

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 867/2018**
+ **CRL.REV.P. 1148/2018**

Date of decision: 1st March, 2021

IN THE MATTER OF:

SALEEM

..... Petitioner

Through Mr. Abhimanyu Jhamba and Mr. R A
Thonpinao Thangal, Advocates

versus

STATE OF NCT & ANR

..... Respondents

Through Ms.Kusum Dhalla, APP for State with
S.I. Amit Kumar P.S. New Usmanpur
Mr. SU Mirza, Advocate for R-2

AND

SALEEM

..... Petitioner

Through Mr. Abhimanyu Jhamba and Mr. R A
Thonpinao Thangal, Advocates

versus

STATE & ANR

..... Respondents

Through Ms.Kusum Dhalla, APP for State with
S.I. Amit Kumar P.S. New Usmanpur
Mr. SU Mirza, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present petitions under Section 397/401 CrPC are directed against the order on charge dated 04.06.2018 and 27.10.2018 passed by learned

Special Judge (NDPS), Additional Sessions Judge, Karkardooma, Delhi in Session Case No.85/2018 discharging respondents Mohd. Asif, respondent No.2 in CRL.REV.P. 867/2018, and Mohd. Wasim, respondent No.2 in CRL.REV.P. 1148/2018.

2. The marriage between daughter of the complainant i.e. Rubina Bano and Mohd. Faizan was solemnized on 17.05.2014. Originally, both the revision petitions arise out of FIR No.1087/2017 dated 24.10.2017 registered at Police Station New Ushmanpur for offences under Sections 498A, 406, 304B and 34 IPC and under Section 4 of the Dowry Prohibition Act.

3. It is stated in the FIR that the marriage of the complainant's daughter Rubina Bano was solemnized with Mohd. Faizan on 17.05.2014. It is alleged in the FIR that the complainant gave one motor cycle, Rs.2,00,000/- cash along with jewellery and utensils as dowry. It is alleged that her husband/Mohd. Faizan, Sayra(mother of Mohd. Faizan), Nazreen (sister of Mohd Faizan) were dissatisfied with the dowry given by the complainant and used to put pressure on the deceased to get more money.

4. It is stated that on 21.10.2017 the deceased along with her child came to the house of the complainant and she returned back to her matrimonial home on 22.10.2017. It is stated that when the accused Mohd. Faizan brought Rubina Bano he threatened that it was the last time he was getting her back home. It is stated that on 23.10.2017, the complainant received a call from the mother-in-law of the deceased that she had taken poison and when the complainant saw her she had already passed away.

5. FIR was registered by the Police Station New Usmanpuri for offences under Sections 498A, 406,304B and 34 IPC. The complainant filed an

application under Section 173(8) CrPC wherein it was stated that a complaint vide DD No. D-395 dated 08.06.2015 had been filed before the Senior Police Officer, Gaziabad against Mohd. Faizan (husband), Noor Mohammad (father-in-law), Shayra (mother-in-law), Shazia, Nazia, Iram (sisters-in-law) and Wasim (maternal-brother) for assaulting, demanding dowry and threatening his daughter but the Investigating Officer had the said document.

6. Material on record indicate that an application under Section 173(8) CrPC in FIR No.1087/2017 dated 24.10.2017, against Mohd. Wasim, respondent No.2 in CRL. REV.P. 1148/2018, was allowed by the learned Special Judge (NDPS), Additional Sessions Judge, Karkardooma, Delhi by order dated 21.05.2018 found that matter is already under investigation and supplementary charge sheet is being filed against Mohd. Wasim. It is also stated that an application was filed before Deswal Rangrej Social Welfare Association, where the accused have admitted to beat the deceased and a copy of the settlement was also filed along with the charge sheet but the Investigating Officer failed to induct any witness from the aforesaid association.

7. The records indicate that the deceased was beaten by her husband and her mother-in-law for dowry. On 08.06.2015, a complaint vide DD No.395 was made to the ACP, Gaziabad wherein the complainant alleged that when he went to the house of the accused he was assaulted by Mohd. Wasim and Mohd. Asif. However, he brought his daughter back home. There was a settlement and Rubino Bano went back to her in laws.

