

**Manohar Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Aug-04-1997

**Reported in :** 1998(1)WLC180; 1997(2)WLN123

**Judge :** B.J. Shethna, J.

**Appeal No. :** S.B. Cr. Revision Petition No. 124 of 1997

**Appellant :** Manohar

**Respondent :** The State of Rajasthan

**Disposition :** Petition dismissed

**Judgement :**

**B.J. Shethna, J.**

1. The petitioner-husband of deceased Manju has filed this petition against the impugned order dated 24.2.1997 passed by the learned Judge, Special Court, Merta in sessions case No. 148/1996 (13/92) by which he ordered to frame charge against the accused for the offence punishable under Sections 302, 201 IPC. Learned Counsel Shri Mehta for the petitioner has raised only one submission, namely that the order passed by the learned Judge is not a speaking order and the learned Judge has not at all dealt with the contentions raised before him before deciding to frame charge against the accused for the offences punishable under

Sections 302, 201 IPC. He submitted that learned Judge was bound to record atleast some reasons for deciding to frame charge against the accused. In support of this submission he relied upon the Judgment of this Court in case of Ramdeo and Anr. v. State of Rajasthan reported in 1993 Rajasthan Cr. Cases page 412. He also relied upon the Judgment of this Court in case of Nathmal v. State of Rajasthan reported in 1991 Cr. L.R. (Raj.) page 503 and in case of Vikram Singh v. State of Raj. reported in 1989 Cr. L.R. (Raj.) page 675. In Vikram Singh's case (Supra) Farooq Hasan, J. (as he then was) allowed the revision petition by a very brief order, which I would like to reproduced:

Heard learned Counsel for the parties and perused the impugned order.

2. It has been contended by Mr. Garg that the learned Sessions Judge while passing the impugned order did not consider the matter in accordance with the provisions contained in Section 228 Cr. P.C. and has passed a very brief order mentioning nothing about evidence and the accusation so also the reason as to how the petitioner can be charged under Section 307 IPC and Section 326 IPC.

3. It is thus clear that the order dt. 8.3.89 is not a speaking order and therefore it is set aside and the learned Sessions Judge Bikaner is directed to which on sider the matter of framing of the charge. It is expected that the Sessions Judge will pass a speaking order after going through the material on record, and further expected that in future also he will not pass any such order in a mechanical way.

2. Similar order was passed by Farooq Hasan, J.(as he then was) in Nathmal's case. In both the cases the learned Judge of this Court was of the opinion that the impugned order was not a speaking order as the learned Judge failed to give any reason. In Ramdeo case (Supra) the contention was raised that record of the case and documents were not considered before framing the charge. It was held by M.R. Calls, J that evaluation of the material and documents on record with a view to finding out as to whether the facts emerging therefrom, taken at their face value disclose the existence of ingredients of the offence or not, as the condition precedent and pre-requisite. The order of framing charge was set aside as on the facts of that case the learned Judge found that there was non-compliance of Section 227 of Cr. P.C. Section 227 Cr. P.C. clearly provides that if, upon

consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Thus, Section 227 clearly provides that while discharging the accused the Judge has to record his own reasons. However, bare reading of Section 228 Cr. P.C. under which charge has to be framed does not provide that he has to record reasons. Section 228 read as under:

228. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which:

(a) is not exclusively triable by the court of Sessions, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offences in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

2. Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleades guilty of the offence charged or claims to be tried.

3. It is true that in Vikram Singh's case and in Nathmal's case (Supra) Farooq Hasan, J. of this Court (as he then was) allowed the revision petitions filed by the accused and remanded the cases to the trial court on the ground that the order of framing charge was not a reasoned order. In fact, both the Judgments of this Court were very brief. In case of Ramdeo (Supra) this Court held that evaluation of the material and document on record with a view to finding out as to whether the facts emerging therefrom, taken at their face value disclose the existence of ingredients of the offence or not, as the condition precedent and pre-requisite. In the instant case the learned Judge has passed a brief reasoned order. He himself was

satisfied that there was a prima facie case to frame charge against the accused, therefore, he ordered to frame charges against the accused for the offences punishable under Sections 302 and 201 IPC. The submission of learned Counsel for the petitioner was that this is an old case of 1981 where the allegation against the accused was that he committed murder of his wife and tried to disturb the evidence, thereby, committed offence under Sections 302, 201 IPC. This case was investigated time and again by different agencies and there was about 4-5 F.R. in favour of the petitioner accused. In spite of that, on the protest application filed by the complainant the learned Magistrate accepted the protest application and found that there is a prima facie case against the accused for the offences under Sections 302 and 201 IPC. It may be stated that this order passed by the learned Magistrate committing the case to the court of Sessions was not challenged. From the record it is clear that learned Magistrate passed a very lengthy order running into 27 pages. It is true that this is a case of 1981 and that time Section 113B of the Evidence Act, under which presumption is to be raised against the accused in case of dowry death where the offence is committed under Section 304B, was not there. It came into force in 1996 or so, much after the commission of offence. It appears that Legislature has amended the Penal Code & Evidence Act in view of the growing offences of dowry death.

4. In my opinion while framing charge, the learned trial Judge is not supposed to pass a lengthy reasoned order. In my humble opinion, if the learned Judge discuss the evidence in the order at the time of framing charge against the accused then it might cause prejudice to the accused, therefore, it is desirable that the trial Judge should refrain himself from writing lengthy order at the stage of framing charge.

5. In *Stree Atyactar Virodhi Parishad v. Dilip Nathumal Chordia and Anr.* reported in : [1989]1SCR560 , the Apex Court cautioned the High Court while interfering with the order of framing charge passed by the Sessions Court. Their Lordships have observe in para No. 20 of the Judgment as under:

20. We wish to add a word regarding interference by the High Court against the charge framed by the Sessions Court. Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person

by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

6. As observed by their Lordships the self restraint on the part of the High Court is the rule when the order of framing charge is challenged before the High Court in a revision petition. There is no injustice, much less glaring injustice which stares on the face of the case. Infact, the present incident took place way back in 1981 and almost 16 years have passed by now. The allegation against the petitioner are of serious nature of committing murder of his wife within less than a period of one year and then to destroy the evidence for which he was charged under Section 201 1PC alongwith 302 IPC. Therefore, on the ground of delay in deposing the case no benefit can be given to the accused in such serious case. In view of the above discussion, I do not find any substance or merit in this revision petition, hence the same fails and is hereby dismissed. The record be send down to the trial court forthwith. Learned Judge shall now proceed with the case and try to decide the same as early as possible as it is an old case of 1981. The accused shall fully co-operate during trial.

7. At this stage, learned Counsel for the petitioner submitted that it may be made clear by this Court that any observations made in this order should not come in the way of the petitioner during trial. I have not made any such observations which may go against the accused still I may make it clear that this order is passed at the stage of framing of charge. It goes without saying that the trial court will decide the

case strictly in accordance with law and on the strength of evidence lead by the prosecution before it.

8. With these observations, this petition is dismissed.

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