

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing and Order: August 11, 2016

+ **CRL.REV.P. 76/2015**
MITHUN KUSWAHA

..... Petitioner

Through: Mr. Satish Chand Gupta, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State, with Sub-
Inspector Sunita, Police Station
G.T.B. Enclave, Delhi.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J. (Oral)

1. By this revision petition filed under Section 397 read with Section 401 of Cr. P.C. the petitioner seeks for setting aside the order dated 25.11.2014 passed by the learned Additional Session Judge, FTC, Shahdara, Karkardooma, Delhi, in S.C. No.66/2014 whereby the respondent has been charged for the offences punishable under Sections 498A/306 of IPC.

2. In nutshell, the facts of the case are that on 10.10.2010 the petitioner got admitted his wife Preeti to Max Hospital, Patpar Ganj as

she had consumed the acid. On 12.10.2010 the patient Preeti Kushwaha was declared dead by doctors, due to which an Inquiry was conducted by SDM and on 26.10.2010 a case under Section 498A of ipc was registered at the instance of Girja Devi (mother of the deceased). However, on 06.12.2010 after recording of statement of witnesses and observing the report of the SDM, Sections 306/34 of IPC were added in the charge sheet. Consequently on 25.11.2014 the charge sheet was filed and petitioner was charged with section 498A/306 IPC. Aggrieved by the said order, the petitioner approached this court by way of the present revision petition.

3. Mr. Satish Chand Gupta, learned counsel for the petitioner contended on behalf of the petitioner that the marriage of the petitioner and the deceased Preeti Kushwaha was solemnized on 16.02.2010. Since the petitioner was working as Engineer in a Company namely HCL situated in Noida and due to his odd duty hours, he used to come late. However, mother of deceased Preeti made an allegation that the petitioner had an illicit relation with some girl, which was the main reason for coming late at home. The petitioner tried to explain his wife but due to suspicious mind she did not listen the petitioner. It is further contended on behalf of the petitioner that due to the family atmosphere, the petitioner had to leave his job at HCL and was to join another company named WIPRO from 11.10.2010. But the wife of the petitioner consumed bathroom cleaner on 10.10.2010 which caused her untimely death on 12.10.2010.

4. It is the further contention of the learned counsel for the petitioner that father of the deceased had made a statement before the SDM on 13.10.2010 stating therein that there was no demand of dowry on behalf of the petitioner or his family members. Petitioner had also returned back all the dowry articles and it was agreed by the father of deceased that he shall not initiate any legal action against him and in this line, a compromise/agreement dated 20.10.2010 was also executed between them.

5. On 26.10.2010, Smt. Girja Devi mother of the deceased filed a written complaint and made her statement before the SDM Seemapuri, making false allegations against the petitioner. All such allegations were neglected and rejected by the court of learned Additional Sessions Judge and vide order dated 16.12.2010, he granted bail to the petitioner. Learned counsel for the petitioner contended that the learned Additional Sessions Judge vide order dated 14.11.2014 framed the charge under Section 498-A/306 of IPC despite the observation that it is a rebuttable presumption. Aggrieved by the said order, the petitioner preferred the present petition against framing of charge against him.

6. Ms. Manjeet Arya, learned Additional Public Prosecutor appears on behalf of the State and filed a status report in this regard, indicating that upon an enquiry conducted by the SDM, an FIR No.303/2010 was registered under Section 498-A/34 IPC on 26.11.2010, however, on 06.12.2010 section 306/34 of IPC were

added in the case on the basis of statement of witnesses and report of SDM. The charges have been framed and the case is pending trial.

7. I have heard the submission made by learned Additional Public Prosecutor for the State and have also gone through the impugned orders passed by the learned Additional Session Judge framing charges against the petitioner for the offence under Sections 306/34 of IPC.

8. Upon perusal of the impugned order dated 14.11.2014, in the considered opinion of this court, it cannot be said that the learned Additional Session Judge has not passed a reasoned order. The learned Additional Session Judge has specifically dealt with the the postmortem report, wherein cause of death was shock as a result of chemical peritonitis due to ingestion of corrosive substance and observed that the deceased died within seven years of her marriage, therefore, the presumption under Section 113-A of the Evidence Act may be drawn against the petitioner. This court further notes that the learned Additional Sessions Judge while framing charge under Sections 498-A/306 of IPC has also observed that such a presumption is rebuttable but at the stage of charge the facts and circumstances of the case were prima facie held to be sufficient for framing the charge under Section 498-A and 306 of IPC.

9. After going through the contents of the petition as well as material placed on record, this court is of the considered opinion that the Court at the stage of framing the charges has not to apply its

judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. It is also a well settled principle that the order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so.

10. In the light of the aforesaid discussion of facts and circumstances of the case, this court finds that the order dated 14.11.2014 passed by the learned Additional Sessions Judge thereby framing charge under Sections 498-A/306 of IPC does not suffer from any serious legal infirmity and rather it was eminently a just and fair order and this Court finds no reason to take a different view from the said order.

11. Resultantly, the present petition filed on behalf of the petitioner is dismissed and the order dated 25.11.2014 passed by the learned Additional Session Judge thereby framing charge under Section 498-A/306 of IPC is upheld. Accordingly, the petitioner is directed to appear before the Trial Court and to take appropriate legal remedies as available under the law.

12. Finding no merit in the present petition the same is hereby dismissed.

(P.S.TEJI)
JUDGE

AUGUST 11, 2016
pkb

