

Madan Mohan Sharma Vs. State

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Court : Delhi

Decided On : Jul-11-2006

Reported in : 131(2006)DLT347; II(2006)DMC332

Judge : Badar Durrez Ahmed, J.

Acts : [Evidence Act, 1872](#) - Sections 113A; Indian Penal Code (IPC) - Sections 306, 311A and 498A

Appeal No. : Crl. Rev. P. 657/2004

Appellant : Madan Mohan Sharma

Respondent : State

Advocate for Def. : Richa Kapur, Adv.

Advocate for Pet/Ap. : S.C. Buttan, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This revision petition is directed against the order dated 07.10.2004 passed by the learned Additional Sessions Judge, whereby he has concluded that a prima facie case against the petitioner has been made out in respect of offences under Sections 498-A/306 IPC.

2. The learned Counsel for the petitioner at the outset submitted that he is challenging the order with respect to the framing of charges under Section 306 IPC and not against that part of the order which pertains to the offence under Section 498-A for which he is ready to face the trial. Insofar as the offence under Section 306 is concerned, he immediately referred to paragraphs 9 and 10 of the impugned judgment to point out that the learned Additional Sessions Judge had invoked the provisions of Section 113A of the Indian [Evidence Act, 1872](#) to raise a presumption with regard to the abetment of suicide by the deceased [Smt. Vandana Sharma]. He submitted that this presumption cannot be raised inasmuch as Section 113A is inapplicable in the facts of the present case as the suicide was committed beyond the period of 7 years from the date of her marriage. He also contended that even apart from the presumption under Section 311A, no case is made out for framing of a charge under Section 306.

3. The learned Counsel for the State attempted to support the order on charge.

4. Having heard the counsel for the parties and having examined the impugned order in detail, I find that the learned Additional Sessions Judge was greatly influenced by the application of Section 113A of the Indian [Evidence Act, 1872](#) in coming to a conclusion that a charge under Section 306 IPC ought to be framed. The said Section 113A reads as under:

113A. Presumption as to abetment of suicide by a married woman. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

5. A plain reading of the aforesaid provision makes it clear that the presumption can be raised only when the suicide is committed within a period of seven years from the date of the marriage of a woman. In the present case, the deceased and the petitioner were admittedly married on 23.04.1994. The incident took place on

10.07.2002 and the deceased succumbed to the same on 18.07.2002. It is, therefore, clear that the incident as well as the death of the said Smt. Vandana Sharma took place beyond the period of seven years from the date of her marriage. Clearly, Section 113A would not be applicable and, therefore, the presumption as to abetment of suicide by a married woman on the part of her husband (the petitioner herein) cannot be raised.

6. An examination of the impugned order and in particular paragraph 10 thereof reveals that the learned Additional Sessions Judge did have the presumption under Section 113A in mind. The said paragraph 10 reads as under:

The presumption will be that the husband or his relatives had abetted the commission of such suicide.

Therefore, it cannot be said at this stage that had the presumption under Section 113A not been considered by the learned Additional Sessions Judge, he would have definitely framed charges under Section 306.

7. In this view of the matter, I feel that the impugned judgment and/or order to the extent that it relates to the offence under Section 306 is liable to be set aside and is so set aside. The matter is remitted to the learned Additional Sessions Judge for considering arguments afresh on the question of framing of charges under Section 306 IPC. The matter be placed before the learned Sessions Judge in the first instance on 24.07.2006.

This revision petition stands disposed of.

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