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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 880/2017**
STATEPetitioner

Through: Mr. Manoj Pant, APP for
the State.

versus

SANJAY KUMAR SHAH & ORSRespondents

Through: Mr. Rajendra Kumar, Adv.
(through VC) with SI
Vijay Dahiya, PS Prashant
Vihar, Delhi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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18.12.2024

**CRL.M.A. 19230/2017 (condonation of delay of 23 days in filing
the present revision petition)**

1. For the reasons mentioned in the application, the same is allowed and the delay in filing the present petition is condoned.
2. The application stands disposed of.

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3. The present petition is filed against the order dated 27.07.2017 (hereafter '**impugned order**') passed by the learned Special Judge, North, Rohini Courts, Delhi whereby the respondents were discharged of the offence under Section 304B of the Indian Penal Code, 1860 ('**IPC**').
4. The brief facts of the present case are that on 15.05.2016, Renu (hereafter '**the deceased**') got married to Respondent No. 1. Subsequently, on 08.01.2017, the deceased committed suicide by consuming poison. FIR No. 16/2017 dated 11.01.2017 was registered at Police Station Prashant Vihar on a complaint given by Ashok Kumar, the brother of the deceased under Sections 498A/304B/34 of the IPC. It is alleged that on 03.01.2017, the

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deceased came to Delhi and was residing with Respondent No. 1 in Rohini, Delhi. It is alleged that the deceased, on phone, used to narrate that her husband and in-laws had been harassing her for money. It is further alleged that when the deceased was coming to Delhi, her mother had given her ₹10,000/- and jewellery.

5. During the course of investigation, the supplementary statement of Ashok Kumar was recorded on 02.02.2017 wherein he alleged that Respondent No. 1 and his brothers being Respondent Nos. 3-4 harassed the deceased for bringing ₹3,00,000/- from her parents. The parents of the deceased have also made similar allegations in their respective statements under Section 161 of the Code of Criminal Procedure, 1973 ('CrPC') dated 04.04.2017.

6. Chargesheet in the present case was filed under Sections 498A/304B of the IPC.

7. The learned Trial Court, by the impugned order, discharged the respondents of the offence under Section 304B of the IPC. It was noted that the allegations in the FIR as well as in the statements under Section 161 of the CrPC are vague in nature and do not disclose the date, month, year of the alleged demand of money. It was noted that even the manner in which the deceased was harassed was not mentioned in the statements under Section 161 of the CrPC.

8. The learned Trial Court noted that both the parties belonged to lower strata of society, and were living a life of hand to mouth existence. It was noted that all the jewellery articles given to the deceased were found on her body at the time of her death. It was noted that there were no external injury marks on the body of the deceased when she was taken to the hospital. It was further noted that there existed nothing on record to show



that cruelty of any kind was inflicted on the deceased. Consequently, the learned Trial Court discharged the respondents of the offence under Section 304B of the IPC.

9. The learned Additional Public Prosecutor for the State submits that the learned Trial Court erred in discharging the respondents of the offence under Section 304B of the IPC. He submits that the order of the learned Trial Court is based on conjectures and surmises and is liable to be set aside. He submits that the learned Trial Court failed to take into consideration the fact that the death of the deceased occurred within 8 months of her marriage with Respondent No. 1.

10. He submits that the deceased came to Delhi on 03.01.2017 and committed suicide on 08.01.2017. He submits that even in the FIR, it has been specifically averred that the deceased was harassed by the respondents for not bringing money. He submits that there are clear allegations in the statement of the father of the deceased whereby he stated that he had given ₹10,000/- to the deceased when she was coming to Delhi a week prior to her death. He consequently submits that the learned Trial Court erred in discharging the respondents of the offence under Section 304B of the IPC.

11. The learned counsel for the respondents submit that the learned Trial Court rightly discharged the respondents of the offence under Section 304B of the IPC. He submits that for the ingredients of dowry death to be met, it must be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or the relative of the husband in relation to any demand for dowry. He submits that in the absence of the element of cruelty or harassment, the ingredients of Section 304B are not met.



12. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

13. Since the State has assailed the impugned order whereby the respondents were discharged of the offence under Section 304B of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC. The same is set out below:

“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, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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 subsection (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.”

14. The Hon’ble Apex Court, in the case of **Sajjan Kumar v.**



CBI : (2010) 9 SCC 368, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, 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. For this limited purpose, sift the evidence as it cannot be expected even at that initial 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in



conviction or acquittal.”

(emphasis supplied)

15. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294**, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

16. The Court at the stage of framing of charge is to evaluate



the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

17. From a perusal of the impugned order, it is apparent that the learned Trial Court took into consideration the factors emphasised upon by the State before this Court. Now what remains to be seen is whether there is any infirmity in the impugned order whereby the learned Trial Court discharged the respondents of Section 304B of the IPC.

