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Haresh and ors. Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Jan-29-2009

Reported in : 2009CriLJ1383; 2009(3)MPHT13(CG)

Judge : T.P. Sharma, J.

Appellant : Haresh and ors.

Respondent : State of Chhattisgarh

Judgement :
ORDER

T.P. Sharma, J.

1. This revision is directed against the order dated 1-3-2004 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No. 396/2003, whereby learned Additional Sessions Judge has framed charge for offence punishable under Sections 304-B & 498-A read with Section 34 of the IPC against the applicants.

2. The order is challenged on the ground that without any prima facie material for offence punishable under Section 304-B of the IPC, the Court below has framed the charge and thereby committed illegality.

3. I have heard learned Counsel for the parties and perused the copy of the order impugned as also the copy of the charge-sheet.

4. Learned Counsel for the applicants submits that Mrs. Neetu alias Neelam (since deceased) was married to applicant No. 1 Haresh on 9-6-2003 at Dhamtari and she died by jumping into a dam on 14-9-2003 within three months of her marriage in abnormal circumstances. Applicants Nos. 2 and 3 are father-in-law and mother-in-law of the deceased and applicants No. 4 and 5 are brothers-in-law of the deceased. The deceased died within seven years of her marriage in abnormal circumstances. The applicants are husband and relatives of husband of the deceased. She further submits that for framing of charge under Section 304-B of the IPC the prosecution is required to collect material to show prima facie that the applicants had committed cruelty and torture in connection with demand of dowry upon the deceased son before her death. But the prosecution has not collected any material to show that the deceased was subjected to cruelty or harassment by the applicants in connection with demand of dowry soon before her death and in absence of such material, charge under Section 304-B of the IPC is groundless and the Court below has committed illegality in framing charge under the aforesaid offences. Learned Counsel further submits that copy of charge-sheet shows that on 14-9-2003 the deceased, one maid servant namely Kaushilya and applicant No. 3 Smt. Kavita Buxani were present in the house, the deceased went out of the house and after having a rickshaw she went to a dam which is away from the house of the applicants and jumped in the dam and thereby committed suicide. This clearly shows that at the time of leaving the house of the applicants by the deceased except applicant No. 3 none of the applicants was present, applicant No. 3 has not harassed or committed cruelty upon her at the time of leaving the house of the applicants. Material witness Kaushilya Bai, maid servant of the applicants, has not stated anything relating to torture or harassment. Relatives of the deceased i.e. mother Smt. Padma Devi, cousin Sanjay Kumar, younger brother Ajay Kumar Vidhani and uncle Mohan Das are not residents of Dhamtari. They are residents of Khandwa (M.P.) which is far away from Dhamtari. They have stated what the deceased had narrated to them, but on the date of commission of suicide, relatives of the deceased were not present at Dhamtari, they have not been communicated anything by the deceased or any person to show that on the

date of death or soon before her death she was subjected to cruelty or harassment by the applicants in connection with demand of dowry, even they have not stated that the applicants have demanded dowry. The only allegation is that parents of the deceased had given less dowry and in-laws of the deceased used to demand golden bangles, Kangan & cash. But it is evident from inquest that at the time of inquest golden tops, necklace (Mangalsutra), locket, Kangan, two golden rings, silver payal & Bichia were found over her body, this shows that she was wearing silver & golden articles even at the time of her death. Learned Counsel also submits that relatives of the deceased have exaggerated their statements because of the death of their daughter and sister and they have stated against the present applicants only with a view to implicate them falsely.

5. Learned Counsel for the applicants placed reliance in the matter of Harjit Singh v. State of Punjab : 2006 CriLJ554 in which the Apex Court while dealing with the charge of Section 304-B of the IPC held that five conditions are required to be shown & established by the prosecution relating to the offence punishable under Section. 304-B of the IPC i.e. dowry death which are as follows:

(1) That the death of the woman caused by any burns or bodily injury or in some circumstances which is not normal;

(2) Such death occurs within 7 years from the date of her marriage;

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

(4) Such cruelty or harassment should be for or in connection with demand of dowry; and

(5) Is established that such cruelty and harassment was made soon before her death.

It has also been held that if the prosecution establishes the aforesaid ingredients, the Court may presume in accordance with Section 113-B of the Indian Evidence Act that the accused have committed dowry death. Learned Counsel further placed reliance in the matter of Noorjahan v. State Rep. by D.S.P. 2008 STPL (LE)

