

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL REVISIONAL JURISDICTION**  
**APPELLATE SIDE**

**Before:**

**The Hon'ble Justice Ananda Kumar Mukherjee**

**C.R.R No. 3094 of 2011**

**Nirmal Kumar Agarwal & Anr.**

**Vs.**

**The State of West Bengal & Anr.**

**For the Petitioners:**

Mr. Sekhar Kumar Basu, Sr. Adv.,  
Mr. Soubhik Mitter, Adv.  
Ms. Rajnandini Das, Adv.  
Ms. Arushi Rathore, Adv.  
Mr. Karan Bapuli, Adv.

**For the State:**

Mr. Binoy Panda, Adv.  
Ms. Puspita Saha, Adv.

**Heard on :**

23.02.2022.

**Judgment on:**

08.03.2022.

**Ananda Kumar Mukherjee, J. :-**

1. This revisional application has been filed by the petitioners under section 401 and 482 of the Code of Criminal Procedure, 1973 praying for quashing/ setting aside of order dated 24.08.2011 passed by Learned Additional District and Sessions Judge, 3<sup>rd</sup> Court, Darjeeling in sessions Case No. 53 of 2006 arising out of Darjeeling Sadar Police Station Case No. 93 of 2005 dated

22.01.2005 under section 498A/326/306/511/341 of the Indian Penal Code and section 3/4 and Dowry Prohibition Act.

2. In the brief, fact of the case giving rise to the revisional application is that over the death of Manu on 22.11.2005. Her father, opposite party no. 2 lodged a complaint before the officer-in-charge, Sadar Police Station, Darjeeling alleging that on 7<sup>th</sup> March, 2002 Manu was marriage to petitioner no. 1 and at the time of marriage gold and silver ornaments, cash, clothes, furniture and other items had been given to the deceased at dowry. After six to seven months from the marriage, opposite party no. 2 received complains from the matrimonial family of Manu regarding insufficiency of dowry articles. The opposite party no. 2 tried to resolve the matter with the petitioners. Subsequently, Manu was subjected to physical and mental torture and petitioner no. 2 declared that she would get petitioner no. 1 remarried. Two days prior to Diwali that year, petitioner no. 1 called Manu's father and asked him to take back his daughter but opposite party no. 2 tried to explain the situation to petitioner no. 1.

3. On 20.11.2005, Manu informed the opposite party no. 2 that a quarrel was going on in the matrimonial family and she was apprehending that anything might happen to her. The opposite party No. 2 advised Manu to adjust herself and told her that he would come and hold talks with the matrimonial family members. However, on 20.11.2005 at 12:30 P.M the petitioner no. 1 called Manu's father and informed that Manu had suffered burn injuries. Opposite party no. 2 rushed from Raxaul and reached Darjeeling

at 9:30 A.M on 21.11.2005. He found Manu had suffered 90-95% burn injuries on her person. The opposite party no. 2 alleged that after being assaulted Manu had been burnt by the petitioner. On the basis of a complaint lodged by the father of the deceased Sadar Police Station Case No. 93 of 2005 dated 22.01.2005 was registered under section 498A/326/306/511/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act.

4. After completion of investigation police submitted Charge Sheet No. 25 of 2006 under section 498A/326/306/511/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act against the petitioners. Learned Magistrate took cognizance of the offence. The case was subsequently committed to the Court of Learned Sessions Judge from where it was transferred to the Court of Learned Additional Sessions Judge 3<sup>rd</sup> Court, Darjeeling for trial and disposal. The case was registered as Sessions Case No. 53 of 2006.

5. The petitioners herein have contended that the charge sheet and the accompanying documents do not make out any offence as alleged against the petitioners, accordingly they filed an application for their discharge. Learned Judge, after hearing the contention raised on behalf of the petitioner passed an order on 18.05.2007 rejecting the prayer for discharge of petitioners and further fixed 19.05.2007 as the next date for appearance and framing of charge.

6. On 19.05.2007 Learned Additional Sessions Judge, 3<sup>rd</sup> court, Darjeeling after considering the materials as placed on record by the prosecution was

satisfied to frame charge against the petitioners under section 498A read with section 34 of the Indian Penal Code, and section 304B read with section 34 of the Indian Penal Code and also under section 3 of the Dowry Prohibition Act read with section 34 of the IPC. The petitioners pleaded not guilty and claimed to be trial. The case was thereafter fixed for trial from 02.07.2007 to 04.07.2007.

