

CRR-1115-2015

(SUWALAL Vs THE STATE OF MADHYA PRADESH)

29-01-2016

Shri Ajay Bagadiya with Shri Lokesh Mehta, learned counsel for the petitioners.

Shri Romesh Dave, learned Government Advocate for the respondent.

Heard.

This petition has been filed under Section 397 and 401 of Cr.P.C. for quashing the order dated 10/08/2015 passed by IV ASJ, West Nimar, Khargone in S.T. No.123/2015 whereby charges under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act has been framed.

2. Brief facts giving rise to this revision are that on 15/02/2015 Kiranbai W/o Mahendra was brought to District Hospital, Khargone, she died on 15/02/2015. The information was sent to Police Station-Khargone whereby merg intimation No.16/2015 under Section 174 of Cr.P.C. was recorded. During inquiry it was found that the marriage of the deceased/Kiranbai was solemnized with Mahendra Saini about 9 years ago. Deceased has not given birth to child on account of it her husband/Mahendra, father-in-law/Suwalal, mother-in-law/Kajodidevi, brother-in-law/Prahlad, sister-in-law/Samtabai used to demand money and also used to harass her mentally and physically, they

used to demand four vehicle but due to non-fulfillment of demand and on account of taunts, deceased committed suicide. After due investigation the charge-sheet has been filed. Learned trial Court has framed the charges under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act. Being aggrieved this revision petition has been filed.

- 3.** It is submitted that the impugned order is contrary to law and facts on record. *Prima facie* there is no material to frame charge under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act. Learned trial Court over looked the fact that the petitioner No.1 and 2 are residing at Sikar, Rajasthan and petitioner No.3 and 4 are also residing separately at Khargone, therefore, allegation of abatement is false. It is further submitted that marriage of the petitioner No.5 took place long back and no complaint has been made regarding demand of dowry. It is also submitted that the petitioner No.5 has got treated his wife at various Hospitals. It is further submitted that petitioner No.5 has spent huge amount in the treatment of deceased, therefore, allegation of demand of dowry is totally false. It is submitted that learned trial Court has not considered the fact that there is no evidence regarding abatement to commit suicide by the petitioners. Hence it is prayed that charges be

quashed.

4. On the other hand learned Government Advocate supported the impugned order submitting that there are material collected during the investigation and *prima facie* there is sufficient evidence to frame the charges, hence trial Court has rightly framed the charges under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act.
5. I have considered the submissions and carefully perused the record. It is not disputed that marriage of the deceased was solemnized with the petitioner No.5/Mahendra. It is also not disputed that deceased/Kiranbai has not gave birth to any child. Mohanlal has stated that daughter was residing with her husband/Mahendra, father-in-law/Suwalal, mother-in-law/Kajodidevi at Khargone. They also used to go to Rajasthan on the eve of Rakhi. Kiranbai and Mahendra came and he has given Rs.30,000/- for treatment. Kiranban says that her in-laws said that Rs.10,000/- to 20,000/- is not sufficient and they used to demand four vehicle. He further stated that on 06/02/2015 Suwalal and Rodmal came and stated that for the treatment of Kiranbai would cast about rupees two and half lacs which has to be arranged by him. It is further stated that Kiranbai telephoned him and told that her father-in-law/Suwalal, mother-in-law/Kajodidevi harassing her. Chhotidevi/mother of

the deceased in her case-diary statement has stated that her daughter/Kiranbai was not having any issue on account of it her father-in-law/Suwalal, mother-in-law/Kajodidevi, brother-in-law/Prahlad, sister-in-law/Samtabai used to harass her daughter. Meenabai/sister of the deceased has also stated that Kiranbai told her that her father-in-law/Suwalal, mother-in-law/Kajodidevi, brother-in-law/Prahlad, sister-in-law/Samtabai used to harass her because she has not given birth to a child. On 15/02/2015 she talked with Kiranbai who told that mother-in-law/Kajodidevi and brother-in-law/Prahlad were quarreling with her. In the case-diary statement Mukesh Kumar who is brother of the deceased has stated that his sister is residing with Mahendra in her maternal home at Khargone and she was not having any issue, on account of it her in-laws were demanding money for the treatment of his sister. Mahendra used to demand car and cash. He further stated that Suwalal and Kajodidevi came and told that they got treated Kiranbai and expenses has been borne by them and asked his father/Mohanlal to get treatment of Kiranbai. They also demanded Rs.2,00,000/-, thereafter on 09/02/2015 Kiranbai informed that her father-in-law/Suwalal, mother-in-law/Kajodidevi, brother-in-law/Prahlad, sister-in-law/Samtabai quarreled with her. On 15/02/2015

