

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-620-2018 (O&M)

Date of decision: 06.09.2018

Ritesh Kaushik

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. M. Amanullah, Advocate, for
Mr. Mishab Bin Tariq, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

JAISHREE THAKUR, J.

CRM-5880-2018

This is an application filed under Section 5 of the Limitation Act seeking condonation of delay of days in filing the present revision.

For the reasons mentioned in the application, the same is allowed.

Delay of 17 days in filing the revision is condoned.

CRR-620-2018

1. This is a petition that has been filed under Section 482 Cr.P.C. seeking to challenge order dated 30.11.2017 whereby the petitioner has been charged under Section 306 IPC.

2. In brief the facts are, that the petitioner and the deceased, (daughter of the complainant), solemnized a marriage on 04.12.2000, out of which wedlock a female child was born. In the FIR, it was alleged that the petitioner Ritesh was in the habit of beating his wife (complainant's daughter) and would not come home for several days, and on asking as to where he was, he would again beat his wife. Mother-in-law, Bimlesh also used to instigate Ritesh and used to participate in beating. It was stated in the FIR that many requests were made to both Ritesh and his mother, not to beat his daughter but to no avail. On 20.06.2016, his daughter Poonam had lodged a complaint of physical violence against Ritesh at the Police Station and Ritesh accepted his mistake in the presence of the Panchayat by stating that he would neither use filthy language nor beat his wife Poonam. On 01.06.2017, around 9.50 p.m. his nephew Rakesh who lives near the house of Poonam, informed him that many persons were standing outside Poonam's house and that is how he came to know that his daughter Poonam had committed suicide. He along with his other daughters and neighbours went to his daughter's house and on entering, found her body lying down on the bed. There was a Chunni around her neck, on checking the room, he did not find a suicide note and thereafter sought legal action against Ritesh and his mother. On completion of investigation, challan was presented and charges were framed under Section 306 IPC.

3. Learned counsel appearing on behalf of the petitioner herein contends that there is false implication in the present case, as all allegations are untrue. It is contended that the statement that has been given to the police,

does not constitute any offence under Section 306 IPC while also arguing that the cause of death has yet to be confirmed as stated in the MLR itself. It is also argued that the petitioner has wrongly been charged under Section 306 IPC without considering the fact that the deceased was 34 years old and there was a female child aged 4 years and during the subsistence of marriage no such quarrel had arisen. The allegations of beating were false as they were happily residing together. It was further submitting that the Addl. Sessions Judge has given wrong weightage to the ocular and baseless version of the complainant. In support of his argument, he relies upon the judgments rendered in *M. Mohan vs. State represented by the Deputy Superintendent of Police, (2011) 3 Supreme Court Cases 626*, *Gurcharan Singh vs. State of Punjab, (2017) 1 Supreme Court Cases 433* and *K.V. Prakash Babu vs. State of Karnataka 2016(4) Crimes 184 (SC)*.

4. Per contra, learned counsel appearing on behalf of the respondent-State argues that the petitioner was in the habit of beating his wife. On 02.06.2016, the deceased Poonam had lodged a complaint of physical violence against her husband, the petitioner herein at Police Post, Parvitya, Colony and petitioner had accepted his mistake promising not to repeat it future. It is argued that the matter was thoroughly investigated and allegations against the mother were not proved and, therefore, it is only the petitioner herein who was challaned for committing offence under Section 306 IPC. It is also argued that as per the disclosure statement suffered by accused, the deceased had committed suicide due to severe beatings given by him and during investigation, the accused had also recovered the Chunni

of the deceased Poonam with which she had committed suicide and, therefore, there is no infirmity in the order framing charge under Section 306 IPC.

5. I have heard learned counsel for the parties and have also perused the case law as cited by learned counsel for the petitioner herein.

6. The scope of quashing a charge while exercising powers under Section 482 Cr.P.C. has been considered by the Supreme Court in ***State of M.P. vs. Mohanlal Soni, 2000 (3) RCR (Criminal) 452***, wherein it has been observed as under :-

“7. The crystallised judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

Hon'ble the Supreme Court in ***Tej Bir and another Vs. State of Haryana and another, 2012 (3) RCR (Criminal) 308***, held that High Court should restrain itself for quashing the charges by confining its attention only to the recitals in the FIR. The FIR does not represent the entire evidence of the case. In para 9 of the judgment, it has been further observed as under:-

“9. In the case of State of M.P. v. S.B. Johari and Ors., 2000 (1) RCR (Criminal) 523, it has been held that High Court in criminal revision cannot appreciate and weigh the materials on record for coming to the conclusion that charge against the

accused could not have been framed. This Court held that the settled legal position is that at the stage of framing of charge, the High Court has to prima facie consider whether there is sufficient ground for proceeding against the accused and the High Court is not required to appreciate the evidence and arrive at the conclusion whether the materials on record are sufficient for conviction of the accused or not. The test at this stage should be, whether after accepting the charge, as framed, any case is made out.”

Recently, in a case reported as ***State of Rajasthan vs. Fatehkaran Madhu, (2017) 3 SCC 198***, it has been held that power of quashing criminal proceedings should be exercised very sparingly.

7. The entire thrust of the argument as raised by learned counsel for the petitioner is that charge under Section 306 IPC is not maintainable as ingredients of Section 306/107 IPC are not satisfied. It is also submitted that no suicide note was found which would implicate the petitioner herein.

8. This court does not find any merit in the arguments raised by the learned counsel for the petitioners. At the stage of framing of charge, the Court is not concerned with the proof of allegations but has to *prima facie* form an opinion whether there is a probability that the accused has committed an offence, which if put to trial could prove his guilt. The power to quash criminal proceedings has to be exercised very sparingly and that too in the rare of the rarest cases. It is only if allegations are absolutely absurd and 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.

9. In the present case, a detailed investigation was carried out by the prosecution before filing of the challan. Note was taken of the fact that the petitioner herein used to physically abuse his wife, the deceased. The deceased had also registered a complaint against the physical abuse meted out to her at the hands of the husband. Thereafter, charges were framed. The accused petitioner can prove his innocence after leading adequate evidence before the trial Court.

10. The case law as relied upon by the counsel is distinguishable and not applicable to the facts of the instant case, since all these judgments rendered by the Hon'ble Supreme Court were after conviction and an appeal had been filed.

11. In view of the above, there is no ground for interference by this Court in quashing the charges that have been framed against the petitioner.

12. However, while dismissing the petition it is made clear that any observations made here would not be deemed to be an opinion on the merits of the case, which in turn has to be decided on the basis of the evidence before the court.

13. Dismissed.

06.09.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.