

Rajesh Mehta Vs. the State

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Court : Delhi

Decided On : Jul-27-2001

Reported in : 93(2001)DLT428; II(2001)DMC440; 2001(60)DRJ678

Judge : R.C. Chopra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 161, 221, 221(1), 227, 228, 236, 237, 304-B, 306 and 498-A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397

Appeal No. : Crl. Rev. No. 10/2001

Appellant : Rajesh Mehta

Respondent : The State

Advocate for Def. : Mr. Sunil K. Kapoor, Adv.

Advocate for Pet/Ap. : Mr. Harsh Kr. Sharma, Adv

Judgement :

ORDER

R.C. Chopra, J.

1. The petitioner, who is being prosecuted under Sections 498-A and 304B IPC, has filed this Revision petition under Section 397 of the Code of Criminal

Procedure (hereinafter referred to as 'the Code' only) for setting aside an order dated 6.9.2000 passed by learned Additional Sessions Judge. New Delhi ordering that charges under Sections 304-B and 498-A IPC be framed against him.

2. The facts relevant for disposal of this revision petition, briefly stated, are that the petitioner got married to deceased Neelam on 11.12.1996 at Delhi. According to the prosecution, soon after the marriage the petitioner started misbehaving with his wife and used to give her beatings even. The brothers of the deceased once went to the house of the petitioner and tried to make him see reason, but did not succeed. On that very night again there was some episode in the house of the petitioner on account of which police control room van came and took the petitioner along. In July, 1997, the petitioner along with his wife deceased Neelam shifted to Palam Colony, but there also he continued to give her beatings on account of which she suffered miscarriage. From Palam Colony they shifted their house to South Extension Part-I, but the misbehavior and beatings continued. On 28.8.1999 the petitioner abused his father-in-law on telephone and threatened him to either take away his daughter or she would be left at Nari Niketan. After about half an hour, the mother of the petitioner informed the father of the deceased that deceased Neelam had consumed Baygon Spray. They also received a phone call from police station and were told that Neelam was admitted in I.C.U. of Moolchand Hospital. The parents and other family members of the deceased did not go to the hospital even out of fear of the petitioner. Later when the deceased came to her parents' house, she informed them that the FIR registered at P.S. Kalkaji on the basis of the above incident had been quashed by the High Court on her statement. On 20.2.2000 the family of the deceased received information about her death from P.S. Vasant Kunj. They went to her house and found that her body was lying in a store on first floor. Suspecting that the deceased had been murdered by the petitioner, brother of the deceased filed a report with the police station on which an FIR under Section 304-B/498-A IPC was registered. After necessary investigations, a challan was filed against the petitioner.

3. Learned Additional Sessions Judge vide impugned orders dated 6.9.2000 found a prima facie case against the petitioner under Section 304-B as well as 498-A IPC and ordered framing of charges against him.

4. Learned counsel for the petitioner has vehemently argued that no charge under Section 304-B IPC could be framed as there was no evidence on record to suggest even that the deceased was being harassed on account of any dowry demand. It is submitted that earlier FIR No.588/99 under Section 498-A IPC registered at P.S. Kalkaji was quashed by the High Court vide orders dated 7.1.2000 on the statement of the deceased and as such, allegations made therein stood effaced and could not be sued in this case for holding that soon before her death the deceased was being subjected to any cruelty or harassment for or in connection with any demand for dowry. Arguing that it was a simple case of suicide, learned counsel submits that no charge under Section 498-A IPC was even made out against the petitioner. It is submitted that the impugned order is liable to be quashed as there were no grounds at all for proceeding against the petitioner.

5. Learned counsel for the State on the other hand submits that there are no good grounds at all for interfering with the impugned order framing charges against the petitioner.

6. The law in regard to orders under Sections 227 and 228 of the Code as laid down in different decisions is that the prosecution must be given opportunity to lead its evidence and establish its allegations against an accused if there exists a strong suspicion that the accused might have committed the offence. Leading cases on this issue are Om Wati & Ors. Vs . State through Delhi Administration & Ors., : 2001 CriLJ1723 , Century Spinning & . Vs . The State of Maharashtra : 1972 CriLJ329 . State of Bihar Vs . Ramesh Singh : 1977 CriLJ1606 . Union of India Vs . Prafulla Kumar Samal & Another, : 1979 CriLJ154 . Niranjan Singh Karam Singh Punjabi, Advocate Vs . Jitendra Bhimraj Bijja & Ors. : 1990 CriLJ1869 , Stree Attyachar Virodhi Parishad Vs . Dalip Nathumal Chordia & Another, : [1989]1SCR560 , State of Maharashtra, etc. Vs . Som Nath Thapa etc., : 1996 CriLJ2448 and Satish Mehra Vs . Delhi Administration & Another : (1996)9SCC766 .