Kiranbai telephoned her sister/Meena and told that her mother-in-law and brother-in-law quarreled with her, thereafter they came to know that Kiranbai committed suicide. Rajendra in his case-diary statement has stated that Kiranbai was not having any issue, hence her mother-in-law/Kajodibai, brother-in-law/Prahlad used to taunt her.

6. As per postmortem report of the deceased, no any external injury has been found. Mode of death was exphysia and cause seems to be hanging.
7. Question which falls for consideration in the present case is
“as to whether considering and accepting the entire material available on record as absolutely correct and true, a *prima facie* case for the alleged commission of an offence punishable under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act is made out against the petitioners?”

Section 306 of IPC reads as under :-

Abetment of suicide “If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment has been defined in Section 107, Indian Penal Code, which reads as under:

A person abets the doing of a thing, who-

First--Instigates any person to do that thing; or

Secondly--Engages with one or more other person or

persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly--Intentionally aids, by any act or illegal omission, the doing of the that thing.

Under [Section 109, Indian Penal Code](#) punishment of abetment has been provided, which reads as under: Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for punishment of such abetment, be punished with the punishment provided for the offence.

Explanation: An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid A which constitutes the abetment.

Making a person liable for an offence punishable under [Section 306](#) of the Penal Code, the prosecution has to establish that such person has abetted the commission of suicide. Unless the alleged act of an accused falls under any of the three categories of acts, enumerated in [Section 107, Indian Penal Code](#), the same would not amount to abetment.

In case of [Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh](#), the Apex Court considered several decisions and held that the charge for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased, particularly when ingredients of abetment are not attracted on the statements of deceased or witnesses. The Apex Court considered as under:

In [Swamy Prahaladdas V. State of M.P. and Anr.](#) 1995 Supp. (3) SCC 438, the appellant was charged for an offence under [Section 306, IPC](#), on the ground that the appellant during the quarrel is said to have remarked the deceased to go and die. This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not

even prima facie enough to instigate the deceased to commit suicide.

[In Mahendra Singh v. State of M.P.](#) 1995 Supp. (3) SCC 731, the appellant was charged for an offence under [Section 306, IPC](#) basically based upon the dying declaration of the deceased, which reads as under:

My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning.

This Court, considering the definition of 'abetment' under [Section 107, IPC](#), found that the charge and conviction of the appellant for an offence under [Section 306](#) is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

[In Ramesh Kumar v. State of Chhattisgarh](#), this Court while considering the charge framed and the conviction for an offence under [Section 306, IPC](#) on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide. The conscience of the Court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty.

It was ultimately found that even if accused did tell the deceased to go and die, that itself did not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that words uttered in a quarrel in a spur of the moment cannot be taken to be uttered with mens rea. It is just a fit of anger and emotional distress, without intending any consequence.

8. On examining the allegations made against the petitioner in the evidence and material adduced by the prosecution with the charge-sheet, it is apparent that there is absolutely nothing to indicate that petitioner in any manner wanted or intended that deceased should commit suicide.

9. As regard demand of dowry *prima facie* there is no evidence to frame charge under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act.
10. In view of the aforesaid discussions, in opinion of this Court, learned trial Court has committed illegality in framing the charge against the petitioners under Section 306, 498-A of IPC and Section 4 of Dowry Prohibition Act. Consequently, this petition deserves to be allowed and it is allowed. Impugned order is set-aside.
11. Accordingly, **Cr.R. No.1115/2015** stands disposed of. C.C. as per rules.

(D.K. PALIWAL)
JUDGE