Amit Kapoor vs. Ramesh Chander and Another** reported in **(2012) 9 Supreme Court Cases 460,** Supreme Court has, in very categorical terms held in para-19 as under:-

"At the initial stage of framing of charge, the court is

concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

In the same judgment, the court below has clearly stated that the revisional jurisdiction should be exercised cautiously and that the scope of interference exercising the revisional jurisdiction particularly while dealing with the framing of a charge has to be very limited.

9. In the instant case, when we refer to the judgments placed before the court, the statements of Kabutari Bai (PW-3) – mother, Jagdish Prasad Sahu (PW-2) – father, Santosh Kumar Sahu (PW-1) – brother, Rakesh Kumar Sahu (PW-5) – brother-in-law and also the statement of Satyawanti Gupta (PW-4), sister of the deceased clearly stipulate that there was *prima facie* evidence against the present applicants in respect of subjecting deceased Abha Sahu to cruelty and harassment on account of demand of dowry. Further, the circumstances under which the death of the deceased took place i.e. firstly, applicant No.1 – Vishwanath Sahu tried to make out a story that the deceased met with an accident while the family were going on the motorcycle from Uproda Kodi to Lakhanpur but the evidence that has been collected shows that except for the deceased, no other person who was travelling on the motorcycle on the said date received any sort of injury. Similarly, the motorcycle on which they were travelling was also not damaged which would show that no accident had taken place and finally on 7.10.10 when the deceased died, the postmortem report shows that the death took place because of the intake of poison. These are the strong suspicions in respect of the death of the deceased having died otherwise than under normal circumstances.

10. As regards the contention of learned Sr. Advocate for the applicants, there is no element of proof regarding the harassment and cruelty that took place soon before the death of the deceased. It is submitted that Hon'ble Supreme Court in the case of Kaliyaperumal and another vs. State of Tamil Nadu reported in AIR 2003 Supreme Court Cases 382 held that the determination of the period which can come

within the term 'soon before' is left to be determined by the courts depending upon facts and circumstances of each case. If in the instant case, the time is to be seen from the statements that have come before the court below, it is evidently clear that the marriage took place on 27.4.09 and the harassment by the applicants to the deceased was after 5-6 months from the date of marriage and that in the intervening period, the deceased had also turned out from the house of the applicants and that thereafter, the matter was settled by the *Panchayat* and the deceased came back to reside with the applicant No.1 and the other applicants. After these incidents that took place in the intervening period, it can be safely presumed that the act on the part of the applicants subjecting the deceased to harassment and cruelty on the issue of demand of dowry was soon before her death.

11. It is settled position of law that while framing of the charge, the court below need not meticulously analyze the evidence or scan the records that have come before the court threadbare. All that which is required is from the available materials, whether *prima facie* an offence is made out or not and for that even if there is a strong suspicion against the persons, the charge can be framed.

12. Thus, under the given circumstances, no such strong case has been made out by counsel for the applicants so as to invoke the revisional jurisdiction of this Court at this stage of framing of charge.

13. Thus, the criminal revision being devoid of merit, the same is accordingly dismissed.

Sd/-
P. Sam Koshy
Judge