

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1000 of 2016
and Crl.MP.No.8028 of 2016

V.Kuppulakshmi .. Petitioner/Defacto Complainant

Vs.

1. Jaiprasanth

2. The Inspector of Police L & O,
B8 Variety Hall Road Police Station,
Coimbatore City,
Cr.No.42 of 2015 .. Respondent No2/Complainant

Prayer:- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to call for the records pertaining to the order dated 18.03.2016 made in CMP.No.645 of 2015 in SC.No.248 of 2015 on the file of the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore and set aside the same by allowing the criminal revision.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.A.S.Balaji for R1.
Mrs.M.F.Shabana, GA (Crl.side) for R2.

ORDER

The present Criminal Revision is directed against the order passed by the learned Sessions Judge, Mahalir Neethimandram, Coimbatore in CMP.No.645 of 2015 in SC.No.248 of 2015 dated 18.03.2016 allowing the discharge petition filed by the A4/present petitioner from the charges.

2.The learned counsel for the petitioner would contend that in this case, the trial Court without analysing the entire evidence discharged A4, as if there is no incriminating materials available for framing of charges against him. The trial Court without analysing the evidences of LW1 to LW3 have categorically implicated the accused and there was a specific allegations found in the Section 161 statement of the above witnesses. The trial Court compiling with the evidence of LW1 to LW3 with the evidence before the Revenue Divisional Magistrate, erroneously discharged A4 from the offences. The

trial Court failed to look into sections 304B r/w.113-B of Indian Evidence Act, which presume the guilt of committing the offence of dowry death by any person who has been proved to have subjected a married women concerned soon before her death to cruelty or harassment, for or in connection with dowry. The learned counsel further contended that there are sufficient materials available on the side of the prosecution to frame charges against A4, but the trial Court without appreciating the evidence wrongly compared with the other evidence and analysing the evidence at the stage of framing charges itself comes to a conclusion. In view of the above, the trial Court has erroneously discharged the accused from the charges and the learned counsel prays this Court to allow the criminal revision by setting aside the order of discharge passed by the trial Court against A4.

3.The learned counsel for the first respondent/A4 vehemently contended that the trial Court after perusing the entire evidences produced on the side of the prosecution correctly come to a conclusion that there is no valid incriminating materials available against A4, on the side of prosecution. Hence, the trial Court clearly discharged A4 from the charges and there is no illegality or infirmity in the order passed by the trial Court and prays to dismiss the revision petition.

4.Heard the rival submissions made on both sides and perused the records.

5.The learned counsel for the petitioner during the course of arguments produced the following citations in support of his contentions :-

1. (2013) 11 SCC 476 – Sheoraj Singh Ahlwat and another V. State of Uttar Pradesh and another
2. (2014) 2 SCC 240 - Tummala Venkateswar Rao V. State of Andhra Pradesh
3. (2014) 11 SCC 709 State of Tamil Nadu V. N.Suresh Rajan and others

6.It is held by the Hon'ble Supreme Court in paragraph 21 of the first decision reported in (2013) 11 SCC 476 - Sheoraj Singh Ahlwat and another V. State of Uttar Pradesh and another

"21. Coming then to the case at hand, the allegations made against the appellants are specific not only against the husband but also against the parents-in-law of the complainant wife. Whether or not those allegations are true is a matter which cannot be determined at the stage of framing of charges. Any such determination can take place only at the conclusion of the trial. This may at times put an innocent party, falsely accused of commission of an offence to

avoidable harassment but so long as the legal requirement and the settled principles do not permit a discharge the court would find it difficult to do much, conceding that legal process at times is abused by unscrupulous litigants especially in matrimonial cases where the tendency has been to involve as many members of the family of the opposite party as possible. While such tendency needs to be curbed, the court will not be able to speculate whether the allegations made against the accused are true or false at the preliminary stage to be able to direct a discharge. Two of the appellants in this case happen to be the parents-in-law of the complainant who are senior citizens. Appellant 1 who happens to be the father-in-law of the complainant wife has been a Major General, by all means, a respectable position in the Army. But the nature of the allegations made against the couple and those against the husband, appear to be much too specific to be ignored at least at the stage of framing of charges. The courts below, therefore, did not commit any mistake in refusing a discharge."

7. The Apex Court in the second judgment report in (2014) 2 SCC 240 - Tummala Venkateswar Rao V. State of Andhra Pradesh observed in paragraphs 8, 9, 10 and 14 are as follows :-

8. This Court in Kailash v. State of M.P. has observed as under: (SCC pp. 670-71, para 10)

"10. No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is 'soon before'. The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term 'soon before' is synonymous with the term 'immediately before'. This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within

the term 'soon before' is left to be determined by the courts, depending upon the 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 [see Hira Lal v. State (Govt. of NCT of Delhi)]."

9. This Court in Hira Lal v. State (Govt. of NCT of Delhi) has observed as under: (SCC pp. 86-87, para 9)

"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."

10. Section 304-B IPC reads as follows:

"304-B. 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."

It is obvious from this provision that the term "soon before her death" has been employed by Parliament to refer to cruelty or harassment which was meted out in proximity to the death and has to be considered as the cause of the death as held supra. The provision does not employ the term "at any time before" nor "immediately before" and must be construed according to its true import.

14. It may be noted, no exculpatory evidence has been led in defence so as to rebut the presumption enacted by Section 113-B of the Evidence Act, 1872, which reads as follows:

"113-B. 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 had 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 purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

8.The Apex Court in the third judgment reported in (2014) 11 SCC 709 State of Tamil Nadu V. N.Suresh Rajan and others observed in paragraphs 29 to 31.3 are extracted hereunder :-

29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P., in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi): (Sheoraj Singh Ahlawat case, SCC p. 482, para 15)

"15. '11. It is trite that at the stage of

framing of charge the court is required to evaluate the material and 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.' (Onkar Nath case, SCC p. 565, para 11)"

(emphasis in original)

31. Now reverting to the decisions of this Court in Sajjan Kumar and Dilawar Balu Kurane, relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction".

