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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 03.11.2022***
Pronounced on: 13.12.2022

+ **CRL.REV. P. 531/2022 & CRL.M.A. 16184/2022**

RAVI SAINI Petitioner

Through: Mr.(Dr.) Sarabjit Sharma,
Advocate

versus

STATE NCT OF DELHI Respondent

Through: Mr. Satish Kumar, APP for the
State

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397 of Code of Criminal Procedure, 1973 assails the order dated 11.07.2022 passed by learned Additional Sessions Judge-05, South-West District, Dwarka Courts, New Delhi whereby charges have been framed against petitioner for offence under Sections 498A/304B of Indian Penal Code, 1860.

2. A quick reference to brief facts of the case is necessary. The deceased and the petitioner, in the present case, had entered into a wedlock on 22.02.2015, and a child was born out of their marriage. On 28.04.2019, the deceased was found hanging in her matrimonial home pursuant to which a PCR call was made by the petitioner's father. The

door of the room, which was found bolted from inside, was broken open by the police officer and the deceased was taken to hospital where she was declared 'brought dead'. An FIR under Sections 498A/304B/34 IPC was registered on 29.04.2019 against the present petitioner and his father and mother on the basis of complaint of the mother of deceased. The case of the prosecution, before the learned Trial Court was, that 10 days prior to the marriage, the in-laws of deceased had demanded a four wheeler vehicle, a demand which was acceded to by deceased's family after taking loans. Since the day of her marriage, deceased was harassed by her husband and in-laws for non-fulfillment of demand of dowry, and the deceased had even left her matrimonial home in May, 2018 and was later found in Haridwar the next day when she was handed over to her brothers who had brought her back to the parental home. Subsequent to this, a police complaint was also made by the deceased, after which she was taken back to her matrimonial home. On 28.04.2019, the ring ceremony of sister-in-law of deceased's brother was scheduled, in regard to which she had a telephonic conversation with her mother on 27.04.2019, but unfortunately, she was found dead the very next day.

3. The learned Trial Court, after hearing arguments of both prosecution as well as accused, proceeded to frame charge against the petitioner under Sections 498A/304B of IPC, and the proceedings against the parents of the petitioner stood abated due to their death during the course of proceedings. The operative part of the order framing charge dated 11.07.2022 is as under:

“...After having gone through the submissions advanced by counsel for both the parties and perusal of the record, particularly, the statement of mother, brother of the deceased and statement of Shri Sukhbir Saini and complaint of deceased dated 06.05.2018, I find that there is sufficient material on record to presume that accused has committed the offence punishable under Section 498A/304B IPC...”

4. Petitioner, being aggrieved by the aforesaid order, though not disputing the charge under section 498A, has challenged the legality of the order on the grounds that ingredients, essential for constituting offence under Section 304B, are entirely absent in the present case.

5. Learned counsel for the petitioner submits that the allegations levelled against the petitioner are general in nature and the complaint, which ultimately resulted into registration of FIR does not allege any act which shows cruelty or harassment caused, soon before the death of the deceased, so as to frame a charge under section 304B IPC against the petitioner.

6. It is further submitted by learned counsel for petitioner that the statements recorded under Sections 161 as well as 164 Cr.P.C., of the relatives, mother, brother and other relatives of the deceased, do not reveal any cruelty or harassment in relation to demand of dowry soon before the death the deceased. It is further stated that the supplementary statement of deceased's mother is devoid of merits and reliance is placed upon the decision of a Coordinate bench of this Court in *State (Govt. of NCT) v. Sandeep Kumar & Ors., Crl.Rev. 460/2015*. It is averred that the material on record does not satisfy the ingredients

required to charge the accused for the offence punishable under Section 304B IPC.

7. Learned APP for the State, controverting the aforesaid contentions, submits that the impugned order does not suffer from any infirmity and the learned Trial Court has rightly framed the charges against the petitioner after perusing the record of the case and giving due consideration to the arguments of both the sides. It is stated that the statements of the relatives of the deceased recorded under Sections 161 as well as 164 Cr.P.C. are enough to make out a *prima facie* case of 304B IPC against the present petitioner.

