

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 450/2021 c/w
CRM(M) No. 872/2021

Reserved on: 14.10.2024
Pronounced on: 26.11.2024

(i) **Makhana Devi, Age 56 years,
W/o Sh. Paras Ram,
R/o Ward No. 2 Majalta,
Tehsil Majalta, District Udhampur**

.... Petitioner/Appellant(s)

(ii) **Manita Badyal, Age 31 years,
W/o Sh. Pankaj Sharma,
R/o Village Battal Ballian,
Near Women College, Udhampur,
Tehsil and District Udhampur**

Through:- Mr. Anil Khajuria, Advocate.

V/s

(i) **UT of J&K,
Through Commissioner/Secretary,
Home Department, Civil Secretariat,
Jammu/Srinagar.**

.....Respondent(s)

(ii) **Officer-in-Charge/(SHO),
Police Station, Majalta,
Tehsil Majalta, District Udhampur**

Through:- Mr. Sumeet Bhatia, G.A.
Mr. Ajay Abrol, Advocate.

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
JUDGMENT

01. The order dated 14.01.2021, whereby the petitioners have been charged for offences punishable under Sections 304-B/109 IPC has been called in question and is sought to be quashed through the medium of this petition filed by the petitioners under Section 482 of CrPC. The said order has been challenged precisely on the following grounds:

“(a) That the petitioners humbly state that Section 304-B of the Indian Penal Code provides for dowry death and the same is reproduced in verbatim for the ready reference of the Court as under:

“Dowry death [S.304-B. (1) Where the death of a woman is caused by any 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, on 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).”

A bare perusal of the afore-quoted provision clearly points out that for the purposes of bringing acts or omissions attributable to the accused within the four corners of dowry death u/s 304-B, the investigating agency or the prosecution, as the case may be, has to essentially meet the essential ingredients of the offence i.e. firstly that the death of the woman must be caused by burns or bodily injury or the same had occurred otherwise than under normal circumstances within seven years of her marriage and secondly it has to be 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 demand of dowry and thirdly that the allegation of cruelty or harassment must relate to the demand of dowry by the husband or such relative, fourthly that the cruelty or harassment for the demand of dowry must be shown to have been raised soon before the death and fifthly that there must be a live link between the demand of dowry and causation of death. However, in the instant case, the ingredients of the offence are missing and the petitioners have been falsely implicated for the commission of offences u/s 304-B/109 IPC and as such the chargesheet as well as the order framing charge deserved to be quashed.

(b) That the petitioners most humbly state that during the course of investigation the statement of mother, father, brother, and sister of the deceased was recorded under Section 164 CrPC and a bare perusal of the statement of witnesses namely Neha Raina (sister of deceased), Amit Raina (brother of deceased), Santosh Devi (mother of deceased) and also Sh. Bodh Raj Raina (father of the deceased) it is clear that none of the witnesses have at

all attributed a direct allegation against the petitioners for the demand of dowry and from the perusal of the statement of the four witnesses recorded u/s 164 CrPC it is quite evident that the ingredients of the offence u/s 304-B are not made out particularly there is absolutely nothing in the testimony of these witnesses indicating that the deceased was harassed or meted with cruelty for the demand of dowry soon before death. It is respectfully submitted that the expression "soon before death" occurring in Section 304-B has been interpreted by the Hon'ble Apex Court in several authoritative pronouncements and it is settled that though the expression "soon before her death" is not capable of any strict interpretation and no straitjacket formula can be fixed for ascertaining whether "soon before death" the deceased was subjected to cruelty or harassment for demand of dowry. The Hon'ble Apex Court has settled that the expression "soon before death" though cannot be read as immediately before death but there must be the proximity of time between the causation of death and cruelty and harassment for the demand of dowry and there must be a live link between the cruelty and harassment for the demand of dowry and the cause of death. However, in the instant case a bare perusal of the testimonies of witnesses recorded during the course of investigation it is manifest firstly that there was no demand of dowry directly attributable to the petitioners in the proximity of time when the death has occurred and also that there is absolutely no live link between the alleged cruelty or harassment for demand of dowry and the cause of death. Therefore, in the absence of the most crucial ingredient, the Learned Trial Court was not justified in directing framing of charges against the petitioners for the commission of offence u/s 304-B/109 IPC.

