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Court : Madhya Pradesh

Decided On : May-07-1993

Reported in : 1994(0)MPLJ40

Judge : V.S. Kokje, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 227 and 397;
Indian Penal Code (IPC) - Sections 304B and 498A

Appeal No. : Cri. Rev. No. 223 of 1991

Appellant : Manmohan Laxminarain and ors.

Respondent : State of Madhya Pradesh

Advocate for Def. : G. Desai, Adv.

Advocate for Pet/Ap. : K.C. Maheshwari, Adv.

Disposition : Revision application allowed

Judgement :

ORDER

V.S. Kokje, J.

1. This is an application under Section 397 of the Code of Criminal Procedure preferred by the accused persons against framing of charge under Section 498A

and Section 304B of the Indian Penal Code against them.

2. According to the prosecution information about the crime was received through a letter addressed to the Hon'ble the Prime Minister of India by one Shankarlal Dubey resident of 638, Gol Bazar, Jabalpur and on investigation it was found that the daughter of the complainant/Shankarlal Dubey named Neelima alias Nilu was married to accused Captain Sudeep Pandey the son of the other two accused persons on 24-2-1988. Even after receiving dowry of about Rs.1,50,000/-incash and kind, the accused persons were not satisfied and, therefore, used to torture Neelima since 25-2-1988 and ultimately, accused/Capt. Sudeep Pandey gave a blow on abdomen to Neelima while she was admitted to a Military Hospital as a result of which she died on 30-1 -1989.

3. After investigation the challan was filed and the case being triable by court of session was committed to it. After hearing both the parties, the sessions court has framed a charge under Sections 498A and 304B of the Indian Penal Code. The present revision has been filed against the order of framing charge dated 31-5-1991.

4. It was contended on behalf of the applicants that the charge is without foundation and the material on record is not sufficient to sustain a charge under Sections 498A and 304B of the Indian Penal Code. The learned counsel relied on decisions reported in 1989 (3) Crimes 645 (SC) and 1991 (1) Crimes 377 (Note). The learned counsel for the State on the other hand submitted that when the sessions court has come to a conclusion that on the material placed before it a prima facie case of commission of offence under the aforesaid sections is made out, this court cannot interfere lightly with that finding. Relying on 1986 Cri.LJ. 1245 (SC), 1989 (1) SCC 715 and 1991 (1) SCC 371, it was contended by the learned counsel appearing for the State that in the circumstances of the case there was no scope for interference and the accused persons must be asked to stand trial.

5. The scope of interference in a revision with an order framing charge is no doubt very narrow. In State of U. P. v. Man Mohan and Ors., 1986 Cri.L.J. 1245 (SC), it was held that where the magistrate had formed the opinion that there were

grounds to presume that the accused had committed the offence and that the prosecution was not false, frivolous or vexatious or one which was by way of abuse of the process of law, the High Court could not quash the charge in exercise of the revisional and reference powers.

6. In *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39 the Supreme Court considering the scope of Section 277 and Section 228 of the Code of Criminal Procedure observed as follows :-

'Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the' accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.'

In *Union of India v.-Prafulla Kumar Samal*, (1979) 3 SCC Page 4 principles governing the exercise of powers are summarised as follows:-

'1) That the judge while considering the question of framing the charges under Section 227 of the Code 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 had been made out.

2) Whether 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.

3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

The aforesaid two cases were considered and relied upon by the Supreme Court in *Stree Atyachar Virodi Parishad v. Dilip Nathumal Chordia and Anr.*, 1989 MPLJ (SC) 366 = (1989) 1 SCC 715. Paragraph 14 of which summarised the position as under:-

'These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused. The 'ground' in the context is not a ground for conviction but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is

whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.'

