

Jaidev Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-12-2006

Reported in : I(2006)DMC618; 2006WLC(Raj)UC227

Judge : R.S. Chauhan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306, 406 and 498A; [Code of Criminal Procedure , 1973](#) - Sections 161 and 227

Appeal No. : Criminal Revision Petition No. 1173 of 2005

Appellant : Jaidev Singh

Respondent : State of Rajasthan

Advocate for Def. : Arun Sharma, P.P.

Advocate for Pet/Ap. : Anshuman Saxena and; Hemant Gajraj, Advs.

Disposition : Petition allowed

Judgement :

R.S. Chauhan, J.

1. The petitioner has challenged the order dated 17.9.2005, whereby the Additional District and Sessions Judge, Khetri has framed the charges against the petitioner for offences under Sections 306, 406, and 498-A, I.P.C.

2. The brief facts of the case are that on 18.11.2004, the complainant, Pratap Singh, lodged a report at Police Station Buhana wherein he claimed that his daughter, Savita, was married to the petitioner's son, Jitendra. Just after her marriage, the husband, the mother-in-law, the father-in-law and the brother-in-law, started torturing his daughter for dowry. He further claimed that during the marriage, he had spent a huge amount on his daughter's marriage and had given rupees one lakh to the accused persons by way of dowry. He further alleged that Jitendra was a habitual drinker who would abuse and assault his daughter after heavy drinking. Because of the ill treatment, his nephew Mohan had brought his daughter back to the paternal house. But after intervention of family relations, Savita was sent back to the matrimonial home on 9.11.2004. On 18.11.2004, a telephone call was received at his residence that Savita has been thrown into the well and has died.

3. On the basis of the said report, the police registered a formal FIR, FIR No. 278/2004, against the four accused persons for offences under Sections 306 and 498-A, I.P.C. However, after a thorough investigation, the Police did not submit any charge sheet against the mother-in-law and the brother-in-law. But submitted the charge sheet against the husband and the father-in-law, the present petitioner before us. After hearing both the prosecution and the petitioner, the learned Trial Court framed the charges as aforementioned. Hence, this petition before us.

4. Mr. Anshuman Saxena, the learned Counsel for the petitioner, has argued that firstly, only general and vague allegations have been leveled against the present petitioner. Same set of allegations was also leveled against the mother-in-law, yet the Police did not believe the allegations. On the same set of evidence while the police has not filed a charge sheet against the mother-in-law, the Court has framed charges against the petitioner. In fact, the bald statements do not add up to offence under Section 498-A, I.P.C. The learned Trial Court has ignored this aspect of the case and has framed the charges against the petitioner. Secondly, the deceased was married to the petitioner's son for a period of seven to eight years. During this interim period, the complainant did not complain about the alleged abuse of his daughter. Thirdly, a large number of witnesses have claimed in their statement under Section 161, Cr.P.C. that Savita, the deceased, was

suffering from mental disorder. In fact, the deceased jumped into the well and committed suicide not because of any abatement, caused by the petitioner, but because she was suffering from a mental disorder. There is no evidence to show that the petitioner had intentionally abetted the alleged suicide committed by the deceased. Therefore, the ingredients of offence under Section 306, I.P.C. are conspicuously missing. Hence, the charges framed by the learned Trial Court deserve to be set aside.

5. The complainant was not arrayed as a party to the petition since the case started on a police report. However, as Mr. Gajraj appeared on behalf of the complainant, he was permitted to assist the Public Prosecutor. Mr. Gajraj has argued that while framing the charges, the learned Trial Court cannot enter into a detailed examination of the evidence collected by the police during investigation. If a prima facie case is made out, the learned Trial Court would be justified in framing the charges. Moreover, according to him, even the bald statements were sufficient for framing the charges against the petitioner. Therefore, he has supported the impugned order. Since the learned Public Prosecutor has echoed the same arguments, we need not record them.

6. We have heard the learned Counsel for the parties and have also gone through the challan papers submitted by the petitioner.

