



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 08.07.2021

ORDER PRONOUNCED : 29.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.R.C. (MD) No.792 of 2017

WEB COPY

Sinthamani

... Petitioner

vs.

1.Santhosh @ Karthikeyan

2.State of Tamilnadu,

represented by the Deputy Superintendent of Police,

Pattukotai Circle,

Thanjavur District.

(Pattukottai Police Station, Cr.No.280 of 2015)

... Respondents

PRAYER:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records relating to the impugned order passed in Crl.M.P.No.414 of 2017 in S.C.No.51 of 2017 dated 07.07.2017 on the file of the Mahila Court, (Fast Track Mahila Court), Thanjavur and to set aside the same.

For Petitioner : Mr.R.Rajeselvan
Legal Aid Counsel

For R1 : Mr.B.Anand

For R2 : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed by the mother of the victim to set aside the order passed in Crl.M.P.No.414 of 2017 in S.C.No.51 of 2017 dated 07.07.2017 by the learned Judge of the Mahila Court, (Fast Track Mahila Court), Thanjavur, whereby, the learned Sessions Judge, Mahalir Neethimandrum, Thanjavur, had discharged the accused from the charge initiated under Section 304 (B) of IPC.

2.The point for consideration is whether the order passed by the learned Sessions Judge, Mahalir Neethimandrum, Thanjavur in Crl.M.P.No.414 of 2017 in S.C.No.51 of 2017 dated 07.07.2017 is to be set aside.

3.From the records, it is found that one Mrs.K.Abiya, learned counsel, was nominated as counsel for the petitioner by the Legal

<https://hcservices.ecourts.gov.in/hcservices/>



Services Committee attached to this Bench. However, she did not appear before the Court, when the case came up for hearing on 23.06.2021 and 01.07.2021. Therefore, this Court vide order dated 01.07.2021, directed the Legal Services Committee attached to this Bench to nominate a different counsel on behalf of the petitioner to prosecute the case effectively. In compliance of the same, the Legal Services Committee has nominated one R.Rajaselvan, Panel Advocate as the counsel for the petitioner, vide D.No.1758 of 2021 dated 07.07.2021.

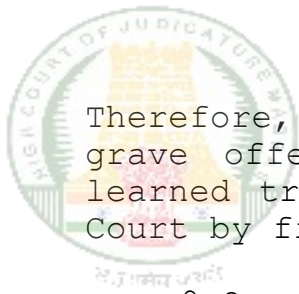
4.Mr.R.Rajaselvan, learned counsel for the petitioner submits that the learned Sessions Judge, Mahalir Neethimandram, Thanjavur had misdirected himself in considering the arguments put forth by the learned counsel for the accused that there are no materials for the charge under Section 304(B) of IPC.

5.The marriage between the deceased and the accused was solemnized on 28.10.2009 and the deceased had committed suicide on 09.04.2015. Therefore, automatically the presumptions are in favour of the circumstances under Section 304(B) of IPC. Within a period of 7 years from the date of marriage, the deceased had committed suicide in the house of the accused. Therefore, naturally the presumption is in favour of Section 304 (B) of IPC only, but instead what will be the evidence in the trial cannot be considered at the stage of framing of charges. This is the golden rule in framing the charges. *Prima facie*, case is only considered by the Court.

6.The mother of the deceased/the petitioner herein had preferred a complaint for the death of her daughter. The deceased prior to her death had contacted her mother and had stated that her husband and her in-laws were harassing her for more dowry and the mother of the deceased, the petitioner herein had convinced her that she will visit the house of the in-laws and bring her back to her mother's place. Accordingly, the mother, the petitioner herein and her brother, (maternal uncle of the deceased) went to the house of the in-laws, where, the room was locked. Thereafter, they had opened the door forcibly and found the deceased in hanging position.

7.The brother of the petitioner herein ie., the maternal uncle of the deceased on touching the body of the deceased found that it was warm and he took her body down from the hanging position and took her to the hospital, where she was declared brought dead. The husband of the deceased was missing from the home.

8.The Revenue Divisional Officer in his report, which is mandatory for the cause of death of a married woman occurred within a period of 7 years from the date of marriage, had also pointed out that due to dowry harassment only, the woman was dead. While so, the learned Sessions Judge, Mahalir Neethimandram, Thanjavur had ignored the golden rule regarding *prima facie* case that what will be the evidence in the trial cannot be a ground to discharge the accused.



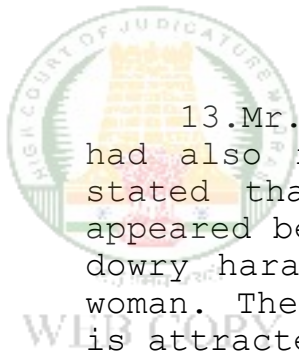
Therefore, he committed an error in discharging the accused from the grave offence of 304(B) of IPC. Aggrieved by the order of the learned trial Judge, the mother of the victim had approached this Court by filing this Criminal Revision Case.

9. On perusal of the order passed by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur, it is found not in accordance to the rules that have already been laid down regarding framing of charges. The learned trial Judge shall not travel into the path, whereby what will be the evidence during trial cannot be considered by the materials available *prima facie*. Here, *prima facie* is the death of the woman i.e., on 09.04.2015 and the death occurred before 7 years from the date of her marriage.