7. A perusal of Sections 227 and 228 of the Code and the judgments of the Apex Court referred to above leaves no room for doubt about legal proposition that a

discharge under Section 227 of the Code is permitted only in those cases where the Court is almost certain that there is no prospect of the case ending in a conviction and as such, feels that the time of the Court need not be wasted by holding a trial. The use of words in Section 227 of the Code 'The Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused' clearly conveys that at the stage of framing charge, the Court is neither required to hold any elaborate inquiry nor should delve deep into various aspects of the case. Sufficient grounds to proceed means some material available on record, which prompts the Court for holding the trial and give proper opportunity to the prosecution to lead evidence and establish its allegations. thereforee, if there is some material on record, which connects the accused with the crime, the charge has to be framed under Section 228 of the Code. It is also settled proposition of law that Revisional Court should not ordinarily interfere at the initial stage of framing the charge merely on the hypothesis, imagination and far fetched reasons, which in law amount to interdicting the trial. The Revisional Court must avoid substituting its own view at this stage if the view taken by the trial Court is neither perverse nor patently unwarranted.

8. It is true that in the present case after the death of the deceased Neelam, neither in the FIR nor in the statements of the family members of the deceased, anything was stated about dowry demands, but the earlier FIR No.588/99 registered at P.S. Kalkaji under Section 498-A IPC was not that old in period of time that the allegations contained therein could not be considered for invoking Section 304-B or 498-A IPC against the petitioner. May be that the said FIR was quashed by the High Court on 7.1.2000 upon a statement of the deceased, but within about six weeks thereafter, the deceased committed suicide by consuming a poisonous substance. Possibility, thereforee, cannot be ruled out that the statement in High Court was an abject surrender of the deceased to the circumstances she was facing. There is evidence on record to show that soon after the aforesaid compromise, the deceased was being harassed and given beatings even by the petitioner and as such, the cruel treatment and harassment on account of dowry demands, which was the subject matter of FIR No.588/99 registered at P.S. Kalkaji never came to an end and continued unabated inspire of quashing of the FIR by the High Court. Learned trial Court was, thereforee, fully

justified in holding that the evidence regarding dowry demands existed on record in the form of earlier FIR. The plea of learned counsel for the petitioner that in view of quashing of the FIR, all the allegations contained therein stood effaced, cannot be accepted as the time gap between quashing of the FIR and the death of the deceased was very short and during it even her beatings and harassment continued. thereforee, a strong suspicion existed on record in regard to the harassment of the deceased for and in connection with the dowry demands. As such, there were good and sufficient grounds for presuming that soon before her death, the deceased was being subjected to cruelty and harassment by the petitioner in connection with dowry demands.

9. The absence of allegations in regard to dowry demands in the statements of the father and brothers of the deceased gives a ring of truth to their statements and shows that they are not inclined to make stereo type false statements against the petitioner. It appears that the deceased, who was already a divorcee was not keeping her parents fully informed about the harassment and cruelty meted out to her by the petitioner. The reason could be that she did not want to perturb them and was inclined to face the ordeal herself. The behavior of the petitioner with deceased after marriage was cruel and barbaric, but still in keeping with Indian culture and social ethos, the deceased continued to face it in silence. Her family members were so scared of the petitioner that they had no courage to go to the hospital even where the deceased was once admitted on account of the incident on the basis of which FIR No.588/99 was registered. It appears that the deceased inspire of her harassment, torture and beatings at the hands of petitioner did not inform her family about her plight and for this reason only the statements of her father and brothers are silent about dowry demands.

10. Since the deceased had died within seven years of her marriage otherwise than under normal circumstances and there is some material on record to show that soon before her death, she was being subjected to cruelty and harassment by her husband for or in connection with dowry demands the conduct of the petitioner was covered under Sections 304-B/498-A IPC. This Court, thereforee, is of the considered view that the impugned order framing charges under Sections 498-A and 304-B IPC was fully justified and warranted.

11. The FIR and the statements of the witnesses recorded by the Investigating Officer further show that the petitioner by his conduct had abetted the suicide of the deceased so as to attract Section 306 IPC also against him. The material on record shows that soon after his marriage with the deceased, the petitioner started giving her beatings and even abused her father on telephone, threatening him to take away his daughter or else she would be left at Nari Niketan. The harassment and beatings were so much that sometimes neighbours were compelled to call the police. The statements of the neighbours recorded by the Investigating Officer show that the beatings and harassment of the deceased by the petitioner was a regular feature and continued unabated till the night of the death of the deceased when she was found knocking at the doors of neighbours even for help. In *State of Punjab Vs . Iqbal Singh & Others*, : 1991 CriLJ1897 , His Lordship Hon'ble Mr. Justice Ahmadi speaking for the Bench made quite lucid observations in para-8, which are quoted as under:-

'Then we have a situation where the husband or his relative by his willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of S.306, I.P.C. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide.'

12. As such, there are sufficient grounds for presuming that the petitioner by his acts of cruelty and misbehavior had abetted, instigated and compelled the deceased to end her life.

