

Sarveshwar Singh Vs. State and ors.

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Court : Rajasthan

Decided On : Feb-12-1999

Reported in : 1999CriLJ2179

Judge : G.L. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 174, 397 and 482;
[Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

Appeal No. : Cr. Misc. Petn. No. 125/98

Appellant : Sarveshwar Singh

Respondent : State and ors.

Advocate for Def. : P.N. Mohanani, Adv.; A.K. Upadhyay, P.P.

Advocate for Pet/Ap. : Sandeep Mehta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.L. Gupta, J.

1. This misc. petition by complainant under Section 482, Cr.P.C. is directed against the order dt. 3-2-98 passed by the learned Sessions Judge, Jalore

whereby he discharged respondents Nos. 2 and 3 under Section 304-B, I.P.C.

2. The relevant facts of the case are that petitioner Sarveshwar Singh lodged a report at Police Station Ahoreon 25-4-97 alleging that his sister Rashal Kanwar was married to respondent Suresh on 10-12-94 and a lot of dowry was given in the marriage but his sister used to tell that her daughter-in-law (respondent No. 3) was not satisfied with the dowry and therefore a Tape Recorder was arranged for her, yet the respondents were not satisfied and on the night of 18-4-97 the dead body of Rashal Kanwar was found lying in the loom of the respondents' house. On this report, a case under Section 498-A and 304-B, I.P.C. was registered. The police after completion of the investigation submitted a challan. The learned Sessions Judge vide order dt. 11-9-97 framed charges under Sections 498-A and 304-B, I.P.C. against the respondents Nos. 2 and 3. That order was challenged by the respondents by preferring a revision petition. This Court vide order dt. 12-10-97 setting aside the order of charge, directed the Sessions Judge to re-hear the parties and pass order according to law. Thereupon, the learned Sessions Judge after hearing the counsel for the parties and perusing the documents discharged the respondents Nos. 2 and 3 under Section 304-B, I.P.C. and directed the framing of the charge under Section 498-A and 306, I.P.C. against them.

3. Mr. Mehta, learned counsel for the first informant-petitioner, contended that a charge under Section 304-B, I.P.C. ought to have been framed against the respondents Nos. 2 and 3 on the basis of the material available on record.

4. Mr. Mohanani, and the learned Public Prosecutor, on the other hand, supported the order passed by the trial Court. It was contended by Mr. Mohanani that the first informant has no right to file revision against the order of discharge and it is only the State which could challenge such order and when the State has rightly not challenged the order, this Court should not interfere in the order of discharge.

5. I have considered the above arguments. It has been the consistent view of this Court that a private party has no locus stand to invoke revisional jurisdiction in a case proceeded on police report to challenge the order of discharge : Vide Ganga Ram v. Prabhudayal 1987 Rec Cri 81; Dal Chand v. State of Rajasthan 1997 Cr LR (Raj) 717 and Amichand Ahir v. Krishna Kumar 1997 Raj Cri C. 67. However,

as under Section 397, Cr.P.C. this Court suo motu can call for and examine the record of a Criminal Court for the purpose of satisfying itself as to the correctness, legality propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings, I deem it proper to go through the material placed on record.

6. In his order the learned Sessions Judge has observed that there is no material on record on which it can be said that the deceased was subjected to cruelty by the accused in relation to the demand of dowry soon before her death. The basic ingredient of Section 304-B, I.P.C. is that there should be evidence of cruelty or harassment soon before the death. The word 'soon before the death' mean that there should be evidence of cruelty or harassment within a reasonable time and quite in proximity prior to death: See *Mishriya v. State of Raj* 1995 Cr LR (Raj) 542 and *Bhagwan Sahai v. Raju alias Rajendra Kumar* 1995 Cr LR (Raj) 806.

7. The father and the brother of the deceased in their statements recorded in enquiry under Section 174, Cr.P.C. do not tell that the deceased was subjected to cruelty or that there was demand of dowry by the respondents. The witnesses have been interrogated twice by the police. In one set of the statement the witnesses do not state that soon before the death there was cruelty caused to the deceased. It is significant to point out that the real sister of the deceased Bhanwar Kanwar who married in the same village, in her statement recorded by the Circle Officer, Jalore states that she had met Rashal Kanwar on the day, the occurrence had taken place but she had not told that her husband or mother-in-law harassed her. According to Santosh, cousin of the deceased, Rasal Kanwar used to tell her that she was not feeling well, and she wanted to die and also that she wanted to go to Bangalore with her husband. Of course, in some of the statements the witnesses state that the deceased had complained against the respondents that they wanted more dowry but as there is no evidence of causing cruelty to her by the respondents in relation to demand of dowry soon before her death i.e. in immediate past, the learned Sessions Judge was not unjustified in discharging the respondents under Section 304-B, I.P.C.

8. No case of interference by this Court is made out and the petition is liable to be dismissed.

9. Consequently, there is no merit in this misc. petition which is hereby dismissed.

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