8. By order dated 04.06.2018, charges were framed under Sections 498A, 304B, and 34 IPC and an alternate charge of 302 has also been

framed against the four accused i.e. Md. Faizan (husband), Noor Mohammad (father-in-law), Shayra (mother-in-law), Najmeen (sister-in-law). However, the learned Sessions Judge observed that other than vague allegations against Mohd. Asif that he had instigated the in-laws to kill the deceased, there is nothing on record against him therefore, Mohd. Asif/respondent No.2 in CRL.REV.P.867/2018 was discharged.

9. The learned Additional Sessions Judge by order dated 27.10.2018, discharged Mohd. Wasim/respondent No.2 in CRL.REV.P. 1148/2018 holding that the allegations against Md. Wasim are similar to that of Md. Asif which also are vague and bald.

10. The order dated 04.06.2018 in CRL.REV.P 867/2018 and order dated 27.10.2018 in CRL.REV.P. 1148/2018 discharging Mohd. Asif and Mohd. Wasim respectively are under challenge in the instant revision petitions.

11. Heard Mr. Abhimanyu Jhamba, learned counsel for the petitioner, Ms.Kusum Dhalla, learned APP for State and Mr. SU Mirza, learned counsel for the respondent No.2 and perused the material on record.

12. Mr. Abhimanyu Jhamba, learned counsel for the petitioner contends that the contents of DD No. D-395 dated 08.06.2015 has been completely ignored by the learned ASJ, He states that in the said complaint there were specific allegations of beating against both Mohd. Asif and Mohd. Wasim. Learned counsel for the petitioner argues that in DD No. D-395 dated 08.06.2015, it is noted that both Mohd. Asif and Mohd. Wasim manhandled and beat the complainant when he came to take his daughter. He would contend that even in the present FIR, there are specific allegations against Mohd. Asif and Mohd. Wasim.

13. *Per contra*, Mr. S U Mirza, learned counsel for the respondents

Mohd. Asif and Mohd. Wasim would contend that both respondents were residing separately and were not present on the fateful day when the incident happened. It is contended that other than making bald allegations in the complaint, there are no allegations or material to show that they have instigated the parents of Mohd. Faizan to torture the deceased.

14. In the Status Report the Police have not stated as to whether there have been specific allegations against Mohd. Asif and Mohd. Wasim. Further, the State has chosen not to challenge the order discharging the two accused.

15. Mr. Abhimanyu Jhamba, learned counsel for the petitioner has not been able to point out specific instances against the two accused. The FIR only states “it seems to me that they have all jointly killed my daughter by giving her poison and in this Mohd. Faizn, Sayra, Noor Mohd. and Asif are involved.” It has also been stated in the FIR that the Mohd. Wasim and Mohd Asif have instigated to kill the deceased. Learned ASJ after considering all the material on record found that there are only vague allegations against the respondents that they instigated the in-laws to kill the deceased.

16. It is categorically stated that other than vague allegations, nothing is on record against the respondents. The trial is in advanced stage. The revisional court cannot substitute its conclusion to the one arrived at by the inferior court.

17. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, the Supreme Court observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or

propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

18. Other than the complaint, DD No. D-395 dated 08.06.2015 states that respondents herein used to abuse and torture the deceased and that they further used to beat her. The said document is not the part of the charge sheet. In any event, the Police after conducting further investigation arrayed the respondents as accused but the learned ASJ after considering all the statements and the material on record has come to the conclusion that the allegation against the respondents are only vague. Admittedly, the two respondents did not stay in the matrimonial home and they have their own families. The order dated 04.06.2018 whereby alternate charge under Section 302 IPC has been added against the husband, parents-in-law and sister-in-law of the deceased is a well considered order.

19. In view of the above, this Court does not find any infirmity in the orders impugned in the instant revision petitions. The petitions are dismissed.

SUBRAMONIUM PRASAD, J

MARCH 01, 2021

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