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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Order pronounced on 06.10.2022*

+ CRL.REV.P. 420/2021

GULZARI

..... Petitioner

Through: Mr. Kuldeep Singh, Proxy.

versus

STATE

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for
State with SI Yashpal, PS Madhu
Vihar.**CORAM:****HON'BLE MR. JUSTICE TALWANT SINGH****Talwant Singh, J.:**

1. This revision petition has been filed against framing of charge under Section 304B, 498A IPC against the petitioner passed by learned ASJ, Karkardooma Courts in FIR No. 059/2019 under Section 304B IPC registered at PS Madhu Vihar.
2. The brief facts given are that on receipt of a DD bearing No. 61A when the IO reached at Max Hospital, Patparganj, he found one Neetu Jatav W/o Gulzari admitted there vide MLC No. 8908/2019. She was having ligature mark around her neck and the nature of injuries, as opined by doctor was hanging. She was unfit to make statement. She died during treatment on 31.03.2019 in the Hospital. Statement of mother of deceased was recorded and on the basis of her statement, FIR under Section 304B IPC was registered. The petitioner was arrested and Charge Sheet was filed. The case was committed to Sessions Court and the learned ASJ was pleased to frame charges against the petitioner for offences punishable under Section 304B/498A IPC.



2.1. Aggrieved from the said order, the present petition has been filed challenging the order of framing of charge on the ground that the said order is not based upon the facts and the law; the learned Judge has failed to appreciate that the petitioner and the deceased were in love and they were residing together in live-in relationship, so there was no question of any dowry. The FIR itself shows that the deceased ran away from her parental house on 01.08.2017 and she went to present petitioner. It has been submitted that the learned Trial Court has not considered the fact that the complainant was not aware whether any marriage was solemnised or not, so how could she know about allegation of dowry demands.

2.2. It is further submitted that at best, a case is made out against the petitioner under Section 306 IPC and not under Section 304B and 498 IPC. The petitioner is unnecessary in custody since 31.03.2019. Also, there is a minor daughter born 28.06.2018. The deceased had never made any complaint to the Police at any point of time. There is nothing on record to say that the petitioner and deceased were married as per Hindu law though they were residing as husband and wife after falling deeply in love.

2.3. As per the petitioner, the FIR itself registered under Section 304B IPC at the initial stage as the Police itself was not convinced about demand of dowry. The brother of the deceased, namely Jitender has stated in his statement under Section 161 Cr.P.C that petitioner never demanded any money in his presence. Moreover, the deceased never made any complaint to her brother although she used to talk to him on telephone. There is a minor incident of spilling over of juice and the petitioner scolded the deceased and as soon as he went outside the house, the deceased hanged herself. It was the petitioner who took the deceased to the hospital. Hence, it is prayed that the



accused/petitioner be discharged.

3. Notice was issued. Status Report has been filed.

4. It has been reiterated that the petitioner and deceased, were not married and they were in a live-in relationship. There is an 8-month old child of the petitioner and the deceased, and in the birth certificate of the child, the name of the father is that of the petitioner.

4.1. As per the compliant lodged by the mother of the deceased, her husband, namely, Gulzari (present petitioner) used to harass the deceased for sake of dowry, and consequently, the victim has committed suicide under compelling circumstances.

4.2. It is further stated that during further investigation, the accused had disclosed that he married Neetu (deceased) before the photo of God available at his home. There is a minor child from the said wedlock. As per the State, although the petitioner and deceased were living in a live-in relationship but the same was duly accepted by the society and child was also born, so the charge framed in the learned Trial Court is justifiable.

5. I have heard the arguments.

6. The impugned order of charge is on record. The said order shows that either the ground of petitioner and deceased living in a live-in relationship without there being a valid marriage was not raised before the learned ASJ or if it is presumed that it was raised, it is nowhere discussed in the entire order on charge dated 03.10.2019. Learned Trial Judge proceeded with the presumption that since the death has taken place within seven years of marriage and the complainant (mother of the deceased) has alleged demand of dowry, so a charge under section 498A/304B IPC is made out.

7. In my view, the averment made on behalf of the petitioner that



deceased was never married to him is a material fact, which has to be considered at the stage of framing of charge. Since, this factum was either not raised or it was not considered at the stage of framing of charge and even the FIR nowhere alleges that the petitioner and the deceased were married to each other, hence, in my view, it is a fit case where the impugned order of charge is to be set aside and it is hereby ordered accordingly.

8. As a result, impugned order dated 03.10.2019 of framing charge under Section 304B/498A IPC against the petitioner is hereby set aside. The learned Sessions Judge is requested to pass a reasoned order after hearing both the sides afresh, especially on the point as to whether the deceased was a legally wedded wife of the present petitioner.

9. The revision petition is disposed of with these directions.

10. Copy of this order be sent to learned Sessions Judge for information and compliance.

TALWANT SINGH, J

OCTOBER 06, 2022/pa

[Click here to check corrigendum, if any](#)