

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 798 of 2019

- Shashank Chouhan S/o Raghuvar Chouhan, Aged About 34 Years, R/o Kududand, Police Station Civil Line Bilaspur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station- Jarhagaon, District- Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

-----Respondent

For Applicant : Ms. Nirupama Bajpai, Advocate.

For Respondent/State: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

24/10/2019

1. This petition has been brought challenging the order of framing charge by the Court of Sessions Judge Mungeli, Chhattisgarh in S.T. No.14/2019 for offence under Section 306/34 of the IPC.
2. It is submitted that there is no altogether substance to make out a prima facie case for framing of charge of abetment to commit suicide by deceased Punita Dubey. In fact, there had been a dispute between the deceased and her husband Anil Dubey because of which Anil Dubey thrashed her and she left her matrimonial home by taking assistance of her friends. Anil Dubey who is co-accused has lodged a missing report on 02-02-2018. Thereafter, the deceased was recovered on 05-02-2018 and then she gave a statement to the police that she has left her matrimonial home because of the beating given by her husband by taking help of friend Deepak Baghel. She has never named this applicant in her statement to the police on her recovery and then she has died on the same day, regarding which postmortem

report shows the cause as suspected poisoning. The statement of the deceased before her death can be regarded as statement of dying declaration and further the statement of other witnesses namely Karuna Tiwari whom she met before her death, Dilip Kumar Pandey, Been Tiwari have not made any statement to show that this applicant had ever any association with the deceased before her death. Even Doctor Pradeep Agrawal who treated the deceased for her injuries stated that on his asking the deceased did not make any statement to him before she died. Therefore, the prosecution against the applicant is totally baseless and he is entitled for discharge.

3. Learned counsel for the State/respondent opposes the petition and the submission made by learned counsel for the applicant and submits that prima facie there is evidence available on record on the basis of which offence under Section 306/34 of the IPC is made out against this applicant. Hence, the petition be dismissed.
4. Heard learned counsel for the parties and perused the case diary and the documents.
5. As per the prosecution case, deceased Punita Dubey and her husband Anil Dubey, co-accused had strained relationship, because co-accused Anil Dubey has doubts on the chastity of his wife, the deceased. On 01-02-2018 when the deceased was talking to somebody on her mobile phone then co-accused Anil Dubey because of his doubts severely thrashed the deceased. According to the statement of the deceased herself given to the police after recovery on 05-02-2018 she had called on phone her friend Deepak Baghel who came in a car and then she left with him and went to the house of her sister-in-law Karuna Tiwari in Kota and then on the next day she went to Bilaspur. When she was living with her sister-in-law she felt indisposed because

of which she was admitted in hospital on 05-02-2018, thereafter, she expired.

6. On perusal of the whole material of the prosecution, it appears that the prosecution against the applicant has been made on the ground of the statement given by her husband Anil Dubey who is co-accused. He has stated that his wife had left with this applicant and Deepak Baghel in a car and thereafter she was tortured by them, because of which she committed suicide. Firstly such statement of the co-accused is no substance for prosecution as the co-accused cannot be cited as a witness in the case and secondly the statement given is totally imaginary without any substance and source of such information.
7. Another statement of witness on which the prosecution has relied is of Gouri Shankar Pandey who is father of the deceased. He was neither present when the deceased was beaten by her husband nor when she died in the hospital. He has given statement on the basis of information given by co-accused Anil Dubey that the deceased had left with this applicant on 01-02-2018 and thereafter she was raped and tortured by this applicant and one Deepak Patel because of which she committed suicide. This is again a hearsay evidence and the source of such statement is the co-accused Anil Dubey. Similar statement has been given by one Ramharisingh Thakur on the basis of the information given to him by co-accused Anil Dubey. These witnesses are neither a direct evidence nor aware of the circumstances in which the deceased left and as alleged she felt compelled to commit suicide and secondly they are totally hearsay witnesses which cannot be regarded as having any substance.
8. The other witnesses who have been examined namely Karuna Tiwari, Dilip Kumar Pandey, Doctor Pradeep Agrawal, who have met the

deceased before she died and had conversation with her on the day she died, have not made any statement against this applicant, on the contrary Karuna Tiwari has stated that the deceased had informed her that she has left her matrimonial home because her husband had beaten her by doubting her chastity. The deceased has not given any statement against this applicant. Therefore, I am of this opinion that without any basis the Investigating Officer has given a twist to the investigation to collect evidence against this applicant, which is totally uncalled for and in the wrongful exercise of powers of investigation.

9. The Code of Criminal Procedure does not provide any audience to the accused person under the power of police to investigate the case under Chapter 12 of the Code. All the case has been created against the applicant on the basis of the statement given by co-accused Anil Dubey who is himself not a direct witness and then other witnesses who have stated only on the basis of the information given to them by the co-accused. This is something which can be called as creation of evidence and then this evidence is also altogether no evidence.
7. On the basis of the discussions made hereinabove it is found that it is a case of no evidence against the applicant. Hence, the order of framing of charge of the trial Court is totally erroneous and against the principles of law. Therefore, the petition is allowed and the impugned order of framing charge against the applicant is set aside and he be set at liberty.

Sd/-
(Rajendra Chandra Singh Samant)
Judge