

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (ABA) NO. 417 OF 2020

(Smt. Ranjana Narsing Rathod ..vs.. State of Maharashtra, through SHO, Yavatmal (Gramin))

WITH

CRIMINAL APPLICATION (ABA) NO. 618 OF 2020

(Ramesh s/o Hirasingh Rathod ..vs.. State of Maharashtra, through PSO, PS, Yavatmal (Rural))

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.D. Darne, Counsel for the applicant in ABA 417/20,
Mr. A.S. Manohar, Counsel for the applicant in ABA 618/20,
Mr. M.K. Pathan, Addl.P.P. for the non-applicant/State,
Mr. R.R. Rathod, Counsel for the complainant.

CORAM : ROHIT B. DEO, J.

DATED : 10-12-2020

Mrs. Ravina unfortunately committed suicide on 01-8-2020 within few months of the marriage with Sudhakar.

2. The mother of the deceased lodged complaint dated 04-8-2020 on the basis of which Crime 430/2020 for offence punishable under Section 304-B read with Section 34 of the Indian Penal Code came to be registered with Yavatmal (Rural) Police Station and four persons including Sudhakar are arraigned as accused.

3. Accused 1-Sudhakar is the husband of the deceased who is arrested and is presently in jail custody. Accused 2-Ranjana is the mother-in-law, accused 3-Saguna who, according to the learned Counsel for the complainant, also goes by the name of Jayshree is the

sister of Sudhakar and accused 4-Ramesh is the alleged paramour of accused 2-Ranjana. Accused-Ranjana Rathod is the applicant in Criminal Application (ABA) 417/2020 and accused Ramesh Rathod, the alleged paramour of Ranjana Rathod, is the applicant in Criminal Application 618/2020.

4. I have heard the learned Counsel Mr. V.D. Darne and Mr. A.S. Manohar for the applicants, the learned Counsel Mr. R.R. Rathod for the complainant and the learned Additional Public Prosecutor Mr. M.K. Pathan for the non-applicant/State and have perused the case diary.

5. I am satisfied that the applicants have made out a case for making the interim protection absolute.

6. Section 304-B of the Indian Penal Code, which is inserted by Act of 43 of 1986 reads thus :

“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 purposes 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.”

The basic ingredient of offence punishable under Section 304-B is that soon before the death the woman shall have been subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

By the same Amendment Act, Section 113-B was inserted in the Indian Evidence Act, 1872 which reads thus :

“113-B. Presumption as to dowry death – *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

Explanation – For the purposes of this section, “dowry death”, shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).”

While ‘cruelty’ is not defined either in Section 304-B of the Indian Penal Code or Section 113-B of the Indian Evidence Act, 1872, ‘cruelty’ is defined in a cognate provision of the Indian Evidence Act, 1872. The explanation to Section 113-A of the Indian Evidence Act, 1872 which provides for presumption as to abetment of suicide by a married woman defines ‘cruelty’ as having

the same meaning as in Section 498-A of the Indian Penal Code. The judicial opinion appears to be that cruelty for the purposes of Section 304-B of the Indian Penal Code shall also be cruelty as envisaged in Section 498-A of the Indian Penal Code.

7. Two allegations are levelled in the complaint. The first allegation is that accused 1-Sudhakar and accused 2-Ranjana demanded Rs.1,50,000/- (Rupees One Lac Fifty Thousand) from the deceased and ill-treated her. However, the allegation is most vague and general. The other allegation is that the deceased saw accused 2-Ranjana and accused 4-Ramesh in a compromising position, that her presence in the house was an impediment to smooth relationship between Ranjana and Ramesh and, therefore, she was ill-treated in order to oust her from the house. The nature of ill-treatment is not spelt out. Even otherwise, such ill-treatment may not be the cruelty which is required to be established to bring into play Section 304-B of the Indian Penal Code.

8. Perusal of the case diary would reveal that the statements of the relevant witnesses are already recorded. No case is made out for custodial interrogation. In this view of the matter, I am satisfied that if the pre-arrest protection is made absolute, the investigation shall not be adversely affected.

9. The applications are allowed.

10. The interim protection granted vide orders dated 21-9-2020 and 13-10-2020 is made absolute with the only modification that the applicants shall attend the concerned police station, till filing of the charge-sheet, as and when directed by the Investigating Officer.

JUDGE

adgokar