

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 674 of 2021

1. Jayram Sharma Son Of Bharat Sharma, Aged About 37 Years, Occupation - Service, Janpad Panchayat, Nawagarh, Resident Of Sector-11, Zone-1, Khursipar, Bhilai, Police Station Khursipar, Bhilai, District Durg (C.G.) At Present Resident Of Housing Board Colony, Government House, Sukul Para, Nawagarh, Tahsil Nawagarh, District Bemetara (C.G.).

---- Applicant

Versus

1. State Of Chhattisgarh, Through The Station House Officer, Police Station, Nawagarh, District Bemetara (C.G.).

---- Respondent

For Applicant : Mr. Goutam Khetrapal, Advocate.
For Respondent/State : Mr. Shrestha Gupta, P.L.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

25/10/2021

- 1) This criminal revision is filed under Section 397/401 of Code of Criminal Procedure, 1973 against the order dated 08/09/2021 passed by 1st Additional Sessions Judge (FTC) Bemetara, District Bemetara (C.G.) in S.T. No. 54/2021 whereby charges under Sections 306 in the alternative 302, 498-A of Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961 have been framed.
- 2) Learned counsel for the applicant submits that charge under Section 302 of Indian Penal Code has wrongly been framed by the Trial Court. From the material available on record including the postmortem report where the Doctor has opined that the nature of death seems to be suicidal, the Trial Court was not justified in framing the charge under Section 302 of Indian Penal Code. It is further submitted that even the charges under Section

306, 498-A of Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961 are not made out against the applicant therefore, the impugned order be set aside and the applicant be discharged of the alleged offences. Reliance has been placed on the decision dated 02/03/2021 of High Court of Kerala in the matter of ***Rajesh Vs. State of Kerala, Crl. Rev. Pet. No. 654 of 2011*** and in the matter of ***Santosh Kudtarkar Vs. State*** reported in ***2016 SCC OnLine Bom 2300***.

- 3) On the other hand, learned counsel for the State opposes the submission made by the counsel for the applicant.
- 4) Heard learned counsel for the parties.
- 5) The High Court of Kerala in the matter of ***Rajesh Vs. State of Kerala (Supra)***, considering the fact that the deceased/wife was found hanging in the house of the petitioner/husband, soon before her death she was beaten by the petitioner black and blue with a weapon as a result she suffered internal bleeding, the autopsy report, the fact that the trial Court framed charges against the petitioner under Sections 498A, 302 and 306 of IPC, observed that in the given facts and circumstances of the case, charges under both the sections 306 and 302 of IPC cannot co-exist, but it can be framed in the alternative. Hence, the High Court set aside the impugned order framing charge of the trial Court with a direction to conduct hearing as contemplated under Sections 227/228 of CrPC and proceed to frame charge against the petitioner for the offences, if any, disclosed by the materials produced by the prosecution.
- 6) In the matter of ***Santosh Kudtarkar Vs. State (Supra)***, the petitioner was charged under Section 306/34 and in the alternate under Section 302/34 of IPC whereas the material on record indisputably shows death of the deceased to be suicidal in nature. In these circumstances, the Hon'ble Court set aside the impugned order framing charge, remanded the matter to the Sessions Judge for framing of charge afresh after hearing

the parties in light of the observations made therein.

- 7) In the present case, after investigation, the police filed charge sheet against the applicant under Sections 306, 498A, 304B of IPC and Section 4 of Dowry Prohibition Act. Marriage of the deceased Shalini Sharma was solemnized with the applicant on 2.3.2014 and as per postmortem report, inquest report and statements of her parents and other witnesses, she committed suicide by hanging on 27.6.2021 i.e. after seven years of her marriage and as such, offence under Section 304B of IPC is not made out. Though there is allegation in the statements of the witnesses that she committed suicide for being harassed by the applicant physically and mentally in connection with demand of dowry, but there is no any suspicion expressed by the witnesses or shown in the postmortem report, inquest report, FIR or the merg intimation regarding commission of her murder. In such a situation, framing of charge under Section 302 of IPC would amount to an illegality.
- 8) Thus, in the totality of the facts and circumstances and the material available on record, keeping in view the afore-cited judgments, this Court is of the opinion that the impugned order framing charge of the trial Court is not in accordance with law and liable to be set aside. Accordingly, the criminal revision is **allowed in part**, the impugned order dated 8.9.2021 is hereby set aside and the matter is remanded to the trial Court for framing of charge against the applicant afresh on the basis of material available on record and the observations made by this Court herein.

-Sd/-
(Gautam Chourdiya)
Judge