8. Having heard the counsels appearing on either side and perusing the material on record, this Court is only concerned with the question as to whether the charge framed against the petitioner/accused under Section 304B of IPC by the learned Trial Court is correct as per law or not.

9. At the outset, before proceeding to deal with the facts of case, it will be pertinent to discuss the legal principles which are relevant for deciding the issue in question.

10. The provisions dealing with discharge and framing of charge are provided under Section 227 and 228 of Cr.P.C., and the same are reproduced as under:

"227. Discharge — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

“228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

11. While deciding as to whether a charge be framed against an accused or not, it is necessary for the Court to look into the facts and circumstances of the case and due consideration needs to be given to the material placed on record along with the investigation and the facts determined therefrom. From information so gathered, the Court will be required to ascertain if the essential ingredients of an offence are *prima facie* made out or not. An in-depth appreciation of evidence and roving inquiry into the pros and cons of the case is not permitted as the Trial Court is not allowed to conduct a mini trial while passing an order on charge. [See *Sajjan Kumar v. C.B.I. (2010) 9 SCC 368; Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; Asim Shariff v. National*

Investigation Agency (2019) 7 SCC 148; and Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547]

12. In a recent decision in *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057*, the Hon'ble Apex Court has explained the well-settled law on exercise of power under Section 397 and Section 482 of Cr.P.C. by the Courts while deciding as to whether the charges framed against an accused be quashed or not, as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court

has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure

23. Section 397 CrPC 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 or the perversity which has crept in the proceeding.”

(Emphasis supplied)

13. The present petition assails the charge framed against petitioner under Section 304B IPC, and thus, it will be necessary to take note of the relevant provision of Section 304B which relates to Dowry Death.

“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 purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 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.”

14. The essential ingredients, which emerge from the perusal of aforesaid provision, were highlighted by the Hon’ble Supreme Court in *Devender Singh & Ors. v. The State of Uttrakhand*, 2022 SCC OnLine SC 489, as under:

“9. A perusal of the above provision would indicate that the main ingredients of the offence required to be established are :-

(i) that soon before the death, the deceased was subjected to cruelty and harassment in connection with the demand of dowry;

(ii) the death of the deceased was caused by any burn or bodily injury or some other circumstance which was not normal;

(iii) such a death has occurred within 7 years from the date of her marriage;

(iv) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(v) such a cruelty or harassment should be for, or in connection with the demand of dowry; and
(vi) it should be established that such cruelty and harassment were made soon before her death...”

15. Since the main argument of the learned counsel for petitioner relates to absence of any material to show that the deceased was subjected to harassment for demand of dowry soon before her death, a reference can be made to the judgment delivered by three-judge bench of Hon’ble Supreme Court in *Satbir Singh & Anr. v. State of Haryana (2021) 6 SCC 1* wherein it was **held that the term “soon before the death” under Section 304B must be construed to mean the presence of proximate and live link to connect the acts of cruelty with the consequential death of the victim, and the same does not mean “immediately before” the death.** The observations of the Apex Court as are under:

“15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, “soon before” they did not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase “soon before” entails.

16. The aforesaid position was emphasized by this Court, in the case of Kans Raj v. State of Punjab, (2000) 5 SCC 207, wherein the three Judge Bench held that:

“15. ... “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. ... In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

A similar view was taken by this Court in Rajinder Singh v.State of Punjab, (2015) 6 SCC 477.

17. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term “soon before”. What is pivotal to the above determination, is the establishment of a “proximate and live link” between the cruelty and the consequential death of the victim...”

(Emphasis supplied)

