

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 710/2013**

Date of Reserve: 06.10.2015

Date of decision: 14.10.2015

JAI PRAKASH PANDEY PETITIONER

Through: Mr.Pawan Kumar Singh, Advocate.

versus

PRABHAWATI & ORS.RESPONDENTS

Through: Ms.Rajni Gupta, APP.
Mr.Sradhananda Mohapatra,
Advocate for the respondent No.1.
Mr.Rajesh Kumar, Advocate for the
respondent No.2.
SI Roshan Lal, P.S.Nangloi.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The petitioner who is the informant of FIR No.212/2012 has challenged the order dated 11.04.2013 passed by the learned Additional Sessions Judge/Fast Track Court-West in Sessions Case No.15/2013 whereby he has discharged respondent Nos.1 & 2 of the offence under Section 498A/304B and 34 of the IPC and has framed charges under the aforesaid sections only against the husband of the deceased namely Nagmani @ Montu. The respondents Nos.1 & 2 are the mother-in-law and married sister-in-law of the deceased.

2. The First Information Report was lodged on 19.08.2012 by the petitioner alleging that he married his daughter Neha to co-accused Nagmani on 21.05.2011 in accordance with Hindu religious rites. At

the time of marriage, Nagmani, the husband, was in employment in Delhi and, therefore, immediately after the marriage, the daughter of the informant came to stay with her husband in Delhi where the couple resided in a rented accommodation. It has been averred in the First Information Report that sometimes in January, 2012 his daughter was insinuated and troubled at the instance of the respondents and her husband for bringing insufficient dowry. The daughter of the informant thereafter came to her parental home and joined her husband later on the husband apologizing for his conduct. Again, a complaint was made by his daughter in the month of July, 2012 about similar bad behavior by her husband. The daughter of the petitioner told him that she always feared the arrival of her husband in the night. The husband of the deceased again promised of good conduct and took his wife to his home. The bad behaviour continued unabated. On 18.08.2012 at about mid-day, the petitioner is said to have talked to his daughter on telephone when the petitioner made it known that he wished to visit her. The daughter of the informant prevented him from visiting her and said that she should be left to her own fate. At about 8.30 pm on the same day a neighbour of the in-laws of the daughter of the petitioner gave an information on telephone that his daughter had committed suicide. On such information, the informant/petitioner and his family members left for the matrimonial home of the deceased from Sangam Vihar. The informant found that the husband of the deceased had already taken her to Sanjay Gandhi Memorial Hospital. This incensed the informant and, therefore, it was alleged by the

petitioner that because of the ill treatment meted out to the deceased, she committed suicide.

3. As a result of the aforesaid complaint, FIR No.212/2012 (P.S.Nangloi) was registered for investigation under Sections 498A/304B and 34 of the IPC.

4. The police after investigation submitted chargesheet under Sections 498A/406/304B/302 and 34 of the IPC, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

5. The Trial Court vide the order impugned discharged the respondents namely mother-in-law and married sister-in-law of the deceased on the ground that they were not named in the First Information Report and no role has been attributed to them with regard to dowry demand or harassment. The Trial Court took note of the fact that the respondent No.1 (mother-in-law) admittedly did not stay with the deceased and her husband, rather she was a permanent resident of a village in the district of Rohtas in the State of Bihar while respondent No.2 (married sister-in-law) resided at Sarojini Nagar, Amausi, Lucknow, U.P.

6. The Trial Court, on the basis of the aforesaid facts and appreciation of Section 113B of the Indian Evidence Act, on the point of charge, held that the death of the deceased was not proximate to any cruelty foisted on her and the statement of the mother of the deceased also did not specifically allege that any demand of dowry or cruelty was unfurled on the deceased soon before her having committing

suicide. However, charges were framed under Sections 498A/304B against the husband of the deceased, Nagmani @ Montu.

7. The learned counsel for the petitioner has assailed the order on the ground that the police papers indicate that the stridhan given to the deceased during her marriage was lying with her in-laws (respondents) and that there was sufficient material against respondent Nos.1 & 2 also for framing charges against them. It was submitted that the statements recorded under Section 161 of the Code of Criminal Procedure of the parents of the deceased and other witnesses clearly point towards the active involvement of the respondent Nos.1 & 2 in the occurrence. The respondents also demanded a motorcycle and respondent No.1, according to the mother of the deceased, had once expressed that she would go and live with her son only when the deceased would die.

