

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

**Criminal Revision No. 3830 of 2016
Date of decision: 15.12.2017**

Ravinder @ Ravi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.S. Sandhu, Advocate,
for the petitioner.

Ms. Gagandeep Kaur, AAG, Haryana.

Mr. Deepak Girotra, Advocate
for respondent No.2.

JAISHREE THAKUR, J.

1. This is a petition that has been filed seeking to challenge the order dated 16.09.2016 whereby the petitioner has been charged under Section 302 IPC.

2. In brief, the facts are that the petitioner's marriage was solemnized with deceased Rajesh in the year 2000 and out of this wedlock two children were born. An FIR No. 178 dated 10.05.2016 under Sections 498-A, 302 IPC came to be registered at Police Station Kharkhoda, District Sonapat against the petitioner at the behest of the complainant Rajender to the effect that his daughter Rajesh was married to Ravinder @ Ravi, the petitioner herein and he received information that she had been killed by her in-laws. On receiving oral information, the Police Party reached the spot where a written complaint was given to the effect that he received a phone call at 7:30 P.M. on 09.05.2016 from Varinder, who asked him to accompany one person and reach the house of her daughter. The call was

received from the number of his daughter. He called back and Varinder, brother of the petitioner, picked up the phone and intimated him that his daughter had done something wrong and cut off the phone. He tried to contact the husband of the deceased on his phone number, which was found to be switched off. He again called the number of his daughter Rajesh, which was picked up by unknown person who informed that his daughter had been burnt. Then the cousins of the victim went to the village and found that the deceased was burnt and lying in a cow dung store room. The in-laws of the girl pressurised them to perform last rites immediately which was denied. They called the complainant and the complainant went to the Police Station from where the police party reached the spot and police proceedings were initiated. The complainant disclosed that his daughter used to complain about the dowry demands and she was asked to get her share of the land from her father and other demands from the in-laws. On the basis of this information, the present FIR was registered under Sections 498-A and 306 IPC. After investigation, challan was put up under Sections 498-A and 306 IPC and the matter was committed to be tried by the Court of Sessions.

3. At the time of framing of charges, the Public Prosecutor argued that there is sufficient material to frame the charge under Section 306 of the Indian Penal Code and alternatively a charge under Section 302 of the Indian Penal Code as well. This argument was rebutted stating that 306 and 302 of IPC are two distinct offences and as such no alternative charge under Section 302 of the IPC is made out. It was further argued that the Court has ample power to alter the charge under Section 321 of the Cr.P.C., if any

other evidence comes to light during trial.

4. The Addl. Sessions Judge, Sonipat on perusal of the challan and other documents prima facie came to the conclusion that offence punishable under Section 302 of the IPC has been made out against the accused and accordingly charge-sheeted the petitioner herein. Aggrieved against the said charge, the instant revision has been filed.

5. Learned counsel appearing on behalf of the petitioner herein would contend that the marriage of the petitioner with the deceased was of the year 2000 and out of the said wedlock two children were born. Prior to the instant occurrence, there has been no complaint against the petitioner for any alleged demand of dowry or maltreatment at the hands of the petitioner herein. It is argued that on 09.05.2016, the deceased took out fuel from the motor cycle and after pouring the same over herself, she committed suicide. Eventually no one was at home at that time. It is further argued that after conducting a detailed investigation, the Court formed an opinion that the present case is to be tried under Section 302 IPC. It is submitted that there were two eye witnesses to the said occurrence, who during investigation deposed that the petitioner was not present at the time of occurrence. It is argued that the petitioner herein is a milkman, who was not present at that time and, therefore, the charge under Section 302 IPC would not be maintainable.

6. Per contra, learned counsel appearing on behalf of the complainant and the State argue that there was no eye witness as alleged by the petitioner. Two persons Karambir and Jeet Ram during investigation informed the police that they approached the house of the petitioner after

seeing smoke arising therefrom. Karambir (witness) also heard screams of the deceased and on reaching the said premises, found the burning body of the deceased Rajesh in the room meant for cattle. The complainant has specifically stated that the petitioner had been asking his wife, deceased Rajesh, to ask her parents for share in the land measuring 3 acres.

7. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings, the statements of the witnesses as well as the post mortem report.

8. The post mortem report would show that the whole body of Rajesh, the wife of the petitioner, was burnt with her tongue protruding out. The deceased died in her matrimonial home and there are specific allegations made in the complaint that the petitioner herein was harassing the deceased, to ask her parents for her share in the land measuring 3 acres. In a judgment rendered in ***Rajbir @ Raju vs. State of Haryana, 2011(5) R.C.R. (Criminal) 137***, the Hon'ble Supreme Court had issued a direction to all subordinate Courts, that ordinarily Court in case of offence under Section 304-B should draw a charge in alternate for offence under Section 302 IPC as well. It is also well settled that at the time of framing of charges, only a prima facie offence has to be made out. It is not for the Courts to go into the probative value of evidence at the stage of framing of charges. In a catena of judgments, it has been held that the Court is to only apply its judicial mind on the material placed before it and be satisfied that there is a commission of offence. Strong suspicion is enough for a Court to form a presumptive opinion as to the existence of an event having taken place, justifying framing of charge.

9. The Supreme Court, in its latest judgment rendered in ***State of Rajasthan Versus Fatehkaran Mehdu AIR 2017 SC 796***, has reiterated its earlier decisions and held that the revisional jurisdiction of a higher court is a limited one and cannot be exercised in a routine manner. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex- facie. In the aforesaid judgment it has been held as under :-

“26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. 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. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. *It is useful to refer to judgment of this Court in **Amit Kapoor and Ramesh Chander and Another, (2012) 9 SCC 460**, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:*

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

"13. Another well accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has

been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very

sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

10. In the instant case, the deceased was the wife of the petitioner who died an unnatural death. In view of the aforesaid well settled proposition of law that meticulous examination of the evidence is not needed for considering whether the case would end in conviction or not at the stage of framing of charge, this revision petition is dismissed, being bereft of merit.

11. However, it is made clear that the trial court shall not be influenced by any observations made herein above.

15.12.2017

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.