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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-806-2022 (O&M)

Date of Decision: July 21, 2022

Vanita Sander and others

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.C.M.Munjhal, Advocate
for the petitioners.

.....

RAJESH BHARDWAJ, J.(ORAL)

CRM-16211 and 16213-2022

For the reasons mentioned in the applications, the same are allowed. Annexures P-1 to P-7 are taken on record.

CRR-806-2022(O&M)

The petitioners have approached this Court praying for quashing of impugned order dated 07.12.2021 passed by learned District and Sessions Judge, Fazilka, whereby charge has been framed under Section 304-B IPC read with Section 34 IPC and also alternative charge under Section 302 IPC read with Section 34 IPC against them in case FIR No.133, dated 02.12.2018 under Sections 304-B/302/34 IPC, registered at Police Station City-2, Abohar.

Learned counsel for the petitioners relies upon the judgment of Hon'ble the Supreme Court in **Jasvinder Saini and others vs State (Government of NCT of Delhi)**, (2013) 7 Supreme Court Cases 256 and submits that in view of the mandate of the Apex Court, the alternative

charge under Section 302/34 IPC could not be framed. He has submitted that the charge seems to have been framed mechanically on the basis of the observations of Hon'ble Apex Court in Rajbir @ Raju vs State of Haryana, (2010) 15 SCC 116.

Notice of motion.

On the asking of the Court, Ms.Sakshi Bakshi, AAG, Punjab, who is present in Court, accepts notice on behalf of the respondent-State and opposes the prayer made by learned counsel for the petitioner. She has submitted that the trial Court has rightly framed alternate charge under Section 302/34 IPC.

Heard.

In Rajbir @ Raju's case (supra), Hon'ble the Apex Court had issued directions to all the trial Courts in India to ordinarily add Section 302 IPC to the charge of Section 304-B IPC, so that death sentence could be imposed in such heinous and barbaric crimes against women. A copy of the said order was sent to all the Registrar (J)/Registrar of all High Courts for implementation. However, the view expressed by the Hon'ble Apex Court in Rajbir @ Raju's case (supra) was subject to close scrutiny before the Hon'ble Apex Court in Jasvinder Saini and others' case (supra), wherein their Lordships held as under:

“Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case (supra) directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant

to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case (supra), but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court.”

Hence, in view of the law laid down in **Jasvinder Saini's** case

(supra), the impugned order dated 07.12.2021 is set aside. The trial Court shall examine the matter afresh in the light of the observations made in the judgment of **Jasvinder Saini's** case (supra) and shall pass a fresh order in accordance with law. At this stage, the trial Court is required only to look into the material which has been collected during investigation and on that basis, it shall frame the charge either under Section 304-B/34 or 302/34 IPC and not as an alternative. If the evidence comes subsequently, the trial Court will be at liberty to amend the charge at that stage.

The present petition is disposed of accordingly.

July 21, 2022

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No