13. The question, however, that arises for consideration is as to whether by invoking Section 221 of the Code, an additional or alternative charge under Section 306 IPC can be framed against the petitioner besides charges under Sections 498A and 304B IPC. Section 221 of the Code reads as under:-

'221. Where it is doubtful what offence has been committed

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be

charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

14. A bare perusal of Section 221 of the Code shows that wherever it is doubtful as to which of the several offences, the facts, if proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once. The basic principle is that the doubt should be as to the nature of the offence and not about the facts. thereforee, if on the basis of the facts alleged by the prosecution, it is doubtful as to which of the offences, the alleged facts will constitute, the framing of alternative or additional charge is permissible. Section 221 of the Code cannot be invoked where the facts themselves are in doubt nor it can be invoked for framing charges for those offences, the ingredients of which are altogether different. In *Jatinder Kumar & Ors. v. State of Delhi*, 1992 CrL.J. 1482 and *Sangaraboina Sreenu Vs . State of Andhra Pradesh*, : 1997 CriLJ3955 , it was held that since the ingredients of Sections 302 and 306 of Indian Penal Code were distinct and these two offences belonged to two different categories, alternative charges under both these sections could not be framed. However, the ingredients of Sections 304-B and 306 IPC are not so different and distinct so as to say that the charges under both these sections cannot be framed against an accused. Under Section 304-B IPC, the death of a woman caused by burns, injury or otherwise than in normal circumstances within seven years of her marriage becomes punishable if it is shown that soon before her death, she was being subjected to cruelty or harassment for or in connection with any demand of dowry. On the other hand, if a woman commits suicide upon abetment of an accused, the offence under Section 306 IPC may be made out. The instigation for the purposes of abetment, as defined under Section 107 IPC, would include the cases of inciting, goading,

provoking or pushing the woman into a situation, which compels her to put an end to her life by committing suicide. In case of the death of a woman, the difference, therefore, between Sections 304B and 306 IPC primarily remains in regard to the demand of dowry, which is an essential ingredient of Section 304-B IPC and is not so for the purposes of an offence under Section 306 IPC. Section 304-B IPC can be taken as an aggravated form of Section 306 IPC in regard to the death of a woman, who is harassed on account of dowry demands and dies within seven years of her marriage. If in a trial under Section 304-B IPC, dowry related harassment or cruelty is not proved or it is shown that the woman had been married for a period of more than seven years, the offence would not fall under Section 304-B IPC, but may fall within the ambit of Section 306 IPC, which deals with cases in which an accused by his conduct incites, provokes or virtually pushes the woman into a desperate situation where she is compelled to put an end to her life by committing suicide. It, therefore, can be safely said that the offences under Sections 304-B and 306 IPC are neither quite distinct nor they belong to two different categories. However, offences under Sections 302 and 306 are quite distinct and belong to two different categories.

15. In *Sunil Kumar Paul v. State of West Bengal*, AIR 1965 SC 706, Their Lordships of the Supreme Court while considering Sections 236 and 237 of the old Code, which after amendment got reflected in Section 221 of the Code, categorically observed as under:-

'The framing of a charge under S. 236, is, in the nature of things, earlier than the stage when it can be said what facts have been proved, a stage which is reached when the Court delivers its judgment. The power of the Court to frame various charges contemplated by S.236 Cr.P.C. therefore arises when it cannot be said with any definiteness, either by the prosecutor or by the Court, that such and such facts would be proved. The Court had at the time of framing the charges, therefore, to consider what different offences could be made out on the basis of the allegations made by the prosecution in the complaint or in the charge submitted by the investigating agency or by the allegations made by the various prosecution witnesses examined prior to the framing of the charge. All such possible offences could be charged in view of the provisions of S. 236 Cr.P.C. as it

can be reasonably said that it was doubtful as to which of the offences the facts which could be ultimately proved would constitute.'

16. The ratio of the judgment, therefore, is that where the facts alleged by the prosecution create a doubt in the mind of the Court as to which of the various offences is made out, the charges under all the sections which appear to be attracted, may be framed by virtue of Section 221 of the Code so as to enable the Court to pronounce a final judgment at the end of trial without getting handicapped on account of absence of a charge under a particular provision. In the present case on the basis of the charge sheet filed against the petitioner, statements of the witnesses recorded under Section 161 of the Code and other material on record, it prima facie appears that the petitioner might have abetted the suicide of his wife and as such, an alternative charge under Section 306 IPC also ought to have been framed against him.

17. It is true that the State has not challenged the impugned order nor has filed a challan under Section 306 IPC, but the law does not restrict the powers of the Court to frame charges under appropriate provisions on the basis of the allegations made against an accused. The Revisional Court while exercising its powers under Section 397 of the Code is under a duty to satisfy itself with regard to the correctness, legality and propriety of any finding or order passed by a subordinate Court and issue appropriate directions. therefore, this Court being satisfied that a charge under Section 306 IPC also ought to have been framed by virtue of Section 221 of the Code is well within its powers to order accordingly.

18. In view of the foregoing reasons, this Court is of the considered view that the prayer of the petitioner to set aside the impugned order and discharge him of the offences under Sections 304-B and 498-A IPC cannot be allowed and rather an alternative charge under Section 306 IPC also is required to be framed against him.

19. Accordingly, the petitioner stands disposed of with the directions to the trial Court to frame an alternative charge against the petitioner under Section 306 IPC also and thereafter proceed further in accordance with law. The trial Court records be sent back immediately.

20. The observations made herein are prima facie and tentative only and as such, shall have no bearing on the merits of the case at the state of final decision.

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