40036 SC : AIR 2008 SC 2131 in which it has been held by the Apex Court that offence punishable under Sections 304-B & 498-A of the IPC are the two distinct offences, only cruelty is a common essential to both the Sections. The prosecution is required to show that the accused was present at the time of demand of dowry. Reliance has further been placed in the matter of Onkar Nath Mishra v. State (NCT of Delhi) : 2008 CriLJ1391 in which it has been held by the Apex Court that at the stage of framing of charge 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, disclosed the existence of all the ingredients constituting the alleged offence - Court is not expected to go deep into the probative value of the material on record - What need to be considered is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. Reliance has also been placed in the matter of Gurucharan Kumar v. State of Rajasthan : 2003 CriLJ1234 in which it has been held by the Apex Court that in absence of any evidence of torture and cruelty, the husband or relatives of the husband of the deceased are not liable for any offence punishable under Section 304-B of the IPC. Learned Counsel further placed reliance in the matter of Hazarilal v. State of M.P. 2007 STPL (LE) 38718 SC in which it has been held by the Apex Court that only on the basis of suicide or unnatural death of the bride it could not be presumed that there must be some harassment or cruelty, mere surmises and conjectures are not sufficient for conviction under Section 304-B of the IPC. Reliance has also been placed in the matters of K.R. Soorachari v. State of Karnataka : 2005 CriLJ3082 and Ran Singh v. State of Haryana : 2008 CriLJ1941 in which it has been held by the Apex Court that in the case of demand of dowry i.e. offence punishable under Section 498-A of the IPC, the prosecution is required to show prima facie case for demand of dowry and harassment/torture. Reliance has further been placed in the matter of T. Aruntperunjothi v. State : 2006 CriLJ3290 in which it has been held by the Apex Court that in case of absence of accused at the time of commission of suicide and absence of evidence relating to demand of dowry any conviction falling under Section 304-B of the IPC is not sustainable. Further reliance has been placed in the matter of Devi Lal v. State of Rajasthan 2007 STPL (LE) 39085 SC : AIR 2008 Cri LJ 32 in which it has been held by the Apex Court that the prosecution is required to prove the ingredients of

dowry death. Further reliance has been placed in the matter of Sunil alias Balo Das v. Rajesh Das 2008 STPL (LE) 39674 SC in which the Apex Court has held that the revisional Court is required to pass a reasoned order, abrupt conclusions show non-application of mind. Reliance has further been placed in the matter of Paul George v. State : 2002 CriLJ996 in which the Apex Court has held that while invoking the revisional jurisdiction the Court is required to see the legality, propriety and correctness of the order passed by the Court below.

6. On the other hand, learned Counsel appearing on behalf of the State submits that the prosecution' has collected sufficient material for framing of charge of offence punishable under Sections 304-B & 498-A read with Section 34 of the IPC and the Court below has rightly, framed the charge. He further submits that the deceased died within three months & 10 days of her marriage in abnormal circumstances. The statement of Kaushilya shows, that the applicants used to harass and torture the deceased in connection with demand of dowry and the deceased was always perturbed, even on the date of commission of suicide, she was per-turbed and left the applicants' house and committed suicide. Smt. Padma Devi, Sanjay Kumar, Ajay Kumar Vidhani & Mohan Das are relatives of the deceased, they had specifically stated in their statements recorded under Section 161 of the Code of Criminal Procedure, 1973 that the applicants used to demand dowry and always condemn the deceased by saying that she has not brought sufficient dowry, they used to beat her also. In their statements they have stated that after her marriage, the deceased stayed for twenty days in her paternal house where she told the incidence of harassment to them, even she was not permitted to talk on telephone, she has also told them over telephone relating to harassment & torture. Learned State counsel placed reliance in the matter of Rajendra Kumar Jain etc. v. The State of Rajasthan in which the Rajasthan High Court has held that at the time of framing of charge, the Court is required to see the prima facie material and no meticulous scrutiny is required.

7. This is a criminal revision against the order framing charge. It is well settled that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting

the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at the 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.

8. As has been held by the Apex Court in the case of State of M.P. v. S.B. Johari : 2000 CriLJ944 , at the stage of framing of charge the Court is required to see the facts emerging from materials collected by the prosecution whether such material constitute the offence with which the accused could be charged, but the Court is not required to marshal it with a view to decide the reliability thereof.

9. At the stage of framing of charge no meticulous scrutiny is required, only a strong suspicion of the commission of offence is sufficient for framing of charge. In the case of Onkar : 2008 CriLJ1391 (supra) it has been held by the Apex Court in para 11 thus:

It is true that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

10. In the instant case, death of Mrs. Neetu alias Neelam within seven years of the marriage in abnormal condition is not disputed. The statements of mother, brother & cousin of the deceased also show that the applicants used to demand articles and condemn her that she has not brought sufficient dowry. As regards the question of demand soon before her death, the deceased was married to applicant No. 1 Haresh on 9-6-2003 and she died on 14-9-2003 within four months from the date of her marriage. Statements of the witnesses show that the applicants had

continuously demanded articles and condemned her, In the light of the ingredient 'soon before her death' there cannot be a particular time limit for demand and there must be continuity. Statements of the witnesses further show continuity of demand & torture. This is not the case of casual or one time demand. Material collected on behalf of the prosecution is sufficient for framing of charge for offence punishable under Sections 304-B & 498-A read with Section 34 of the IPC. The Court below has neither committed any irregularity nor any illegality in framing the, charge.

11. Consequently, the revision is liable to be dismissed and it is hereby dismissed.

12. In view of this order, M. (Cri) P. No. 2840/2004 & I.A. No. 3899/2004 stand disposed of.

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