

IN THE HIGH COURT FOR THE STATE OF TELANGANA

CRIMINAL PETITION No.1167 OF 2018

Between:

1. Challa Sathyavathi, W/o.Challa Narasimha Murthy,
Aged about 52 years, Occ: House Wife,
R/o.Flat No.402, Indra Towers, Street No.2,
H.M.T.Nagar, Nacharam, Uppal Mandal,
Medchal District, Telangana State. .. Petitioner
- and
1. The State of Telangana,
rep. by Public Prosecutor,
High Court at Hyderabad and another. .. Respondents

DATE OF JUDGMENT PRONOUNCED: **21.01.2019**

SUBMITTED FOR APPROVAL:

THE HONOURABLE Dr. JUSTICE B SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the judgment? Yes/No

*** THE HONOURABLE DR. JUSTICE B.SIVA SANKARA RAO**

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! Counsel for Petitioner/s : Sri C.Raghu

**^ Counsel for Respondents : 1. Sri M.Ravi Kumar,
2. Public Prosecutor.**

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> Head Note:

? Cases referred:

1. AIR 2016 SC 125
2. 1991 (1) SCC 371
3. 2013 (13) SCALE 52
4. 2003 (8) SCC 80
5. 2015 1 SCALE 250
6. (2001) 8 SCC 633
7. (2011) 11 SCC 359
8. 2012 11 SCC 397
9. AIR 2003 SC 3828
10. AIR 2005 SC 1411
11. 2014 11 SCC 516
12. 2014 3 SCC 92

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.1167 of 2018

ORDER:

The petitioner is Accused No.3 in Sessions Case No.294 of 2017 pending on the file of IV Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, taken cognizance for the offence punishable under Section 304B of IPC, covered by the committal proceedings in P.R.C.No.4 of 2017 of the learned Committal Magistrate taken cognizance against A1 to A3 for the said offence under Section 304B IPC based on the police final report in the form of charge sheet filed by LW18 among the two Investigating Officers, including LW17, out come of Crime No.277 of 2016 dated 04.10.2016 of Station House Officer, Nacharam, registered by LW17, Inspector of Police, Nacharam, from the report of the second respondent-*de facto* complainant, no other than father of the deceased. The police report is from the investigation by examination of *de facto* complainant father of the deceased, LW2 mother of the deceased, LW3 own brother of the deceased, LW4 paternal uncle of deceased, LW5 wife of LW4, LW6 cousin brother of deceased and LW8 maid servant of deceased, LW9 watchman of the apartment, LW10 neighbour of the deceased, LW7 the neighbour of *de facto* complainant, LWs.11 to 14 mediators to the scene observation and inquest panchanama and seizure panchanama, LW15 is the Tahsildar, who conducted the inquest and LW16 the Professor, Gandhi Medical Hospital, who conducted post mortem examination on the deceased.

2. The quash petition averments seeking to quash the said cognizance orders so far as against petitioner A3 concerned are that there are no any specific overt acts to sustain the criminal proceedings against the petitioner A3. She went to U.S.A. on 26.07.2016 and at the time of incident occurred on 03.10.2016, she was not in India even to implicate with any involvement of her. The allegation of the prosecution witnesses of deceased committed suicide due to physical and mental torture for additional dowry demand would no way suffice to rope the petitioner in the absence of any single word of specific incident attributable to her in relation to the cause of death of deceased. PWs.7 to 10 neighbour, maid servant and watchmen of the apartment, where deceased breathed last, no where said that the deceased was subjected to cruelty in A3's house and thereby sought for quashing cognizance order and the proceedings against the petitioner A3.

3. Learned counsel for the petitioner A3 reiterated the above facts and sought for quashing the cognizance orders so far as against A3 saying none of the ingredients of the offence under Section 304B IPC with presumption under Section 113B of Indian Evidence Act attracts so far as petitioner A3 concerned and continuation of the proceedings including cognizance orders of the Court outcome of non application of mind are untenable and to sub-serve the ends of justice, the proceedings are liable to be quashed.

4. The learned counsel for the *de facto* complainant *vis-à-vis* learned Public Prosecutor for the first respondent – State opposed the quash petition saying there is a *prima facie* accusation and

prima facie material of the deceased met with death, unable to bear with the additional dowry demand and harassment of the accused including the petitioner – mother-in-law of the deceased soon before her death and thereby there is nothing to quash the proceedings, but for left open any defence to face trial and sought for dismissal of the quash petition.

5. Heard both sides and perused material on record including the expression of the Apex Court in ***Maya Devi and another Vs. State of Haryana***¹ placed reliance by the counsel for the petitioner A3.

