

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 346 of 2017**

1. Mukesh Agrawal S/o Shri Manohar Lal Agarwal Aged About 34 Years R/o A/403, Pooja Apatments, Kranti Nagar, District- Bilaspur, Chhattisgarh.
 2. Milan Agrawal S/o Shri Manohar Lal Agarwal Aged About 35 Years R/o A/403, Pooja Apatments, Kranti Nagar, District- Bilaspur, Chhattisgarh.
 3. Manohar Lal Agrawal S/o Jugal Kishore Agrawal Aged About 69 Years R/o A/403, Pooja Apatments, Kranti Nagar, District- Bilaspur, Chhattisgarh.
 4. Smt. Manulata Agrawal W/o Shri Manohar Lal Agrawal Aged About 61 Years R/o A/403, Pooja Apatments, Kranti Nagar, District- Bilaspur, Chhattisgarh.
 5. Ravikant Nopani S/o Budh Karan Nopani Aged About 49 Years R/o A/403, Pooja Apatments, Kranti Nagar, District- Bilaspur, Chhattisgarh.
 6. Smt. Varsha Agrawal W/o Vivek Kumar Aged About 31 Years R/o Pendara Dafai, Ward No. 15, Mahendergarh District- Korla, Chhattisgarh.
- Petitioners**

Versus

- State of Chhattisgarh through Police Station- Tarbahar District Bilaspur, Chhattisgarh
- Respondent**

For the applicants	:	Mr. Lav Kumar Agrawal & Mr. K.K. Dewangan, Advocate
For the Respondent	:	Mr. Anupam Dubey, Dy. Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****21.07.2017**

1. This revision is against the order dated 20.06.2016 passed by the learned Court of IX Additional Sessions Judge, Bilaspur in Sessions Trial No.35 of 2016 whereby the charge against the petitioners u/s 304-B has been framed.
2. As per the case of prosecution case, the marriage of deceased Sapna Agrawal was solemnized with Milan

Agrawal, petitioner No.2 on 24.05.2015. Thereafter, she was subjected to torture for demand of dowry as she was assaulted and abused by the present petitioners who are family members. Subsequently she set herself ablaze on 10.09.2015 and eventually succumbed to injuries on 16.09.2016. In the meanwhile, the prosecution recorded the statement of deceased including the dying declaration as also the statements of other witnesses and the charge sheet was filed u/ss 498-A and 304 IPC.

3. Learned counsel for the petitioner would submit that reading of the statement/dying declaration of the deceased would show that she was not subjected to torture for demand of dowry soon before her death as she left the home quite earlier in the month of August. It is further submitted that on perusal of statements of witnesses, it reveals that the reason for suicide is for something-else as the allegations of relations of husband with another girl was suspected by the deceased, as such, no case is made out against the petitioners. It is submitted that the statement would show that on the date of incident when she called her father-in-law and some relatives of in-laws in Jaipur they did not pick up the phone, therefore, she committed suicide for which section 304-B cannot be attracted and hence the petitioners may be discharged u/ss 304-B.
4. Per contra, learned State Counsel opposes the prayer and went through the statement of deceased which was recorded on 14.09.2015 and also the dying declaration. It is further submitted that the entire evidence has been adduced and the case is fixed for arguments on 25.07.2017. He also

placed reliance on decisions in *Kans Raj Vs. State of Punjab AIR 2000 SC 2324 Para 8* and *Nitesh Yadav Vs. State of M2012 (3) MPHT 121*.

5. Perused the documents and the statements. On perusal of the dying declaration recorded of the deceased on 10.0.2015 and the statements of deceased u/s 161 Cr.P.C., recorded on 14.09.2015, prima facie it appears that there is allegations of commission of offence. The statements of father and mother of deceased are also examined. Further taking into submission made that the statements of witnesses have already been recorded and the Sessions Trial is fixed for arguments any observation made at this stage may cause prejudice to the rights of either of the parties i.e., prosecution or the witnesses. However, the statement which is placed before this Court u/s 161 Cr.P.C., of the deceased apart from the dying declaration, it would not be proper for this Court to give a finding at this stage.
6. The Supreme Court in a case of *Shoraj Singh Ahlawat Vs. State of U.P.* reported in *AIR 2013 SC 52* has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

“240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately

punished by him, he shall frame in writing a charge against the accused.”

7. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in ***Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)***.
8. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as *prima facie* the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?
9. Further, the Supreme Court in a case law reported in ***M/s. Zandu Pharmaceutical Works Ltd. And others v. Md.***

Sharaful Haque and others (AIR 2005 SC 9), held thus :-

“8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle “quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the

administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look in to the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

10. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of ***State of Rajasthan v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***. It is stated that at the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.
11. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the applicant cannot be appreciated. The same has to be decided on the floor of the Court after assessing the evidence adduced by

the parties which is already completed in the instant case.

12. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the revision petition is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**

R a o