7. Being aggrieved with order dated 19.05.2007 the petitioners preferred a revision before this court, bearing C.R.R. No. 2260 of 2007. The revisional application was disposed of by judgement and order dated 17.03.2008, whereby a learned Single Bench of this court was pleased to observe, "Although, according to my opinion the impugned charge under section 304B of the Indian Penal Code is absolutely in accordance with law except non mentioning of section 34 of the Indian Penal Code, still I feel that when such defects has been brought to the notice of this court let the same be cured before commencement of the trial." The impugned order dated 19.05.2007 passed by Learned Additional Sessions Judge, 3<sup>rd</sup> Court, Darjeeling so far as it related to the charge framed against the petitioners was set aside and the Learned Judge was directed to frame the charge afresh in accordance with law in the light of the observations made in the judgment in C.R.R. No. 2260 of 2007.

8. The petitioner thereafter appeared before the jurisdictional court for framing of charge afresh as directed by this court. Having considered the materials on record, Learned Additional Sessions Judge, 3<sup>rd</sup> Court Darjeeling

on 24.08.2011 was pleased to frame charge against the petitioners for commission of offences punishable under section 498A read with section 34 of IPC and under section 304B read with section 34 of the IPC and also under section 3 of the Dowry Prohibition Act read with section 34 of IPC. The petitioners claimed not guilty to the charge. The case was thereafter fixed on 19.10.2011, 21.10.2011, 24.05.2011 and 25.10.2011 for trial and examination of witnesses.

9. The petitioners have again approached this court assailing the order dated 24.08.2011, relating to charge, contending that the order has been passed without application of judicial mind and in a most casual manner, without observing the directions of this court. It is the case of the petitioners that the court has not considered the materials on record, the illegalities and irregularities as pointed out by this court have not been taken into consideration and the impugned order passed by the Learned Judge is liable to be set aside.

10. Learned Advocate for the petitioners argued that learned jurisdictional court at the time of framing charge for the second time has not considered the materials on record and did not follow the observation of this court whereby the earlier order of framing charge was set aside. It is contended that the court did not apply its judicial mind to the material collected by the investigating agency to find out if any prima facie case existed against the alleged offender, as the court has to be primarily satisfied whether the allegation if uncontroverted or un-rebutted would lead to conviction of the petitioners.

Learned advocate further argued that learned trial court instead of considering the materials on record have technically followed the order passed by this court in C.R.R. No. 2260 of 2007 for which the impugned order is liable to be set aside. In support of petitioners' case learned advocate relied upon two decisions of the Supreme Court of India. In the case of **Century Spinning and Manufacturer Co-limited Vs. The State of Maharashtra (AIR 1972 SC 545)**

Hon'ble court laid down the procedure to be followed by a trial court at the time of framing of charge and observe *"(1) when, in any case instituted on a Police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such Magistrate shall satisfy himself that the documents referred to in Section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.*

*(2) If, upon consideration of all the documents referred to in Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.*

*(3) If, upon such documents being considered: such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such*

*Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”*

In the case of **Niranjan Singh Karam Singh Panjabi Vs Jitendra Bhimaraj Bijje (AIR 1990 Supreme Court 1962)** Hon’ble court observed *“it seems well settled that at the sections 227-228 stage i.e., stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initiate stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”*

11. Learned Advocate for State controverted the argument advanced on behalf of the petitioners and submitted that at the time of passing the impugned order dated 24.08.2011 Learned Additional Sessions Judge <sup>3rd</sup> Court, Darjeeling has followed the observations made by this court while passing order in C.R.R. No. 2260 of 2007 and framed the charge afresh against the petitioners in accordance with law and after considering the materials on record as well as the arguments advanced by learned public prosecutor and the learned advocate for the accused person. Learned Advocate for the State drew the court’s attention to the impugned order and argued that while framing of charge afresh on 24.08.2011, Learned Additional Sessions Judge has followed the observations of the Hon’ble Court where a specific direction was given to frame charge against the accused person under section 498A/ 34 of the Indian

Penal Code. Thereafter having considered the prima facie material against the petitioners framed charge under section 304B read with section 34 of the Indian Penal Code and section 3 of the Dowry Prohibition Act read with section 34 of IPC. It is submitted that apart from the order of framing of charge, the arraignments were also read over to the accused petitioners and the same have been recorded in the Charge From under three heads in form No. 3957. It is urged that there is no merit in the revisional application and the same is liable to be dismissed.