6. As per the charge sheet covered by the investigation with reference to the witnesses examination supra of the crime, the marriage of deceased Tirumala Kumari with A1 Challa Shyam Prasad was performed on 25.07.2012 arranged through elders. At the time of marriage, as per the demand of the accused, *de facto* complainant-father of the deceased gave gold and silver altogether worth Rs.15 lakhs and the deceased used to work as Software Engineer. Since the date of marriage, A1 husband of the deceased, A3 mother-in-law of the deceased, A2 father-in-law of the deceased used to harass her by demanding additional dowry, gold and to stop her job and she was subjected to physical and mental cruelty and a panchayath was held in the presence of elders in this regard. After elderly settlement she was, while carrying, sent to her in-laws' house by meeting the gold and cash additional demands. It is since then the husband and in-laws of the deceased were staying in own flat at Indira Towers, HMT

¹ AIR 2016 SC 125

Nagar, Nacharam. On 08.11.2014, the deceased blessed with a male child Ishan and in the cradle ceremony they have given gold ornaments. Even thereafter there was no stoppage of harassment and ill-treatment of the deceased by the husband and in-laws alleging what was the dowry given at the time of marriage was small and demanded additional dowry and in the recent past they used to abuse the deceased and harassed her by not even sending her to any of her relatives house. Even after several requests they did not change their attitude. On 02.10.2016, the *de facto* complainant and his wife along with relatives and friends went to Kashi starting from the house of the accused and deceased. While so on next day 03.10.2016 (a day before the complaint given on 04.10.2016) at about 05.30 p.m., they received phone information of their daughter Thirumala Kumari committed suicide by hanging to a ceiling fan with the help of chunni. It is because of the harassment for additional dowry by the husband and in-laws A1 to A3, the deceased committed suicide by hanging, as they were in Kashi which caused delay in lodging report, hence to take action.

7. It is on that report the Inspector, Nacharam, LW17 registered Crime No.277 of 2016 supra under Section 304(B) IPC and LW18, the Assistant Commissioner, taken up investigation having conducted inquest over the body in the presence of mediators through the Tahsildar, LW15, after examination of *de facto* complainant LW1 and other witnesses and after scene observation and collection of material objects and preparation of rough sketch in the presence of mediators and after referring the body to the autopsy and Post Mortem Examination, and from the completion of investigation filed charge sheet. It revealed the dowry harassment

even after meeting the dowry at the time of marriage as demanded, for additional dowry even subsequently and continuously including demanding the deceased to stop her doing job and even after panchayath and elderly settlement and even after birth of male child and even after presentations to the male child, there is no stoppage of the demands for additional dowry and harassment by accused persons 1 to 3, from which she ultimately breathed last in the unnatural circumstances, unable to bear with the harassment of A1 to A3, by hanging to a ceiling fan with the help of chunni in the house of A1 to A3 on 03.10.2016. LW8 the maid servant came to the house and noticed and from her hue and cry, LWs.9 and 10 the neighbour and watchmen came there and they all together relieved knot of chunni and laid her on cot and but for the harassment there is no other compelling reason for the deceased to commit suicide and thereby accused are responsible.

8. As per the charge sheet, the marriage of the deceased with A1 was performed on 25.07.2012. The unnatural death of the deceased was on 03.10.2016 evening at Flat No.402, HMT Nagar, Nacharam, which is within seven years of the marriage and the presumption under Section 113 B of Indian Evidence Act, that applies which reads that when a question is whether person has committed the dowry death of a woman and it is shown that soon before her death, said woman has been subjected by said person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such a person has caused the dowry death. As per the explanation, dowry death was for the same meaning as in Section 304 B IPC. The definition of 304 B IPC of dowry death, reads that 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. As per the explanation, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961. The harassment or cruelty shall be for or in connection with any demand for dowry soon before her unnatural death as per the above Provisions.

9. From the legal position and the facts covered by the charge sheet from the investigation referred supra, coming to the quash petition averments and the documents covered by passport and VISA of the petitioner A3, Challa Satyavathi, issued by the Republic of India, bearing No.N3202684, on 21.09.2015 for ten years to expire by 20.09.2025, whose husband is Narasimha Murthy Challa at Flat No.402, Indra Towers, Nacharam and the Migration Department of Rajiv Gandhi International Airport, Hyderabad, the departure stamp D3-057 was dated 26.07.2016 and her arrival as per the immigration of India, Rajiv Gandhi international Airport, Hyderabad, stamped on 12.01.2017 and the VISA issued was B1/B2 on 06.06.2016 with control No.20161545730002 for ten years expired by 01.06.2026. This documents, authenticity not in dispute show therefrom the factum of A3 was in abroad from 26.07.2016 till 12.01.2017 and the unnatural death of the deceased, wife of A1, was on 03.10.2016, which is more than three months after A3, the petitioner left the

country. It is also quash petition averments that she left for USA on 26.07.2016 and returned to India on 12.01.2017 and the counter of R2 also mentioned in para 4 about she left U.S.A. however stated that she with pre-plan and in anticipation of complaint left the country and stayed in USA.

10. The question now to consider is whether there is any material to say that the deceased was subjected to cruelty or harassment in the hands of the petitioner A3 soon before her death for or in connection with any demand for dowry within the meaning of Section 2 of the Dowry Prohibition Act, including to draw any presumption under Section 113 B of Indian Evidence Act read with Section 304 B IPC?