7. We have therefore to examine whether on the test laid down by the Supreme Court the charge framed against the accused persons is without any foundation and could not have been framed on the basis of material on record. Let us therefore examine the material on record on the basis of which the charge has been framed. Admittedly, the marriage took place on 24-2-1988 and Neelima died in a Military Hospital on 30-1-1989. Immediately after the marriage she went with her husband to stay with in father-in-law's house in Pandey Chowk, Jabalpur and was there from 25-2-1988 to 2-4-1988. The leave of Capt. Sudeep Pandey was to have expired on 20-3-1988 and he had to join duties at Shrinagar in the State of Jammu and Kashmir. However, he extended his leave for 15 days. After expiry of his extended leave, Sudeep Pandey joined at Shrinagar on 10-4-1988. He took away Neelima with him and they stayed at Pathankot from 4-4-1988 to 9-4-1988. On 10-4-1988 they reached Shrinagar and Neelima remained with Capt. Sudeep Pandey from 10-4-1988 to 10-7-1988. Capt. Sudeep Pandey was transferred in July 1988 from Shrinagar to Mhow. He arrived at Mhow with Neelima on 22-7-1988 and joined at M.C.T.C., Mhow. In the month of January 1989. Capt. Sudeep Pandey requested the parents of Neelima to take her away to Jabalpur for her first delivery. The parents of Neelima prepared themselves to reach Mhow by 18th January 1989 but, on 16-1-1989 a telegram was received from Capt. Sudeep Pandey asking them to cancel their reservations and to wait for the letter which would follow. The parents of Neelima reached Mhow despite this telegram on the evening of 17-1-1989. There Capt. Sudeep Pandey told them that he intended to have their child born in Military Hospital, Mhow and nowhere else. Because of this, the parents of Neelima returned to Jabalpur on 23-1-1989.

8. On 24-1-1989 they received a call from Military Hospital, Mhow that Neelima had been admitted in the Hospital. On 24-1-1989 the parents of Neelima along with parents of Capt. Sudeep Pandey and his younger brother left for Mhow. There they learned that on 23-1-1989 which was the birth day of Capt. Sudeep Pandey he took away Neelima with him with three other couples to 'Hotel Natraj' at Mhow to celebrate his birth day. They also learned that Neelima fainted during the birth

day party and when she returned home she started bleeding. She passed the whole night in trouble and in the morning was admitted to Military Hospital. On 27-1-1989 she gave birth to a normal male child through Caesarean operation.

9. It is alleged that in midnight of 29th January, 1989 Capt. Sudeep Pandey assaulted Neelima and gave a blow on her abdomen. She passed away on 30-1-1989 at 10.45 p.m. These are the essential facts which were alleged in the first complaint which was made to the Hon'ble Prime Minister of India. The complaint was made on 13-3-1989 from Jabalpur i.e. after about 40 days after death of Neelima. Several allegations have been made regarding torture of Neelima on the ground that she had brought lesser amount in dowry. Even in their statements the parents of Neelima have spoken about demand of Scooter, T.V. etc. The grievances of Neelima against her husband and in-laws are well-documented. She has been writing to her parents very often and those letters are on record. It is clear from the reading of letters that she had no serious complaint against her husband. Apart from the ordinary rough and tumble of married life, especially which is evident during the initial period of adjustment, there appears nothing significantly wrong about the complaints which emerge from the correspondence.

10. Story of physical torture and maltreatment set out in the letter to the Hon'ble Prime Minister certainly does not get corroboration from the letters written by Neelima herself. As regards the allegations about assault on Neelima by Capt. Sudeep Pandey in the Military Hospital, there is absolutely no corroboration in the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure. On the contrary record of the Military Hospital relied upon by the prosecution shows that the death was caused by septicemia and complications arising out of it. The reports of Lt.Col. D. K. Ghosh, A.M.C. Classified Specialist, Obstetrics and Gynaecology and Lt. Col. Anil Nakra, Classified Specialist (Medicine) are on record. Remarks of Commanding Officer Lt. Col. P. R. S. Rathore, Military Hospital, Mhow are also on record. All this record leaves no manner of doubt that the death was due to a disease and was not a homicidal or unnatural death or death in abnormal circumstances.

11. Section 304B of the Indian Penal Code reads as under:-

'304-B. 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.

(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.'

In the circumstances of this case, the death has taken place in a Military Hospital where the deceased wife of Capt. Sudeep Pandey was admitted for a week. The death is not caused by any burns or bodily injury nor it can be said that it has occurred otherwise than in the normal circumstances. There is also not an iota of evidence 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. The word 'dowry' is given the same meaning as it has in the Dowry Prohibition Act of 1961. The Provision reads as under :-

'2. Definition of 'dowry'. - In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage;

or

(b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person.

