

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Jay Sengupta

CRR 2309 of 2021

Srilal Shaw & Anr.

Versus

The State of West Bengal & Anr.

For the petitioners : Mr. Manas Kumar Barman
Mr. Abhiraj Tarafdar
..... Advocates

For the State : Ms. Anasuya Sinha
Mr. Pinak Kr. Mitra
..... Advocates

Heard on : 20.07.2022

Judgment on : 05.09.2022

Jay Sengupta, J.:

1. This is an application challenging an order dated 21.03.2021 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Sealdah, South 24 Paraganas in Case No. SC 01 (12) 2019 arising out of Beliaghata Police Station Case No. 144 dated 29.06.2019 (GR 1563 of 2019), thereby rejecting the prayer for discharge of the accused and holding that a prima

facie charge under Sections 498A and 304B of the Penal Code was made out against all the accused.

2. The present petitioners are the father-in-law and the sister-in-law of the victim deceased while the added opposite party is the de facto complainant and father of the victim deceased. In the First Information Report lodged on 29.06.2019, the de facto complainant alleged that after the marriage of the accused no. 1/husband and the victim deceased on 15.12.2018, the accused subjected the victim to physical and mental torture for want of more dowry. Subsequently, on 28.06.2019 the victim was found in hanging condition at her matrimonial home. During investigation it was learnt that the door was under lock and key and had to be broken open by the husband accused no. 1 in presence of local people. The victim was taken to the hospital, but was declared brought dead. The victim committed suicide within six months of marriage allegedly due to the torture for dowry demand meted out by her husband and the other accused. A charge-sheet was submitted under Sections 498A, 304B and 34 of the Penal Code on 14.08.2019. The petitioner's prayer for discharge was turned down by the impugned order.

3. Learned counsel appearing on behalf of the petitioner submitted as follows. Incidentally, this Court granted anticipatory bail to the petitioner no. 2 on 01.11.2019 while the petitioner no. 1 was granted bail upon surrender on 24.01.2020. It was observed by the Hon'ble Division Bench that the married sister-in-law did not ordinarily reside at the matrimonial home of the victim and there was no material to show that she was present at the relevant time. The prosecuting agency failed to make out any case

against the petitioners. Without properly appreciating the materials produced, the learned Trial Judge erroneously refused the petitioner's prayer for discharge. There were several contradictions in the statements of witnesses recorded under Sections 161 and 164 of the Code. Most of the witnesses were either relatives or neighbours of the victim's side. There was no contemporaneous material or evidence to show that the deceased was ever subjected to physical torture of a kind that was sufficient to cause grave injury or danger to the victim's health or limb. The de facto complainant distorted the facts by unnecessarily adding colour to them. There was no specific allegation against the present petitioners that could connect them to the alleged offences. An abetment had to be made out from a positive act. One simply could not presume the existence of it. The learned Judge also erred in relying on evidence of CSW 8 who falsely stated that she had filed a case under Section 498A of the Penal Code against her husband the accused no. 1. There was no independent corroborative evidence to sustain the charge of abetment. Instead of recording a subjective satisfaction on the question of discharge, the learned Trial Judge went on making guessworks and needlessly relied on a presumption of guilt. At this stage, the learned Court did have the power to sift evidence for the limited purpose of satisfying itself about whether a prima facie charge was made out. But, it failed to do so. It was germane to note that there was no suicidal note in the instant case. No prior allegation was found to have been levelled by the victim earlier. In fact, the de facto complainant's version was non-specific as regards the role played by the present petitioners. Reliance was placed on a decision of the Hon'ble Supreme Court Case K. Subba Rao and

Others Versus State of Teleangana and Others (2018) 14 SCC 452 and it was submitted that the Court should be careful in proceeding against distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. Reliance was also placed on the decision in Sushil Kumar Sharma Versus Union of India, (2005) 6 SCC 281. In spite of there being two suicide notes, in State of West Bengal Versus Indrajit Kundu and Others (2019) 10 SCC 188, the Hon'ble Apex Court found that there was no goading or solicitation or insinuation by any of the accused to the victim to commit suicide. Reliance was also placed on the decisions in Sanju @ Sanjay Singh Versus State of Madhya Pradesh 2002 5 SCC 371 where the Hon'ble Supreme Court held that a suicide committed two days after the husband had stated 'go and die', the suicide was not the direct effect of such quarrel. Relying on Kuppusamy and Anr. Versus State of Tamilnadu 2020 (3) AICLR 559 (Madras), it was submitted that the presumptions under Section 113A and 113B of the Indian Evidence Act as to abetment of suicide by a married woman and dowry death could not be drawn automatically against the in-laws. Reliance was also placed on the decision in Gurucharan Singh Versus State of Punjab, AIR Online 2020 SC 759 on the issue of abetment. In fact, the statement of CSW 19 and 11 named in the charge-sheet went against the prosecution story. Earlier, when the victim was found at a railway platform by the railway police, she decided to call her husband over phone and when the husband came she went back after saying that she had left after quarrelling. If the deceased had then wanted to lodge any complaint against her husband and other in-laws, nothing would have prevented her from doing so. The said incident took place on 26.06.2019 while the

deceased committed suicide on 29.06.2019 i.e., after about 72 hours from the earlier incident. This would clearly go against hauling up the present petitioners for the sad demise of the victim deceased. In fact, this was a second marriage for the deceased. Actually, within a few days of such unfortunate incident, she was forced by her parents to enter into her marriage with the accused no. 1. Possibly she could not bring herself out of her depression resulting from the sad demise of her previous husband. Lastly, the learned Trial Judge failed to appreciate that the duty of hearing an application for discharge was not an empty formality. In *L. Krishna Reddy Versus State of Madras* (2014) 14 SCC 401, the Hon'ble Apex Court held that it was the bounden duty of the Court to sift the materials to see whether a prima facie case was established or not.

