

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 58 of 2019**Order reserved on : 10/07/2019Order Delivered on : 30/08/2019

- Alok Tiwari S/o Shri Omprakash Tiwari, aged about 28 years, R/o College Road Amatoli, Sitapur, District Surguja (C.G.)

----Applicant**Versus**

- State of Chhattisgarh through Station House Officer, Police Station Sitapur, District Surguja (C.G.)

---- Respondent**And****CRR No. 598 of 2019**

- Ramakant Choubey, aged about 58 years, S/o Mr. R.P. Choubey, resident of Near Mission Hospital, Kedompr, Ambikapur (C.G.)

----Applicant**Versus**

1. State of Chhattisgarh, through the District Magistrate, District Surguja (C.G.)
2. Alok Tiwari, aged about 28 years, S/o Mr. Omprakash Tiwari, S/o Mr. Omprakash Tiwari, resident of College Road, Amatoli, Sitapur, District Surguja (C.G.)

---- Respondents

For Applicants	:	Shri Shakti Raj Sinha, Advocate in CRR No.58/2019 and R-2 in CRR No.598/219.
For Applicant	:	Shri Raza Ali, Advocate in CRR No.598 and intervenor in CRR No.58/2019
For Respondent/State	:	Shri Wasim Miyan, P.L.

Hon'ble Smt. Justice Rajani Dubey

C A V Order

30/08/2019

1. Since both the revisions arise out of the common order dated 13.11.2018, they are being disposed of together by this common order.

2. The instant revisions have been preferred against the order dated 13.11.2018 passed by the Additional Sessions Judge (F.T.C.), Ambikapur, District Surguja, in Sessions Trial No.72/2018, whereby the learned Additional Sessions Judge framed charges against applicant Alok Tiwari in Cr.R.No.58/2019 under Sections 306 in alternate Section 302 IPC.

03. The prosecution story, in brief, is that on 17.11.2017, deceased Priyanka Tiwari consumed poison for unknown reason, thereafter, she was taken to nearby hospital at Sitapur and after primary treatment, she was referred to Apollo Hospital, Bilaspur, where she succumbed to death. After investigation, charge sheet was filed against accused/applicant Alok Tiwari and the trial Court framed charges against him under Section 306 in alternate Section 302 IPC. Hence, these revisions.

04. Learned counsel for the applicant in CRR No.58/2019 submits that the framing of charges is contrary to the facts and circumstances of the case and the evidence available on

record. There is no allegation on the present applicant for abetment of suicide as the applicant was working at out station and even he was not present in the house for long time, therefore, no act of abetment can be attributed to the present applicant. He further submits that looking to the entire evidence available on record, no case of framing charge under Section 306 in alternate Section 302 IPC is made out against the applicant. The learned trial Court ought to have considered that in the present case there is no substantive piece of evidence to constitute offence under Section 306 or even 302 IPC. He also submits that all the prosecution witnesses have categorically stated that they have suspicion that the applicant had conversation with deceased over phone before she consumed poison and perhaps this conversation might have resulted into commission of suicide, but none of the witnesses could ascertain that exactly what was the conversation between the applicant and his wife and there is no material to connect the suspicion of the witnesses with the offence and even to substantiate the allegation levelled by the prosecution. He also submits that it is settled position of law that the suspicion howsoever may strong, cannot take place of evidence. Therefore, the impugned order is liable to be quashed.

05. Learned counsel for the applicant in CRR No.598/2019 submits that there is ample evidence against respondent No.2 Alok Tiwari as also against parents of R-2 that the deceased

(applicant's daughter) was subjected to cruelty on account of demand of dowry, as a result of which, the deceased committed suicide. He further submits that the trial Court has failed to look into the material available in the charge sheet and instead of framing charge under Section 304-B IPC, framed the charges under Section 306 and 302 IPC and thereby committed illegality.

06. Learned counsel for State supported the impugned order passed by the trial Court.

07. Heard learned counsel for the parties and perused the material on record.

08. In **Sajjan Kumar V. C.B.I.**¹, Hon'ble the Apex Court held that at the time of framing of charges, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be. Hon'ble the Supreme Court in the matter of **Om**

1 (2010) 9 SCC 368

Wati (Smt) and Another V. State, Through Delhi Admn.

And Others², has held in para 10 as under:-

“10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in Satish Mehra v. Delhi Admn. [(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

“9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

2 (2001) 4 SCC 333

'227. *Discharge*- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

09. Again, Hon'ble the Supreme Court has held in the matter of **Munna Devi Vs. State of Rajasthan and Another**³ that revisional powers cannot be exercised in a routine and casual manner. Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR. In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to

3 (2001) 9 SCC 631

do. On facts, it was premature for the High Court to have exercised its revisional powers. Trial court to conduct trial and dispose of the matter on merits.

10. From perusal of the evidence of witnesses, it is evident that all the witnesses have admitted the factum of torture, and prior to death of the deceased, she had levelled allegation against the applicant in CRR No. 58/2019.

11. As regards framing of charge under Section 306 IPC in CRR No.598/2019, it is the prayer of applicant that instead of Section 306 IPC, charge under Section 304-B IPC ought to have been framed. In this regard, Section 304-B of IPC speaks as under:-

304-B. Dowry Death.-- (1) Where the death of a woman is caused by any burns or bodily injuries 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.

12. It has not come in the evidence that soon before the death of deceased, any demand for dowry was made by respondent No.2 in CRR No.598/2019 and the trial Court has not committed any error in framing charge under Section 306 IPC against respondent No.2 in CRR No.598/2019.

13. These material aspect of the matter is sufficient for framing charges against the applicant in CRR No.58/2019 and this Court do not find any fault in the impugned order dated 13.11.2018 warranting interference by this Court.

14. In view of the aforesaid discussion and in view of judgments of Hon'ble the Apex Court in the matters of **Sajjan Kumar (Supra)**, **Om Wati (Supra)** and **Munna Devi (supra)**, both the revisions are liable to and are hereby dismissed. However, liberty is given to the applicants to raise their objections at the time of final hearing of the matter.

Sd/-

(Rajani Dubey)
JUDGE

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