12. I have considered the facts and circumstances of the case delineated in the application for revision and the impugned order. I have also gone through the judgment dated 07.04.2008 passed in C.R.R. No. 2260 of 2007, wherein a bench of coordinate jurisdiction of this court has observe that although there is clear mention about the time of place of occurrence as well as the offence of commission of dowry death of Manu Goyal by the accused person in furtherance of their common intention but it has not been mentioned that the accused person committed offence punishable under section 304 B read with section 34 of the Indian Penal Code. It is also observed that although according to the opinion of the court the impugned charge under section 304 B of the Indian Penal Code was absolutely in accordance with law except non-mentioning 34 of the Indian Penal Code, still it was felt that such defect had been brought to the notice of the court and the same should be cured before commencement of the trial. The court held that framing of charge under section 498A/ 34 of Indian Penal Code and section 3 of Dowry Prohibition Act

read with section 34 of the Indian Penal Code stands sustained but the charge under section 304B of the Indian Penal Code was set aside and the Learned Judge was directed to frame the charge afresh in accordance with law and in the light of the observations made above.

13. At the time of framing of charge afresh on 24.08.2011 the learned trial court has followed the directions of this court in order 09.04.2008 where the charge in respect of section 498A/ 34 of IPC has been sustained along with the charge under section 3 of Dowry Prohibition Act read with section 34 of the IPC. It further frame charge under section 304B read with section 34 of IPC in the light of the observation made in paragraph 5 of the judgement. Learned Trial Court while framing charge afresh had indicated that he has gone through the judgment of this court in C.R.R. No. 2260 of 2007 and the arguments advanced by learned advocate for the accused person as well as learned public prosecutor and on careful perusal of the material on record. It did not make any observation whether at the time of framing of charge afresh the prosecution case was opened by the learned public prosecutor, placing the materials before the court for appreciation that a prima facie case was made out against the petitioners under section 304B/34 of IPC and that he has considered all materials in the Case Diary to be satisfied that there was significant ground for proceedings against the accused for such offence. Learned trial court while following the direction of this court in order dated 09.04.2008 had lost sight of the fact that at the stage of framing of charge it is incumbent upon the court to consider the materials in the case diary

independently at least to be satisfied that the ingredients of the offence under section 304B/34 of IPC prima facie existed against the accused persons.

14. Considering the scope of section 227 and 228 of Cr. P.C, in **Amit Kapoor Vs Ramesh Chander and another (2012) 9 SCC 460**, the Supreme Court held, “Framing of charge is an exercise of jurisdiction by the trial court in terms of section 228 of the code, unless the accused is discharge under section 227 of the code. Under both this provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exist, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than the prima facie case. There is a fine distinction between the language of section 227 and 228 of the Code. Section 227 is the expression of a definite opinion and the judgement of the court while section 228 is tentative. Thus, to say at the stage of framing of charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of section 228 of the code”.

15. At the time of framing of charge learned trial court shall also bear in mind the ratio of the decision laid down by the Hon'ble Supreme Court in **Kanti Bhadra Shah and another Vs. The State of West Bengal (2000) 1 SCC 722**, that while exercising power under section 228 of Cr. P.C, the judge is not required to record his reasoning for framing the charge against the accused. The court on considering the material shall have to arrive at a satisfaction that there is sufficient ground for proceeding against the accused and frame the charges against him.

16. Having considered the materials in the impugned order I find that learned trial court did not observe these essential conditions at the time of framing the charge afresh. The impugned order thereafter suffers from illegality, the same is set aside. The charge framed is also set aside with a direction that learned trial court shall frame charge against the petitioners afresh, bearing in mind the observations in the judgment made by this court order dated 09.04.2008 passed in C.R.R No. 2260 of 2007 and also consider the materials in the Case Diary and the arguments if any advanced by learned advocate for the petitioners and the Learned Public Prosecutor to arrive at a satisfaction that ingredients of offence exist to constitute a prima facie case against the accused persons.

17. The revisional application is accordingly allowed. Interim order if any, stands vacated.

18. Let a copy of this order be sent to the Learned Additional District and Sessions Judge 3<sup>rd</sup> Court, Darjeeling for information and framing of charge

afresh in the light of the observation made above. Since the matter is pending for a long time the court shall make all endeavour to dispose of the case as expeditiously as possible, preferably within the period of six months from the date of communication of this order. The petitioners are also directed to appear before the court on the next date fixed.

19. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for maintaining all formalities.

**(Ananda Kumar Mukherjee, J.)**