7. Facing of a criminal trial is not an easy task; it is an ordeal. A person accused of an offence is not only socially stigmatized, but also has to invest time, money and energy in protecting his liberty and reputation. When allegations are leveled, the Courts are not expected to accept them without applying a judicious mind to the facts and circumstances of the case. The framing of a charge is not a knee-jerk reaction, but is an application of a judicious mind to the evidence before the Court. Although the Courts are not expected to enter into a detailed examination of the evidence, but the Court should examine the totality of the evidence before it, should examine the nature of the allegations made in the complaint and the evidence, both oral and documentary, in support thereof. A charge should not be framed in a mechanical manner without due application of mind. While discussing the scope of framing of charge under Section 227, Cr. P.C., in the case of Union of

India v. Prafulla Kumar Samal and Anr. : 1979 CriLJ154 , the Hon'ble Supreme Court has held as under:

(1) That the Judge while considering the question of framing of 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 has been made out.

(2) Where the material 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 of 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 inquiry into the pros and cons of the matter and weigh the evidence as if he was concluding a trial.

8. Although a roving inquiry is uncalled for, but the broad possibilities of the case, the total effect of the evidence, the existence of any basic infirmities should be considered in order to see whether a prima facie case exists or not for framing the charges. The learned Trial Court should also remember that the personal liberty and the life of a person are adversely affected by the charges framed against him. Hence, a conscious and a judicious approach should be adopted while framing the charges. Of course, the charge order need not be a reasoned order, but nonetheless, a charge should be framed after keeping in mind the principles

enumerated above.

9. In the present case, the complainant, Pratap Singh, has merely stated in his statement under Section 161, Cr. P.C. that 'immediately after the marriage, the husband Jitendra, the father-in-law Jai Dev, mother-in-law Banarsi Devi and the brother-in-law Rakesh Kumar used to physically and mentally torture his daughter for dowry'. He further claims that 'his daughter used to tell his wife and him and his son that she was assaulted by the husband, the father-in-law, the mother-in-law and the brother-in-law for dowry'. But, for these vague allegations, which are equally applicable to the mother-in-law and the brother-in-law, there is no specific allegation against the present petitioner. The other witnesses, such as Mohan, the cousin brother of the deceased, Jaswant Singh, the brother of the deceased, Jai Veer, the brother of the deceased have also leveled the same set of vague allegations. Interestingly, on the basis of the same set of evidence, the mother-in-law Banarsi Devi and the brother-in-law, Rakesh Kumar, were not even challenged by the police. The petitioner's case is on the same footing as the case of Smt. Banarsi Devi and Rakesh Kumar. In case the same set of evidence was not sufficient for filing of the challan, one fails to understand how the same set of evidence can be sufficient for framing of the charge. Yet, on such feeble evidence, a charge for offence under Section 498-A, I.P.C. has been framed against the petitioner. Vague and bald statement cannot be the foundation for framing of charge. Since a tendency has emerged to rope in other family members of the husband in cases of 498-A, a concrete allegations with regard to the date, the place, the manner, the act of cruelty should be present in the evidence in order to frame a charge for offence under Section 498-A. Because of the present propensity to rope in innocent persons, the Trial Court has to be vigilant while framing charge for offence under Section 498-A.

10. Since no further statement has been made by the complainant and the other witnesses, except those reproduced above, there is no evidence showing abetment for committing suicide. Since there is no evidence of abetment, it is rather surprising that a charge for offence under Section 306, I.P.C. has been framed against the petitioner. Similarly, according to the recovery memo dated 22.11.2004, the Stridhan has already been recovered by the police. Hence, no

offence under Section 406, I.P.C. is made out.

11. Although there are the statements of witnesses who claim that the deceased was suffering from mental disorder, but we would like to comment on the said evidence at this juncture as it may prejudice the case of the husband, Jitendra. Suffice it to say that the evidence produced by the Investigating Agency against the present petitioner is too vague and too flimsy and too non-existent to warrant the framing of charges for offence under Sections 498-A, 306 and 406, I.P.C. Since the learned Trial Court has not exercised the jurisdiction vested in it properly, the impugned order is perverse.

12. In the result, the petition is allowed and the order dated 17.9.2005 qua the petitioner is quashed and set aside.

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