16. Having considered the relevant provisions and ingredients thereof as well as having taken note of the settled law on framing of charge and discharge of accused, it emerges from the facts of the present case that marriage between the deceased and petitioner was solemnized on 22.02.2015, and ten days prior to the date of marriage, the in-laws of the deceased had demanded a four wheeler vehicle and

the family of the deceased had agreed to the said demand to ensure that the marriage of their daughter is not disturbed. Further perusal of the statements reveal that post-marriage, the deceased was subjected to cruelty and harassment by her in-laws and the said harassment was also in relation to demand of dowry. The deceased's mother had alleged that mother-in-law of the deceased used to snatch away whatever cash was handed over by her to the deceased whenever the deceased used to visit her parental home. Further, the deceased had left her matrimonial house on 04.05.2018 without informing anyone. A missing report was lodged by the husband of deceased on 05.05.2018, and on the same day, deceased was found in Haridwar by the railway police and upon her request, her brother were called and she was handed over to them who took her back to parental home. On 06.05.2018, a written complaint was made to P.S. Palam Village wherein deceased had stated that she was harassed and tortured by her husband and her mother-in-law, including harassment for bringing insufficient dowry. It is also alleged that it was only after lodging of said complaint that she was taken back by her in-laws. The said incident is of around 3 years after the date of marriage.

17. It is the case of petitioner that there is no allegation of any harassment for the purposes of dowry on record at all to show that deceased was subjected to cruelty for demand of dowry soon before her death. This Court, however, is not expected to consider and conduct a roving inquiry into the material on record, rather, is only expected to see whether the offence as alleged was *prima facie* made out before the learned Trial Court for the purpose of framing of charge. The mother

and brothers of the deceased have narrated certain incidents of harassment, including those in respect of demand of dowry, in their statements under Section 164 Cr.P.C. In the supplementary statement under Section 161 Cr.P.C., the mother of deceased had stated when she had contacted her daughter a day prior to the death, she was crying at that time and that she was subjected to cruelty and harassment by her matrimonial family for dowry related issues. It was also stated that the petitioner used to beat the deceased at the instance of his parents, and on complaint of being beaten 2 to 3 times for dowry, the complainant and her family had visited the matrimonial home of deceased so as to reach a compromise. Similar allegations have been made by the brothers of the deceased in their statements under Section 161 Cr.P.C. Statement of uncle (*fufa*) of deceased reveals that mother-in-law of deceased used to harass and taunt her for bringing less dowry and non-standard things, and petitioner used to side with his mother and often got angry on deceased, and that there was no subsequent improvement in the behaviour of petitioner. Statement of sister-in-law of deceased, also discloses that a few days prior to the death of deceased, deceased had disclosed that even after separating from her mother-in-law, her husband's behaviour had not improved. The deceased chose to end her life by committing suicide, on the day she was supposed to attend the ring ceremony of her brother's sister-in-law. What events led to the same will have to be necessarily discovered during the course of trial.

18. Thus, when the records of the case are perused, it appears that there are sufficient allegations against the petitioner as well as his parents, to frame charges under Section 304B IPC. Admittedly, the

charge of cruelty under Section 498A is not disputed by the petitioner, whereas proceedings against the parents of the petitioner stand abated. The deceased, in the present case, committed suicide, within four years of her marriage. Considering the overall facts and circumstances of the case, including the statements of the relatives of deceased as well as the complaint dated 06.05.2018 filed by the deceased at P.S. Palam Village, this Court is of the view that there are sufficient instances of harassment in relation to demand of dowry, spread over the course of the matrimonial life of deceased, so as to form a continuous chain of events, in view of decisions of the Apex Court in *Satbir Singh (supra)*, reiterated and followed in *Gurmeet Singh v. State of Punjab (2021) 6 SCC 108* and *State of Madhya Pradesh v. Jogendra & Anr. (2022) 5 SCC 501*.

19. The contentions raised by the petitioner herein will have to dealt with at an appropriate stage during the course of trial, and the prosecution also, would be obliged to show that soon before death, the deceased was subjected to cruelty or harassment for or in connection with demand of dowry, for which it will have to lead sufficient evidence. The accused shall also get his chance to cross-examine the witnesses. The insufficiency or discrepancies, even if any, among the statements of the relatives of deceased cannot be looked into and tested at this stage. At the very initial stage, it would be inappropriate for this Court to deny the prosecution, its right to examine the witnesses and establish its case before the learned Trial Court.

20. In view of the foregoing discussion, this Court finds no reason to interfere with the impugned order. Accordingly, the present petition stands dismissed along with pending application in above terms.

21. It is however, clarified that the observations made by this Court are only for the purposes of deciding the present petitions against order framing charge, and shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

DECEMBER 13, 2022/zp

