

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

107

CRR No.2806 of 2015 (O&M)

Date of decision: 04.08.2015

Kuldeep Singh

....Petitioner

versus

The State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. Gautam Dutt, Advocate
for the petitioner.

PARAMJEET SINGH, J.

Instant revision petition has been filed by the petitioner against the impugned order dated 14.07.2015 passed by learned Additional Sessions Judge, Sangrur, whereby charges have been framed under Section 304B of IPC against the petitioner and in the alternative under Section 302 of IPC and Sections 406, 498A, 201 of IPC in case FIR No.17, dated 18.02.2015 registered at Police Station City I, Malerkotla.

Notice of motion.

On the asking of the Court, Mr. K.S. Sidhu, DAG, Punjab accepts notice on behalf of State of Punjab.

Learned counsel for the petitioner has relied upon Para No.13 of the judgement of Hon'ble the Supreme Court in case titled '*Jasvinder Saini and others vs. State(Government of NCT of Delhi) 2013(4)*

RCR(Criminal) 316 which reads as under:

'Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case (supra) 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. It is common ground that a charge under [Section 304B](#) 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 304B](#) also there is a death involved. The question whether it is murder punishable under [Section 302](#) IPC or a dowry death punishable under [Section 304B](#) 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 304B](#) 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 adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case (supra), 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.'

In view of the law laid down in Jasvinder Saini's case(supra), the impugned order is set aside. The trial shall examine the matter afresh in the light of observations made in the judgement of *Jasvinder Saini's case(supra)* and shall pass fresh order in accordance with law. At this stage, the trial Court is required only to look into the evidence which has been collected during investigation and on that basis, it shall frame the charge either under Section 304B or 302 IPC and not as an alternative. If the evidence comes subsequently, the trial Court will be at liberty to amend the charge at that stage.

The present petition is disposed of accordingly.

(PARAMJEET SINGH)
JUDGE

August 04, 2015

sonia g.