18. Section 304B of the IPC does not categorize a particular form of death to fall within the ambit of dowry death. For this reason, any death be it – homicidal, suicidal or accidental could constitute dowry death within the meaning of Section 304B of the IPC [Ref: *Maya Devi v. State of Haryana : (2015) 17 SCC 405*]

19. However, for the offence of dowry death to be made out, it must be shown that the death of the woman occurred due to unnatural circumstances within seven years of marriage. It must further be established that soon before her death, the deceased was subjected to cruelty or harassment by the husband or the relative of the husband in connection with the demand for dowry.

20. In the present case no grave suspicion arises against the respondents which is not properly explained. Ashok Kumar- the brother of the deceased, in his supplementary statement recorded on 02.02.2017, stated that Respondent No. 1 and his brothers demanded a sum of ₹3,00,000/- from the deceased and also



harassed her in relation to the same. However, at the time when the FIR was lodged on the statement of Ashok Kumar himself on 11.01.2017, no such allegation in relation to demand of ₹3,00,000/- and harassment in relation to the same was levelled by him.

21. From a perusal of the record as well, it is apparent that the allegations are vague in nature. No allegation to manifest the manner in which the deceased was so harassed by the respondents has been made. Consequently, it was rightly noted by the learned Trial Court that the statements failed to give rise to grave suspicion against the respondents.

22. The learned Trial Court noted that the deceased was taken to the hospital by Respondent No. 1 himself. It was noted that all the jewellery articles stated to have been given to the deceased were found on her body at the time of her death. It was noted that no external mark or injury was present on the person of the deceased when she was taken to the hospital. Consequently, the learned Trial Court rightly noted that there existed nothing on record to show that cruelty of any kind was inflicted on the deceased.

23. It is true that a wife committing suicide on being subjected to cruelty in relation to demand of dowry within seven years of marriage would be termed as dowry death as defined in Section 304B of the IPC, and, therefore, the non-presence of injury mark may not be a relevant factor. However, for such a charge, the prosecution has to raise a grave suspicion that the deceased was subjected to cruelty on account of demand of dowry soon before her death.

24. In the initial statement given by Ashok Kumar, on the basis of which the FIR was registered, he stated that the deceased



telephonically informed him a number of times that she was asked to bring money from her parental home on multiple occasions. He also stated that when the deceased was coming to Delhi, their mother gave ₹10,000/- and some jewellery to the deceased. He further stated that the deceased soon after coming to Delhi had died. No allegation that such sum was given on the demand for dowry made by the accused persons or harassment on account of non-fulfilment of the dowry demand was levelled. Further, while Ashok Kumar stated that the accused persons asked the deceased to get money from her parental home, it was not alleged that the same was in connection with dowry. Additionally, no allegation that any harassment or cruelty was meted out to the deceased in connection with any demand for dowry on any occasion was made.

25. In his supplementary statement dated 02.02.2017, Ashok Kumar stated that the deceased had taken ₹10,000/- from their father since Respondent No. 1 had specifically called and asked for the same. No such allegation was made at the time when the FIR was registered.

26. Subsequently, at a later stage, the brother of the deceased, stated that the mother of the deceased had given ₹10,000/- and some jewellery to the deceased at the time when she was coming to Delhi upon the demand of the accused persons. However, from the admitted evidence, all the jewellery articles given to the deceased were found on her body at the time of her death and were later deposited in the Malkhana of the Police Station.

27. From a perusal of the record, it is apparent that the allegations levelled against the respondents are vague in nature. In his initial statement, which led to the registration of the subject FIR, Ashok Kumar did not level any allegation with respect to



demand for dowry or that the deceased was subjected to any cruelty/harassment in relation to the demand for dowry soon before her death. Merely stating that demand of money was made unless it is in relation to the marriage between the parties, would not constitute demand for dowry, and would not fall within the purview of Section 304B of the IPC. [Ref: ***Modinsab Kasimsab Kanchagar v. State of Karnataka and Another* : (2013) 4 SCC 551**]

28. The record fails to indicate material particulars as to the instances when the demand for dowry was made or when and the manner in which the deceased was subjected to cruelty/harassment soon before her death in connection with the demand for dowry.

29. In the present case, from a perusal of the impugned order, and the material on record, it is apparent that there is no grave suspicion against the respondents which was not properly explained. The grave suspicion is further dispelled by the vague allegations levelled against the respondents coupled with absence of any material to *prima facie* show the presence of any form of cruelty inflicted on the deceased. In the opinion of this Court, no *prima facie* case is made out against the respondents under Sections 304B of the IPC.

30. In view of the above discussion, I do not find any infirmity in the impugned order, and the same cannot be faulted with.

31. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

DECEMBER 18, 2024