(c) That the petitioners further state that a bare perusal of the statements of all four witnesses, who are brother, sister, mother, and father of the deceased, the allegations contained in the statement are relatable to the fact that the deceased was married to Vikrant Badyal (accused No.1) three years prior to the date of incident and they were misled to believe that the said accused was a partner in Big Bazaar Udhampur. However, later it came to the fore that the accused was a worker in the said Big Bazaar, and he left his job whereafter the deceased had requested her parents to pay Rs.50,000/- for settling her husband, and there are instances of the demand of money raised by the deceased to her brother on two other occasions when she is stated to have received Rs.30,000/- and Rs.15,000/-. It is also stated by these witnesses that the father of the deceased, Sh. Bodh Raj Raina, was to retire on 31-08-

2020, and the deceased was promised a gift in the form of an air-conditioner on retirement. The perusal of the statements clearly indicates that all these demands made by the deceased at different intervals of time were not relevant or relatable to the cause of death, particularly when it is the admitted case of these witnesses that the air-conditioner was promised to be given to the deceased on the retirement of her father. The petitioners could never be interested in any air-conditioner which the deceased had to receive as a gift from her father, and from the perusal of the prosecution case, there was no other demand at all referred to in the challan which could have become the cause of death of the deceased, i.e., there is no live link between the cause of death and the alleged demand of dowry. Therefore, the framing of charge against the petitioners is clearly against the well-established principles of law as no offence is disclosed against the petitioners. Moreover, the allegations of torture, beating, or harassment referred to in the statement of witnesses are not relatable to any demand of dowry, thus the very essential ingredients of the offence are missing in the instant case.

(d) That the petitioners further submit that the offence u/s 304-B is attracted against an accused by virtue of a statutory presumption engrafted in Section 113-B of the Indian Evidence Act, and in terms of the said provision the said presumption of dowry death can be raised when it is shown that soon before her death such woman was subjected to cruelty or harassment for or in connection with the demand of dowry. In the instant case, the said statutory presumption against the petitioners was not available on the face of record as the very essential ingredients of the offence are wanting. Therefore, the implication of the petitioners for the commission of offence u/s 304-B/109 IPC and subsequent filing of chargesheet and framing of charge against the petitioners is against the law.

(e) That the petitioners humbly state that it is a settled principle of law that while framing charge against the accused the trial court is under obligation to consider whether the case set up against the accused is capable of raising a strong suspicion as against mere suspicion and in case the case set up in the chargesheet gives rise to a mere suspicion, the accused in such case are entitled to be discharged. Now reverting to the facts of the instant case, it is manifest that the very essential ingredients of the offence u/s 304-B are not existent in the instant case, and in the absence of the essential ingredients of the offence, no statutory presumption can be raised against the petitioners u/s 113-B of the Indian Evidence Act. Therefore, the chargesheet as well as

the order framing charge deserves to be quashed against the petitioners and the petitioners pray accordingly.

(f) That it is further submitted that mere demand of dowry and the death of the bride within seven years of marriage in itself is not sufficient to implicate the accused for the commission of offence as the investigating agency is additionally required to show the live link as well as the proximity of time which connects the unnatural death with the demand of dowry i.e., the death must be as a cause or consequence of demand of dowry, which is absolutely not available in the instant case.

(g) That the petitioners seek to urge several other grounds at the time of hearing and as such crave leave of this Hon'ble Court.

02. Heard learned counsel for the parties and perused the record of file.

03. The brief facts of the case are that the deceased, Eva Raina, was married to the accused, Vikrant Sharma, in 2017. She passed away under mysterious circumstances on 08.08.2020, leading to the registration of FIR No. 94/2020 at Police Station Majalta for an offence punishable under Section 302 IPC. Pursuant to the FIR, her husband, Vikrant Sharma, was taken into custody on 09.08.2020, while the other accused, i.e., the petitioners herein, were taken into custody on 12.08.2020. Following the investigation, the police concluded that offences punishable under Sections 302, 304-B, and 316 IPC were established against Vikrant Sharma, while offences punishable under Sections 304-B/109 IPC were established against the petitioners.