4. Learned counsel appearing on behalf of the State submitted as follows. The victim deceased committed suicide within six months of marriage due to the torture for demand of dowry of the husband and the other accused. Several statements were recorded of witnesses including a few relatives and neighbours. The statements recorded under Sections 161 and 164 clearly made out a case against the accused, even against the present petitioners. The bank statement of the victim obtained from the Central Bank of India evinced that a dowry amount was transferred to the accused. This was a suitable case where the presumptions as mentioned above would fully become applicable. Ample evidence was present to show that the accused did inflict cruelty upon the deceased soon before her death and the victim lady died within seven years of marriage. The incident of 26th did not help the present petitioners any bit. After the husband, came she

went under his influence and would not have been free to make a complaint stating the real facts. Be that as it may, the materials collected during investigation clearly made out a prima facie case against the accused. Only after going through a full fledged trial, could the defence of the accused be tested properly. Most of the decisions cited on behalf of the petitioner dealt with completely different sets of facts. As such, they were distinguishable. A prima facie case was indeed found to have been made out against the petitioners as would be evident from a careful perusal of the relevant documents.

5. I heard the submissions of the learned counsels appearing on behalf of the parties and perused the revision petition, the written notes of submissions and the case diary.

6. It is true that the present petitioners are the father-in-law and the sister-in-law of the victim (deceased) and not the husband. Therefore, a greater scrutiny of the materials would perhaps be necessary to sustain the prosecution against them even at this stage. It is now a settled position of law that it has to be scrutinised whether there are sufficient materials against the in-laws of a lady other than the husband who are quite often falsely implicated in such cases.

7. It is also true that the petitioner no. 1 was granted bail upon surrender and the petitioner no. 2 was granted anticipatory bail. However, unlike in case of grant of anticipatory bail or bail, the scrutiny would be higher in case the petitioners want the proceeding against them to come to an end even before a full-fledged trial could commence. It was trite to

mention that any sifting of evidence for such purpose would be for the limited purpose of finding out whether a prima facie case is made out.

8. The victim and the accused no. 1 got married in December 2018 and within six months the present incident occurred. The wife allegedly committed suicide within six months of marriage purportedly due to the torture inflicted by the in-laws for dowry demands. On 28.06.2019, she was found hanging at her matrimonial home. During investigation, it was learnt that as the door was locked, it had to be broken open by the husband/accused no. 1 in the presence of locals.

9. It has been vehemently argued on behalf of the petitioners that a few days before the incident the victim went out of her matrimonial home. She was rescued by the Railway police. When asked, the victim called her husband and not anyone at her maternal home. When the husband came or even before that, she did not make any complaint against him or the in-laws before the Railway police. Even before this incident, she did not lodge any complaint to any authority regarding torture by the in-laws over dowry demand. First, if the above facts which occurred a few days before the alleged incident of unnatural death of the victim are carefully judged, they would not strictly enure to the benefit of the present petitioners. Secondly, the petitioner's version is contradicted by the victim's father in his statement under Section 164 of the Code. According to him, the victim first called up her paternal home on a mobile phone of a stranger and thereafter, he requested the husband to take the victim back home. These disputed facts can best be decided during trial.

10. So far as the present petitioners are concerned, there are specific allegations made against them in the First Information Report that they inflicted torture for failure to bring more dowry. In some statements of witnesses like that of the victim's mother recorded by the investigating officer there are clear references as to their involvement. Moreover, Soma Mondal and Keka Pal, neighbours of the accused made statements that the quarrels increased when the instant petitioners were present at home. In fact, Keka Pal corroborated the presence of the husband and the father-in-law at the place soon before the incident and the fact that a heated quarrel preceeded the death of the victim. Besides, there are allegations against all the accused of taking dowry during the wedding and demanding and receiving more dowry after marriage. The accused wanted more money purportedly on the ground of the husband's downslide in business and on the pretext of defraying expenses in respect of liabilities towards the husband's former wife. Incidentally, the former wife alleged that the husband pawned his jewellery for money, did not return articles and was not paying maintenance. It is further alleged that when the present victim wife expressed her inability to bring more money, the accused inflicted more torture upon her. This is a case based primarily on circumstantial evidence. Much of the petitioner's contentions are based on disputed facts, which could be tested only during trial. In view of the same, it would be absolutely premature and predictive to exonerate the petitioners at this stage. On the contrary, it appears that a prima facie case is made out against the petitioners.

11. In fact, when the wife has committed suicide within six months of her marriage and it is alleged that soon before such incident, she was subjected to cruelty for dowry demand, necessary presumptions would follow as contained in the Evidence Act.

12. In view of the materials collected during investigating including the existence of the statements made by witnesses as referred to above and after reading the same in the light of the attending circumstances, it appears that there are sufficient materials to proceed to the next stage in the prosecution against the accused.

13. Besides, the impugned order is a reasoned one and is not per se illegal.

14. In view of the above, I find no reason to interfere with the impugned order.

15. Accordingly, the revisional application is dismissed.

16. However, there shall be no order as to costs.

17. The petitioners shall be at liberty to raise all the points taken up in this revision at the time of trial.

18. The learned Trial Court shall conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

19. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)