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak v. A.R. Antulay. The same reads as follows: (SCC pp. 755-56, para 43)

"43. ... Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of 'prima facie' case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

9. On perusal of the above said judgments of the Hon'ble Supreme Court produced on the side of the petitioner, it is settled principles of law that at the time of framing charges, the Court has to analyse whether any materials available to show that prima facie case for proceedings against the accused is available or not, the Court cannot compare with the other statement and compare and analyse whether the evidence has to be believed or not, whether any contradiction in the other evidence or statement by the accused, framing of charge is not the stage to look into other material and analyse the evidence, whether it is genuine or not and to compare with the evidence with other materials etc., The Court has to peruse whether any prima facie material available to frame charges.

10. In this case, on reading of the entire evidence of witnesses, it is clear and specifically stated that there are incriminating material available to frame charges under Section 498A IPC. Even though the first respondent has come the house of the deceased weekly once from Bangalore on Saturday and Sunday, there is specific evidence available to presume that he has committed offence under Section 498A IPC, hence, there is incriminating materials are available to frame charge under Section 498A IPC. Whether the evidence of LW1 to LW4 has to be believed or not, the statement before the Executive Magistrate has to be taken into consideration or not cannot be decided at the present stage. All the other defences has to be raised only at the time of trial. This Court finds considerable incriminating materials available to frame charges against A4 under Section 498A IPC.

11. At this juncture, the learned counsel for the petitioner invited the provisions of Section 113 B of Indian Evidence Act, which reads as follows :-

"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 had 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."

12. On reading of the above section 113 B of Indian Evidence Act, r/w. 304B IPC, incriminating materials are available to frame charges against A4 under Section 498A IPC. This Court is of the view that sufficient incriminating materials under Section 304 B is also available for framing charges against A4.

13. This Court is of the considered view, the order of the learned Sessions Judge, Mahalir Neethimandram (Mahila Court), Coimbatore in considering the evidences of LW1 to LW3 and came to the conclusion that there is no sufficient materials available is erroneous at this point of time to frame charge against A4. Hence, the order of the lower Court in discharging the A4 is liable to be set aside and the same is hereby set aside.

14. In the result, the criminal revision is allowed by setting aside the order passed by the learned Sessions Judge, Mahalir Neethimanram, Coimbatore made in CMP.No.645 of 2015 in SC.No.248 of 2015 dated 18.03.2016. The matter is remitted back to the file of learned Sessions Judge, Mahalir Neethimanram, Coimbatore, the lower Court is directed to frame charges against A4 for the offences under Sections 498 A and 304 B IPC and

proceed with the trial in accordance with law. Consequently,
connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Sessions Judge, Magalir Neethimandram (Mahila Court),
Coimbatore.

2.The Public Prosecutor, High Court, Madras.

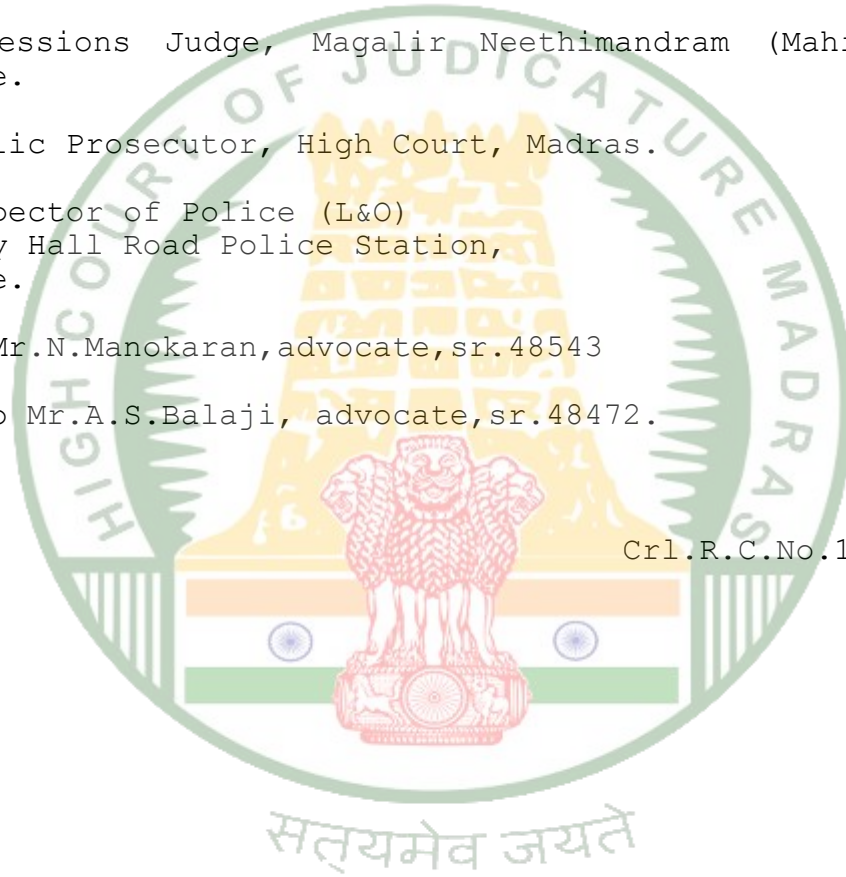
3.The Inspector of Police (L&O)
B8 Variety Hall Road Police Station,
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+1 cc to Mr.N.Manokaran,advocate,sr.48543

+2 cc's to Mr.A.S.Balaji, advocate,sr.48472.

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