At or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.'

12. The presumption as to dowry death can be drawn under Section 113B of the Evidence Act. That provision reads as under:-

'113-B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code.'

13. In the present case it is not contended by the complainants that there was any dispute between the parties about any property or valuable security given or agreed to be given directly or indirectly by the complainants or her parents to Capt. Sudeep Pandey or his parents at or before or any time after the marriage in connection with the marriage of Neelima to Capt. Sudeep Pandey. The allegations are that over and above what was given by the parents of Neelima and over and above what was agreed to be given in connection with the marriage Capt. Sudeep Pandey and his parents were demanding something more. Unfortunately, a lacuna exists in the provision as it does not cover demands in excess of what was given or agreed to be given in connection with the marriage. There is no reason why demand of something over and above what was given or agreed to be given in connection with the marriage, should not be covered by the term 'dowry' but unfortunately, that is the position of law as it stands and we cannot read something in the provision which is not there in order to implicate a greedy husband and his parents. All the demands which have been said to be made were clearly in addition to what was given or agreed to be given in connection with the marriage and, therefore, even if, the allegations are accepted to be true, it would not amount to demanding dowry and consequently, Section 304B would not be applicable. In *Smt. Shanti and Anr. v. State of Haryana*, (1991) 1 SCC 371, the Supreme Court after careful analysis of Section 304B of the Indian Penal Code formulated the following four essential ingredients :-

- '(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) Such death should have occurred within seven years of her marriage;
- (3) She must have been 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 for dowry.'

Out of the four ingredients only one ingredient viz. that the death has occurred within seven years of the marriage seems to have been fulfilled in the case. The charge under Section 304B is therefore clearly groundless and could not have been framed by the Sessions Court on the material before it.

14. The next question is whether the charge under Section 498A of the Indian Penal Code could be justifiably framed by the Sessions Court. Section 498A reads as under :-

'498-A. Husband or relative or husband of a woman subjecting her to cruelty. - Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:- for the purposes of this section, 'Cruelty' means-

- (a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.'

15. To sustain the charge what has to be alleged and proved is that the husband or his relatives subjected the wife to cruelty. The explanation to Section 498A defines cruelty in two parts. There is no material on record which would show that there was any wilful conduct on the part of the accused person which was of such a nature that it would have driven Neelima to commit suicide or to cause grave injury, danger to her life, limb or health. Clause (a) of the explanation is therefore inapplicable in the case. Clause (b) of the explanation covers harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. It is true that parents of Neelima have made allegations in this respect. But most of the allegations are not in tune with letters written by Neelima herself. The complaints made by her are not consistent or cogent evidence of any harassment. On the contrary they show instability of temperament and emotional over-sensitivity. In her letters she has set out complaints of normal nature not uncommonly felt or expressed by a newly married daughter-in-law. These are a part of normal wear and tear, rough and tumble of married life and cannot be taken as evidence of any intentional harassment in order to coerce her to meet any unlawful demand for any property or valuable security.

16. In the aforesaid circumstances of the case when the complainants the parents of Neelima were present at the time of her death, the delay in lodging the complaint cannot be excused. It appears that after the death of their daughter during a short span of her married life, the complainants felt soar about the entire money spent by them on the marriage going waste and thought of putting pressure on the accused persons. Otherwise, there was no reason why they should take more than a month to raise their voice for the first time. The implication of father and mother of Capt. Sudeep Pandey without there being any material against them also appears to be vindictive or a part of a strategy to pressurise the accused persons. In any case, there being no material sufficient to sustain the charges, framing of charge on both the counts is clearly unjustified. It is not a case where two opinions are possible and the trial court has framed a charge taking one of such possible views. It is a case where there is no material on record to sustain the charge. To frame charge in such a case is to permit the complainants to

harass the accused persons and to force them to face a prosecution which is ultimately going to fail certainly.

In the aforesaid circumstances therefore the revision application deserves to be allowed. It is hereby allowed. The charges framed by the Sessions Court are quashed. The accused persons/applicants deserve to be discharged under Section 227 of the Code of Criminal Procedure. They shall accordingly be discharged. Bail bonds shall stand cancelled.

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