11. So far as the expression 'soon before her death', she was subjected to cruelty or harassment by her husband or relative of her husband if at all in connection with any demand for dowry which is a pre-requisite to attract the offence under Section 304 B IPC concerned, leave about the other two ingredients among the three ingredients viz., within seven years of marriage, the death occurred which is other than under normal circumstances - even satisfied; for all the ingredients must co-exist, even for suicide other than homicide within the meaning of unnatural death, as held in ***Shanthi and another Vs. State of Haryana***², that was reiterated by the subsequent expression of the Apex Court in ***Bhupendra Vs. State of Madhya Pradesh***³. From the prerequisite the prosecution has to show under Section 113B of

² 1991 (1) SCC 371

³ 2013 (13) SCALE 52

Indian Evidence Act and Section 304B(1) IPC, of 'soon before death' (occurred otherwise than in normal circumstances) the victim was subjected to cruelty for or in connection with any demand for dowry and the prosecution is obliged to show the same.

12. The Apex Court in ***Hiralal and others v. State (Govt. of NCT) Delhi***⁴, observed that the expression 'soon before' is a relative term that depend upon circumstance of each case for no straight jacket formula can be laid down as to what would constitute period of 'soon' before the occurrence and it would be hazardous to indicate any fixed period and that brings in importance of a proximity test both in the proof of an offence of dowry death as well as for raising a presumption under Section 113B of Evidence Act. Section 114(1) of Indian Evidence Act to some extent is relevant of the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession and the expression there under also observed of what is meant by 'soon after' to be determined by Courts depending upon facts and circumstances of each case. The expression indicates that either 'soon before' or 'soon after' the occurrence would normally imply that the interval should not be much between cruelty or harassment and unnatural death. There must exist proximate and live link between the effect of cruelty or harassment based on dowry demand and the unnatural death thereby for alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the women concerned it would be of no consequence. In ***Sher Singh v. State of***

⁴ 2003 (8) SCC 80

Haryana⁵, the Apex Court observed that the word ‘soon’ finds place in Section 304 B IPC not in terms of days or months or years to interpret but has necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be a continuing cause of the unnatural death. Now coming to the expression placed reliance on **Maya Devi (supra)** it has also reiterated the position of law referred supra in its observation particularly at para 19 that as per **Satvir Singh and ors. v. State of Punjab**⁶ para 21 - thus there are three occasions related to dowry, one is ‘before marriage’ second is ‘at the time of marriage’ and the third is ‘at any time’ after the marriage and the third occasion may appear to be an unending period. But the crucial words are ‘in connection with the marriage of the said parties’. This means giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. The customary payments in connection with birth of a child or other ceremonies prevalent in different areas are thus not enveloped within the ambit of dowry. For attracting dowry death under Section 304B IPC, it is not enough that harassment or cruelty caused to the women with a demand for dowry at some time as it should have happened ‘soon before her death’ which is an elastic expression referred to period either immediately before her death or within few days or even few weeks before it. But proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words ‘soon before her death’ is to emphasise the idea that her death should, in

⁵ 2015 1 SCALE 250

⁶ (2001) 8 SCC 633

all probabilities, have been the after math of such cruelty or harassment. There should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval between the infliction of such harassment or cruelty and her death is wide, the Court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence, for the Court to decide on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'. It is further observed in para 16 of the expression that the language used is 'soon before her death' and no definite period has been enacted and the expression is not been defined in the Evidence Act and IPC and it is to be determined by the Court depending upon facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of proximity and live link between effect of cruelty based on dowry demand and the death concerned as also observed in ***Bansilal v. State of Haryana***⁷ and ***Mustafa Shahadal Shaik v. State of Maharashtra***⁸ besides ***Kaliyaperumal v. State of Tamil Nadu***⁹, ***Yashoda v. State of M.P.***¹⁰ and ***Ramesh Vithal Patil v. State of Karnataka***¹¹.

13. From the above, more than three months prior to the unnatural death of the deceased, the petitioner A3 mother-in-law

⁷(2011) 11 SCC 359

⁸ 2012 11 SCC 397

⁹ AIR 2003 SC 3828

¹⁰ AIR 2005 SC 1411

¹¹ 2014 11 SCC 516

of the deceased left the country and almost a month before that she applied for passport and obtained VISA as can be seen. It is thereby difficult for the Court in the absence of either investigating material of even while at USA she was harassing in driving the deceased to commit suicide with any phone calls or messages, by whatsapp or otherwise. The charge/accusation thus nowhere sustains so far as the petitioner A3 concerned for the offence under Section 304 B IPC.

14. Having regard to the above and in the result, the petition is allowed by quashing the case proceedings against the petitioner – A3 from the cognizance order of the learned Sessions Judge pursuant to the committal cognizance order of the Magistrate, outcome of the crime supra from the police final report. However, it is made clear that, this will not prevent the trial Court in the event during trial if there is any evidence forthcoming to take recourse under Section 319 Cr.P.C. subject to making out such case with factual foundation as per the Constitutional Bench expression of ***Hardeep Singh Vs. State of Punjab and others***¹².

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:21.01.2019

Note:

L.R.Copy to be marked – Yes.

B/o.

vhb

¹² 2014 3 SCC 92