10. The learned Sessions Judge, Mahalir Neethimandram, Thanjavur had mentioned about the reference to the accusation against the deceased by the husband of the deceased as spoken to the RDO by her maternal uncle. It is the petitioner's case, the mother of the victim case that what had been relied on by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur was referred to by the maternal uncle of the deceased that the mother-in-law of the deceased made remarks that her son informed her about the illegal relationship by the daughter-in-law that was referred by the maternal uncle of the deceased. It is not his words. He has referred that the mother-in-law of the deceased had also made allegations, but that is not the case and the cause of death will be known only at the time of trial.

11. *Prima facie*, case drawing strong presumption is soon before the death. The deceased woman complained to her mother regarding dowry harassment and that will be spoken in the evidence by none other than the mother of the victim. If the accused is discharged, the evidence that will be available before the Court will be lost. Therefore, the order passed by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur discharging the accused from Section 304(B) of IPC is a perverse order.

12. Mr. T. Senthil Kumar, learned Government Advocate (Crl.Side) appearing for the 2nd respondent submitted that instead of perusing the materials available before the Court, the learned Sessions Judge, Mahalir Neethimandram, Thanjavur had passed order with ifs and buts. It is not appreciable that what will be the evidence during trial cannot be considered before trial. By the discharge of the accused under Section 304(B) of IPC, the valuable evidence that will be let in by the mother of the deceased, the petitioner herein and the maternal uncle of the deceased, brother of the victim's mother, will be lost. They can speak only about the demand of dowry just before the death, when they were examined as witnesses, by discharging the accused from Section 304(B) of IPC that valuable evidence will be lost.



13.Mr.T.Senthil Kumar, learned Government Advocate (Crl.Side) had also relied on the report of the RDO, wherein, the RDO had stated that the mother of the accused and the accused had not appeared before him and the RDO had arrived at a conclusion that the dowry harassment seems to be the only cause for the death of the woman. Therefore, *prima facie* case regarding Section 304(B) of IPC is attracted.

14.The parents of the accused and the accused were absconded. Subsequently, they had appeared before the RDO and stated that the accused suspected the fidelity of his wife. Therefore, she committed suicide. That is the defence of the accused. The accused's suspecting fidelity is taken by the learned Sessions Judge, Mahalir Neethimandrum, Thanjavur against the principles of framing of charges based on the materials placed by the prosecution. Instead, the defence of the accused only was taken. When the RDO had clearly stated that the cause of reason appears to be dowry harassment, the statement of the accused and his parents that the accused suspected the fidelity of the deceased was considered by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur and thereby, the accused was discharged, which is against the principles of framing of charges.

15.Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent and the learned Government Advocate (Crl.Side) for the 2nd respondent.

16.The point for consideration is whether the order of the learned Special Judge, Mahalir Neethimandram, Thanjavur in discharging the 1st accused from the charges in S.C.No.51 of 2017 is to be set aside.

17.Considering the arguments put forth by the learned counsel for the petitioner, the mother of the victim and the arguments of the learned Government Advocate (Crl.Side), it is found that the report of the RDO, which is a valuable report regarding the death of the woman that occurred within a period of 7 years from the date of marriage, is an important document. The learned Sessions Judge, Mahalir Neethimandram, Thanjavur had ignored the said report and arrived at a finding, which is faulty and erroneous and against the principles of framing of charges. *Prima facie* there are materials available in the final report filed by the police. Therefore, the order passed by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur is against the principles of framing of charges and the same is liable to be set aside.

18.On perusal of the report of the RDO, it is found that the RDO had clearly stated that the only possible reason for the death of the woman is dowry harassment by her in-laws. The report of the RDO and the grounds raised in this Revision Case by the learned counsel for the petitioner and order passed by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur had been perused by this



Court.

19.The point for consideration is answered in favour of the petitioner herein, mother of the victim and against the 1st respondent/accused. The order of the learned Sessions Judge, Mahalir Neethimandram, Thanjavur passed in Crl.M.P.No.414 of 2017 in S.C.No.51 of 2017 dated 07.07.2017 cannot be accepted in the light of the rulings regarding framing of charges.

20.In the result, this Criminal Revision Case is allowed. The order passed by the learned Sessions Judge, Mahalir Neethimandram, Thanjavur in Crl.M.P.No.414 of 2017 in S.C.No.51 of 2017 dated 07.07.2017 is set aside. The learned Sessions Judge, Mahalir Neethimandram, Thanjavur is directed to issue summon to the accused, to frame the charges after hearing the prosecution and the learned counsel for the accused, as per the provisions of the Code of Criminal Procedure and to proceed with the trial.

Sd/-

Assistant Registrar(P & A)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Judge, Mahila Court,
Fast Track Mahila Court, Thanjavur.
 2. The Deputy Superintendent of Police,
Pattukotai Circle,
Thanjavur District.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)
- +1 CC to M/s.R.RAJAJASELVAN, Advocate (SR-24276[F] dated 29/07/2021

Crl.R.C. (MD) No.792 of 2017
29.07.2021

ls (CO)

TR(06.08.2021) 5P 7C