8. I have heard the arguments advanced on behalf of the parties and have perused the records.

9. The informant, in the first instance in his complaint has not attributed any specific role to the respondent Nos.1 & 2 and has expressed his anger over the deceased having been taken to the hospital before he and his family members arrived on the news of commission of suicide by her daughter. This statement indicates two things namely that (i) the deceased committed suicide while she was in her matrimonial home and that (ii) an attempt was made by her husband to put her to medication for saving her life. The fact that only the husband of the deceased was arrested on the same day is an

evidence of the fact that the respondents were not available or present in the matrimonial home of the deceased when she committed suicide.

10. The police papers indicate that a suicide note was found in which the guilt has been saddled on no one and the deceased has expressed some other reason for ending her life. The handwriting of the deceased and the handwriting in the suicide note were found by the FSL to be of the same person.

11. In order to appreciate the contention of the petitioner, it is necessary to refer first to the provision of Section 304B of the Indian Penal Code. Section 304B of the IPC reads as hereunder:-

“304B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

12. The essential ingredients of the offence under Section 304B are that the death of a woman must have been caused under unnatural

circumstances; the death must have occurred within seven years of marriage; and soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; and such cruelty or harassment was in connection with the demand of dowry and such cruelty is shown to have been meted out to the woman soon before her death.

13. Explanation appended to Section 304B defines dowry to have the same meaning as contained in Section 2 of the Dowry Prohibition Act, 1961 which reads as under:-

***“2 Definition of ‘dowry’.** —In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law(Shariat) applied.”

14. The aforesaid provisions of the Indian Penal Code has to be per force read with Section 113B of the Indian Evidence Act which deals with presumption under certain circumstances as to dowry death.

***“113B. Presumption as to dowry death.**—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any*

demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).”

15. The aforesaid provision of presumptive evidence was introduced in the Evidence Act for tackling large number of dowry deaths within the confines of the matrimonial home of the deceased, with almost negligible direct evidence for the same. However, for the aforesaid presumption to be drawn, what is required, on a plain reading of Section 113B of the Evidence Act, is that the woman must have been “soon before her death subjected to cruelty or harassment”, “for, or in connection with, any demand for dowry”. It is only on the proof of the aforesaid ingredient that such a presumption is raised against any accused person about dowry death.

16. In the present case, the petitioner who is the informant has narrated about harassment caused to the deceased on account of not bringing motorcycle and sufficient dowry but such allegation is absolutely vague as far as respondent Nos.1 & 2 are concerned. A closer scrutiny of the First Information Report makes it very clear that on two occasions, after the marriage, the deceased came back to her parental home and went back to stay with her husband on apology being tendered and assurance given by her husband that she would be treated properly. There is a general and omnibus statement regarding harassment at the hands of respondent Nos.1 & 2. The police papers further reveal that the deceased committed suicide and the suicide note did not attribute any role to any one of the accused persons much less

the respondent Nos.1 & 2. Complete reliance on the statement of the mother of the victim that respondent No.1 had once expressed that she would only go to visit her son when her daughter-in-law dies, would be rather unsafe for putting the respondents on trial. The respondent No.2 admittedly has been married off a long time back and has been residing in her matrimonial home at Lucknow. There is no evidence on record, as of now, to come to any conclusion, even remote, that respondent nos.1 & 2 committed any act or created a situation which goaded the deceased to end her life.

17. In **Hira Lal & Ors vs. State (Govt. of NCT) Delhi**, (2003) 8 SCC 80, the Supreme Court at para 9 has observed as follows:-

9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the

substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession”. 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. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.”

18. It was further held:-

“Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved.

The Explanation to Section 498-A gives the meaning of “cruelty”. In Section 304-B there is no such explanation about the meaning of “cruelty”. But having regard to the common background of these offences it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the Explanation to Section 498-A under which “cruelty” by itself amounts to an offence. Under Section 304-B it is “dowry death” that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections (See Akula Ravinder v.State of A.P. [1991 Supp (2) SCC 99 : 1991 SCC (Cri) 990 : AIR 1991 SC 1142]). Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage.”