04. According to the prosecution's case and the investigation, Vikrant Sharma, the husband of the deceased, along with the petitioners, subjected Eva Raina to cruelty on account of dowry demands. The statements of key prosecution witnesses, particularly Neha Raina (sister of the deceased), Santosh Devi (mother of the deceased), and Bodh Raj Raina (father of the

deceased), indicate that the deceased faced cruelty for dowry soon after her marriage in 2017.

05. These witnesses further deposed that, at the time of the marriage, they were misled into believing that Vikrant Sharma was a partner in Big Bazaar, Udhampur, along with his friend. However, it later emerged that he was merely an employee at the said establishment. Post-marriage, the deceased endured cruelty, abuse, and harassment, primarily at the behest of her husband. The witnesses also stated that such demands were instigated by Vikrant's mother and sister. The sister, though married, resided with the accused and is alleged to have been complicit in these acts.

06. The cause of death, as per the post-mortem report, was identified as Cardiopulmonary Arrest (CPA) due to asphyxia caused by constriction/strangulation of the neck. The report further revealed strangulation marks around the neck, along with multiple injuries on the body of the deceased. In addition, a dead fetus was also found in the uterus of the deceased. The findings unequivocally indicate that the death was unnatural, resulting from strangulation, and that the fetus had also perished in uterus.

07. The death of the deceased occurred within a period of seven years from the date of her marriage, thereby attracting the presumption under Section 304-B IPC. The cause of death, as established, was strangulation, which occurred inside the house of the accused.

08. Learned counsel for the petitioners contends that the petitioners cannot be charged as they have no direct connection with the crime or the death of the deceased. He further argues that there must be a proximate

and live link between the alleged cruelty or harassment in connection with dowry demands and the cause of death. Section 304-B provides that 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.

09. As far as the first condition is concerned—regarding the death occurring within seven years of marriage—the deceased passed away under mysterious circumstances within seven years of her marriage. She was married in 2017 and died due to strangulation. Secondly, the witnesses, particularly the deceased's sister, mother, and brother, have made statements regarding acts committed by the petitioners that constitute cruelty and harassment. The witnesses stated that, at the instigation of the mother-in-law and sister-in-law, the accused husband was demanding dowry in the form of cash, among other things. They further alleged that he physically assaulted the deceased, occasionally forcing her to leave the house. On one such occasion, she returned to her parental home but was later taken back by her husband and thereafter, she tragically passed away.

10. The circumstances of the case and the evidence indicate that the deceased was subjected to cruelty and harassment in connection with demands for dowry. This harassment was allegedly inflicted by her

husband at the instigation of the petitioners. The evidence recorded during the course of the investigation, including statements under Section 164 CrPC, as recorded by the trial court, prima facie establishes at this stage that the petitioners incited the husband's actions. These actions ultimately led to the death of the deceased, who was pregnant at the time, resulting in the loss of both her life and the fetus she was carrying.

11. The case at hand is sensitive, and the circumstances surrounding the offence require careful consideration. There appears to be some evidence warranting substantiation and the impugned order against the mother-in-law and sister-in-law cannot be quashed at this stage, as it may impede the trial. The trial Court must meticulously examine the facts and circumstances, along with the evidence produced, to assess whether the alleged cruelty and harassment by the in-laws caused the death of the deceased.

12. In '**Monica Kumar and another Vs. State of U.P. and others**', (2008) 8 SCC 781, the Hon'ble Supreme Court held that the inherent jurisdiction under Section 482 Cr.P.C. must be exercised sparingly, carefully, and with caution, and only when such exercise is justified by the tests specifically laid down in the provision itself. However, in exceptional cases, to prevent the abuse of the process of the Court, the High Court, in the exercise of its inherent powers under Section 482 Cr.P.C., may quash the proceedings.

13. The allegations mentioned in the charge sheet regarding the commission of the alleged offence are matters to be established during the trial by leading evidence. The grounds raised by the petitioners in the present case can be taken as a defense before the Trial Court.

14. In light of the foregoing reasons, I find no merit in the case put forth by the petitioners. Accordingly, the instant petition stands dismissed.

(Vinod Chatterji Koul)
Judge

Jammu:
26.11.2024
Michal Sharma/PS

Whether approved for reporting : Yes/No

