

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Miscellaneous Petition No.746 of 2015**

State of Chhattisgarh through Police Station Kotwali, District Raipur (Chhattisgarh)

---- **Petitioner****Versus**

Kabir Jaal, S/o Siman Jaal, age 25 years, R/o Gandhi Nagar, Kali Badi, Police Station City Kotwali, District Raipur (Chhattisgarh)

---- **Respondent**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For State/Petitioner | : | Shri Neeraj Mehta, Panel Lawyer |
| For Respondent       | : | Shri Mahesh Mishra, Advocate    |

**Hon'ble Shri Navin Sinha, Chief Justice****Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****14/10/2015**

1. The present application has been filed for leave to appeal against the acquittal of the Respondent from the charge under Section 304-B IPC by the Sixth Additional Sessions Judge, Raipur dated 10.4.2015 in Sessions Trial No.214 of 2013.

2. Learned Counsel for the State submits that the deceased was married on 3.2.2013. She committed suicide on 14.5.2013. Death being unnatural within seven years of the marriage, a presumption arises that it was a dowry death invoking Section 113-B of the Evidence Act. The mother of the deceased, PW-1, Asha Baghel and Sister of the deceased PW-4, Durga have both stated of dowry demands and harassment of the deceased by the Respondent, husband. The acquittal is therefore not justified. An alternate charge had also been framed was under Section 302 IPC.

3. Learned counsel for the Respondent opposing the application submitted that the acquittal calls for no interference and leave may not be granted to appeal. Reliance was placed on the police statement of PW-1 and PW-4 to

submit that not a single instance of cruelty for dowry was cited except for very generalised statement of a dowry demand. PW-4, Durga had also stated that the deceased was not keeping well and was under medication. Even in their Court deposition, no specific instance in proximity to death or nature of dowry demand and cruelty was mentioned except for a general omnibus mention of the same.

4. PW-8, Champa Bagh, aunt of the deceased, had acknowledged that the deceased, before her marriage was in love with one Sanju Madhukar and that her parents had solemnised the present marriage much against the wishes of the deceased. In her cross-examination, the witness acknowledged that the deceased had told her that she was not happy with the marriage and did not wish to live with the Respondent. Despite the protest of the deceased, her family members had told the deceased that now she had no option but to go and live with the Respondent. PW-9, Shahjadi Begum, an independent witness of the locality deposed that the deceased had told her that the Respondent never harassed her but still she did not want to go back to his house. The witness was not getting support from her own family members. She also stated that the deceased was having a love affair with Sanju Madhukar since before her marriage, including the fact that prior to her marriage she had eloped with the said Sanju Madhukar, married him and lived with him for about 8 months.

5. We have considered the submissions on behalf of the parties and perused the evidence also.

6. Before the presumption under Section 304-B IPC read with Section 113-B of the Evidence Act arises, the prosecution has to first establish a *prima facie* case of a dowry death. If no *prima facie* case is established, the burden of proof doesn't shift to the accused. The evidence as considered by the Trial Court does not reflect any demand for dowry except for very generalised references. Not a single instance of cruelty has been cited much less nature of the same. The charge under Section 302 IPC was also held to be

unsustainable in the facts and there was no charge under Section 107 of the IPC.

7. On the contrary, the independent evidence of PW-9 including the evidence of the aunt of the deceased, PW-8 clearly established that the marriage of the deceased was solemnized with the Respondent much against her wishes as she was in love with one Sanju Madhukar and married him and even lived with him for about eight months. Obviously, the present marriage solemnised under parental pressure, made the deceased extremely unhappy because of which she committed suicide.

8. We find no reason to interfere with the reasoning of the learned Trial Judge acquitting the Respondent. The application for leave to appeal is dismissed.

Sd/-  
(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-  
(P. Sam Koshy)  
**JUDGE**