IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2792 of 2017 (O&M)
Date of Decision: March 19, 2018

Navdeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Jigyasa Tanwar, Advocate
for the petitioner.

Mrs. Anju Arora, Addl. AG Punjab.

Mr. Karan Pathak, Advocate
for respondent No.2.

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JAISHREE THAKUR, J.

In the instant petition, the petitioner herein has challenged the order dated 11.05.2017 passed by learned Sessions Judge, Ludhiana in case FIR No.15 dated 21.02.2016, under Sections 306, 506 of Indian Penal Code, registered at Police Station Jamalpur, Ludhiana, vide which the application for framing of charge under Section 304-B of Indian Penal Code has been dismissed.

2. In brief, the aforesaid FIR was got lodged by the petitioner-complainant on the allegations that a marriage was solemnized between the petitioner's sister namely Hemleen @ Preety and respondent No.2-Rajinder Kumar about four years ago, as per Hindu rites and ceremonies. Out of this

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wedlock, a male child namely Harshuman was born. After some time of the marriage, respondent No.2, who is addicted to alcohol, used to harass his sister, in which regard earlier the matter was compromised at the Panchayat level many times. It was alleged that on 20.02.2016 at about 6.00 p.m. his sister informed their mother Raksha Sharma on mobile phone that her husband in intoxicated state was harassing her. Thereafter, his sister called him and asked him to take her back as her husband was harassing her. After some time, sister-in-law of his sister namely Seema Kaushal informed his brother Amandeep Singh that his sister had hanged herself and they were taking her to the hospital.

3. On the basis of above complaint, the instant FIR came to be lodged under Sections 306, 506 of Indian Penal Code and after completing the investigation, the challan was presented in the court and the accused was charge-sheeted accordingly. After framing of charges, prosecution examined Dr. Ajit Singh as PW1 and Navdeep Singh, complainant as PW2. Thereafter, the prosecution moved an application for framing of charge under Section 304-B of Indian Penal Code, which application came to be dismissed by the impugned order dated 11.05.2017, which has been assailed in the instant revision.

4. Learned counsel for the petitioner argues that respondent No.2 used to beat the petitioner's sister under the influence of liquor and also used to demand cash frequently. It is submitted that when the petitioner and his family members received a call from sister-in-law of sister of the petitioner, they immediately rushed to Ludhiana. It is argued that petitioner's sister has committed suicide after only 4 years of marriage due to harassment, beatings and frequent demand of money by respondent No.2, but despite that the FIR

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has been lodged under Section 306, 506 of Indian Penal Code. It is contended that the deceased had committed suicide within 7 years of her marriage due to the atrocities committed by respondent No.2, soon before her death, but the learned Sessions Judge, Ludhiana has ignored these facts, while dismissing the application for framing of charge under Section 304-B of Indian Penal Code.

5. Learned counsel for complainant/respondent No.2 argues that the order passed by the Sessions Judge, Ludhiana is well reasoned and the instant revision is liable to be dismissed.

6. I have heard learned counsel for the parties, apart from perusing the record.

7. **Section 304-B** of the Indian Penal Code reads as under;-

> "***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."*

Therefore, in order to attract application of Section 304-B IPC, the essential ingredients are as follows:-

(i) The death of a woman should be caused by burns or bodily

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injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Both Section 304-B of IPC and Section 306 of IPC stand on different footings and ingredients of the both the sections are also different.

8. In the impugned order dated 11.05.2017, the learned trial court has observed as under;-

> "*After going through the record of the case, I am of the view that FIR in this case was registered on the basis of statement suffered by PW2 Navdeep Singh in which he has stated that his sister Hemleen Kaur @ Preeti was married to Rajinder Kumar accused about 4 years prior to the occurrence. Rajinder Kumar used to harass her under the influence of liquor. On 20.02.2016 his sister Hemleen told her mother Raksha Sharma that on that day also, her husband was harassing her under the influence of liquor. After some time, Amandeep Singh, brother of Jethani of Hemleen namely Seema Kaushik told the complainant that Preeti had committed suicide by hanging. Said statement of the complainant was recorded on 21.02.2016. Even in his supplementary statement dated 12.5.2016 said Navdeep Singh, did not state that his sister had committed suicide due to demand of dowry. However, in his statement*

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> *recorded in the court on 21.9.2016, he has deposed that his sister committed suicide as the accused used to demand money from her. At the time of framing of the charge, only prima facie case is to be seen on the basis of evidence collected by the prosecution during the investigation. The evidence recorded during the trial can only be analyzed at the time of final arguments. The prosecution wants that PW2 Navdeep Singh made statement in the trial that his sister committed suicide on the demand of dowry, so charge under Section 304-B of Indian Penal Code be framed. The stage for analyzing the evidence has not yet come. Accordingly, charge cannot be framed on the basis of evidence recorded during the trial. So, without commenting on the merits of the case, I am of the view that prima facie it cannot be said that the accused had committed an offence under Section 304-B of IPC and the accused has been rightly charge sheeted under Section 306/506 of IPC. Accordingly, I do not find any merit in the application in hand and the same is dismissed....”*

9. In the instant case, the trial court has framed the charges on the basis of final report submitted by the police along with the material/evidence collected by it during the course of investigation. In the case of **Sajjan Kumar Vs CBI, (2010) 9 SCC 368,** the Supreme Court took note of the principles laid down in **Union of India vs. Prafuula Kumar Samal and another (1979) 3 SCC 4** while dealing with question as to what material is to be considered while framing of charges;

> “ *14) In **Prafulla Kumar Samal (supra)**, the scope of Section 227 of the Cr.P.C. was considered. After adverting to various decisions, the Supreme Court enumerated the following principles*:

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> *"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
>
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
>
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
>
> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

10. As noticed above, no allegation has been made by the complainant qua the demand of dowry either in his statement recorded on 21.02.2016 or in the supplementary statement recorded on 12.05.2016,

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therefore, charges were framed under Section 306 Indian Penal Code accordingly. This court has also gone through the FIR (Annexure P-1) in which, no specific allegation has been leveled qua demand of dowry, nor was such evidence brought before the court in the report under Section 173 Cr.P.C. Therefore, this court does not find any illegality in the impugned order so passed by the trial court. Moreover, the evidence which has been recorded or going to be recorded during the course of trial, is yet to be analyzed at the time of final decision of the case by the trial court. Further, the trial court is fully empowered to alter the charge at any stage of the proceedings before the judgment is pronounced, if it thinks so, in view of the provisions of Section 216 Cr.P.C..

11. In view of the above discussion and ratio of law, this revision has no merit and the same is hereby dismissed. Needless to say, anything observed by this court hereinabove is only for the purpose of deciding the instant revision and the same shall have no affect on the merits of the case.

(JAISHREE THAKUR)
JUDGE

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Whether speaking/reasoned Yes
Whether reportable Yes/No

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