

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

CRR No.4690 of 2016 (O&M)

Date of decision: 09.03.2017

Sat Narain

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Parminder Singh, Advocate
for the petitioner.

REKHA MITTAL J.

CRM No.6725 of 2017

Heard.

Allowed as prayed for.

Annexures P8 to P11 are taken on record subject to just exceptions.

Disposed of accordingly.

CRR No.4690 of 2016

The present petition directs challenge against orders dated 28.04.2016 and 10.11.2016 whereby claim of the prosecution to summon additional accused namely Chunni Lal son of Mam Chand and Savitri Devi wife of Chunni Lal, parents of Shakti Raj already facing trial has been rejected.

Counsel for the petitioner, at the outset, informed the Court that he does not press challenge against order dated 28.04.2016 whereby application filed under Section 193 Cr.P.C. for summoning additional accused was dismissed by the trial Court. However, it has

been argued that as the deceased just prior to her death narrated that Shakti Raj (husband), his father – Chunni Lal and mother – Savitri Devi had created such circumstances which rendered her incapable to bear the torment and she was left with no option but to end her life, therefore, there is ample evidence on record in the form of dying declaration of deceased made in front of her parents, to summon the additional accused. The trial Court has committed a grave error by refusing to exercise jurisdiction under Section 319 Cr.P.C. to summon the additional accused to face trial under Section 304-B IPC along with their son Shakti Raj, already before the trial Court.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

The trial Court in para 6 of the impugned order has noticed that the couple tied the nuptial knot on 01.12.2011 and the deceased was turned out of the matrimonial place on 29.09.2012 and she committed suicide on 21.10.2014 i.e. after more than 02 years. It has been admitted by the complainant (PW8) that the deceased was staying with him since January, 2013.

Counsel for the petitioner has not disputed these factual findings taken note of by the trial Court. The deceased was admittedly not residing in her matrimonial home about 02 years prior to the unfortunate occurrence on 21.10.2014. In order to attract Section 304-B IPC, one of the essential ingredients is that the woman must have been subject to cruelty or harassment in connection with demand of dowry soon before her death. The expression '*soon before her death*' is also used in Section 113-B of the Evidence Act that provides for

presumption as to dowry death. Hon'ble the Supreme Court in ***“Kamesh Panjiyar @ Kamlesh Panjiyar vs State of Bihar”***, 2005(1) RCR (Criminal) 861 has held that 'soon before' is a relative term and it would depend upon circumstances of each case as to what would constitute a period of soon before the occurrence. The determination of the period which can come within the term 'soon before' is left to be determined by the Court depending upon facts and circumstances of each case. Suffice, however, to indicate is that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demands and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

In the case at hand, there is nothing on record to suggest if the deceased was caused any harassment or cruelty since she left the matrimonial home on 29.09.2012 till her unfortunate death on 21.10.2014. That being so, it is difficult to accept claim of the petitioner that there is evidence on record, sufficient to satisfy the test that the material on record proves more than *prima facie* case but may be short of that the evidence, if goes un rebutted, would lead to conviction. When the facts and circumstances of the present case are examined in the light of essentials of offence under Section 304-B IPC and judgment of the Apex Court in ***“Hardeep Singh vs State of Punjab and others”*** and other connected cases 2014(1) RCR (Criminal) 623, I find myself

unable to differ with the findings of the trial Court in exercise of limited Revisional jurisdiction.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*. However, nothing stated hereinbefore shall cause prejudice to the case against the accused already, facing trial.

(REKHA MITTAL)
JUDGE

09.03.2017
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No