19. In **T.Aruntperunjothi vs. State through SHO, Pondicherry**, (2006) 9 SCC 467 the Supreme Court again held as:

“37. It, therefore, appears that no cogent evidence had been adduced by the prosecution to establish that the appellant had demanded any dowry. It would bear repetition to state that according to the mother of the deceased, PW 7 only PW 3 demanded dowry and only he was responsible for the death of her daughter. If that be so, he should have also been prosecuted.”

20. In **Satvir Singh & Ors. Vs. State of Punjab & Anr**, (2001) 8 SCC 633, the issue regarding prosecution of the husband of a woman under Section 302/304B and 306 of the IPC was considered. In Satvir

Singh (Supra) the Supreme Court has held that there are three occasions related to dowry. One is before the marriage, the second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. The Supreme Court held that this meant that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There could be many other instances for payment of money or giving property as between the spouses namely some customary payments in the family. The demand/expectation in those circumstances may not come within the ambit of dowry. Similarly, in the same judgment, it was held by the Apex Court that the phrase “soon before her death” appearing in Section 304B of the IPC is an elastic expression and could refer to a period either immediately before her death or within a few days or weeks before the death. The pivotal requirement, but, would be the proximity of the death to the cruelty meted out to the deceased. It is not without any reason that the radius of time for attracting such an offence is left open for individual cases. There should be, a perceptible nexus between the death and the dowry related harassment or cruelty.

21. In the absence of any material pointing towards the involvement of respondent no.1 and 2 in connection with the death of the deceased, it would be really difficult to accept the proposition of the petitioner that the materials against them could come during the trial. Framing of charge is a kind of tentative view that a Trial Court

forms in terms of Section 228 of the Cr.P.C which is subject to final culmination of proceedings. It is for this reason that in Section 228 of the Code of Criminal Procedure it is stated that if there is a ground for presumption that an accused has committed an offence, charges would be framed against him. Thus there is an inbuilt mechanism of presumption once the ingredients of the offence with reference to the allegations are satisfied. The trial may not end in conviction or during trial, on the strength of materials adduced, other persons not having trial also could be summoned to face trial along with other accused persons. However at the stage of framing charge, there is a definite legal requirement that a strong suspicion that the accused has committed an offence should exist before such an accused could be put to the rigors of a trial. The provisions of Sections 227 and 228 of the Code of Criminal Procedure read as hereunder:-

“227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate

shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

22. The scope of Section 227 of the Code was considered by the Supreme Court in **State of Bihar vs. Ramesh Singh**, (1977) 4 SCC 39 wherein the Supreme Court observed as follows:-

“4. ... Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

23. In a subsequent decision in **Union of India vs. Prafulla Kumar Samal**, (1979) 3 SCC 4, the Supreme Court listed the following principles for the exercise of powers under Section 227 of the Code of Criminal Procedure:-

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

24. The ambit and scope of the aforesaid sections were again considered in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya**, (1990) 4 SCC 76 as follows:-

“6. ... Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] this Court after considering the scope of Section 227 observed that the words ‘not sufficient ground for proceeding against the accused’ clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not

necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but it may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence.”

25. In a recent decision in **Soma Chakravarty v. State**, (2007) 5 SCC 403, the Supreme Court has held that:-

“The settled legal position is that if on the basis of material on record the court could form an opinion that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true ... Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.”

26. Thus a charge against a person can only be framed if there exists a strong suspicion but nothing less than that. Mere suspicion without any basis, could not be the reason for framing of charge against a person and putting him to trial. The Trial Court has assigned good reasons for discharging respondent nos.1 & 2, namely no positive materials/evidence against them for having goaded the deceased to commit suicide and their being stationed at a different place than the place of commission of suicide, for discharging

respondent nos.1 & 2. No fault could be found with the aforesaid order.

27. However, it may be noted and clarified that in case materials come during the course of trial regarding the participation of the respondents in the occurrence, the petitioner could move the Trial Court for summoning the respondents to face trial. If such a petition is filed, the Trial Court shall consider the same with the correct perceptive as indicated above and would pass necessary orders in accordance with law.

28. The petition is dismissed.

Crl.M.A No.18637/2013

1. In view of the petition having been dismissed, no orders are required to be passed in the instant application.
2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

OCTOBER 14, 2015

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