

CRR-1327-2020 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1327-2020 (O&M)

Date of decision: 16.03.2021

Sonu Dayma

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Kshitij Bharati, Advocate, for the petitioner.

Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

Challenge in the present petition is to the order dated 08.09.2020 passed by the learned Additional Sessions Judge, Narnaul, vide which charge under Section 304-B IPC has been framed against the petitioner.

Learned counsel for the petitioner has contended that there was no specific allegation against the petitioner regarding demand of dowry and rather the allegations were general in nature. He drew the attention of this Court towards the loan sanction letter (Annexure P-6) to contend that the petitioner had purchased the car after raising a loan from the HDFC Bank, Narnaul, and he had been paying the installments regularly. He has further contended that as per the allegations, the petitioner and his other family members had been harassing the deceased for bringing insufficient dowry,

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but no such incident was ever reported to the police. Moreover, there is no independent corroboration to the allegations made by the complainant. In fact, the petitioner had never demanded any dowry either at the time of marriage or subsequent thereto. Had there been a demand for dowry at any time, the complainant, who is a police officer, would not have kept quiet.

Learned counsel for the petitioner has further drawn the attention of this Court towards the photographs (Annexure P-3) to indicate that the petitioner and the deceased had been residing happily and there was no occasion for her to take such an extreme step of committing suicide. He has also relied upon the whatsapp chat (Annexure P-8). In support of his contentions, he has relied upon the decision rendered by the Hon'ble Supreme Court in Mahesh Kumar Vs. State of Haryana 2019 AIR (SC) 4225.

E.converso, the learned State counsel while opposing the prayer made by the learned counsel for the petitioner, has submitted that in the instant case, the death of a woman had occurred within seven years of marriage in her matrimonial home and it was an unnatural death. As per Section 113-A of the Evidence Act, 1872, the presumption as to abetment of suicide has to be raised against the accused person and it is for him to rebut this presumption, which he has failed to do so.

I have considered the rival contentions of learned counsel for the parties.

Suicide, no doubt, is a self murder. But when an act of suicide is not a voluntary act but is committed under compulsion of adverse circumstances, the law punishes those who could be held responsible for

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bringing it about, directly or indirectly, either by active suggestion or by creating objectionable conditions which drive the victim to it, but only if these are intended to achieve the desired object. Callousness and apathy in extreme form would certainly go to show that an atmosphere was created which made the victim dropped down, thereby giving indication that persistent cruelty instigated the victim to commit suicide.

Before proceeding further, it would be apposite to reproduce Section 304-B IPC which is as under:

“304B. 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 purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 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 aforesaid section clearly provides that if a married woman dies 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 in connection with demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused the death.

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The question arises as to whether in view of the facts and circumstances of the case, whether or not a prima facie case under Section 304-B IPC with the aid of presumption under Section 113-A of the Evidence Act, is made out.

A bare reading of Section 113-A of the Evidence Act shows that to attract its applicability, it must be shown that the woman has committed suicide; that such suicide has been committed within a period of seven years from the date of her marriage and that the husband or his relatives, had subjected her to cruelty.

Having regard to the principles aforesaid, advertng to the facts of the case, indisputably, the marriage of petitioner and Reena (since deceased) took place on 28.02.2017 and a baby boy was born to the couple on 24.09.2018. She died unnatural death even in her matrimonial home on 08.05.2020 i.e. within seven years of her marriage. It is specifically mentioned in the FIR that Reena was subjected to cruelty for dowry which had compelled her to commit the suicide by hanging. So far as the contentions raised by the learned counsel for the petitioner are concerned, the same cannot be dealt with at this stage because at the stage of framing of charge or quashing the same, no meticulous examination of the evidence is needed for considering whether the case would ultimately end in a conviction or not. There are specific allegations with regard to the demand of dowry articles and maltreatment to the deceased, which compelled her to take the extreme step of taking her life. On the basis of the material available on record, this Court finds that a prima facie case under Section 304-B IPC is made out against the accused. The impugned order passed by

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the trial Court, is in accordance with the law and no illegality or perversity has been committed by the trial Court.

The Hon'ble Supreme Court in case titled as State of Rajasthan Vs. Fatehkaran Mehdu, 2017(2) R.C.R. (Criminal) page 1 has held as under:-

“29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the

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case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

However, the present one is not a case, which falls in the cases enumerated in the aforesaid judgment of the Hon'ble Supreme Court. It is reiterated that at the time of framing of the charge, the Court concerned is only to see whether or not a prima-facie case is made out against the accused. There is no dispute to the factum that the accused shall have ample opportunity to prove his innocence by leading cogent and

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convincing evidence during the course of trial. However, the such process of the trial cannot be curtailed by holding that the order framing the charge against the petitioner does not hold the legal ground.

In view of the above discussion, I do not find any merit in the present petition.

Dismissed.

Anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

16.03.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes