

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision No. 667 / 2013

Vinod Kumar son of Tola Chand Panchal, resident of Diwara Bada,
Tehsil Sagwara, District Dungarpur.

----Petitioner

Versus

1. The State of Rajasthan.
2. Deepak son of Shri Dinesh Chandra Panchal, resident of
Bhiluda, Chitari Police Station, District Dungarpur.

----Respondents

For Petitioner(s) : Mr.MC Bishnoi.

For Respondent(s) : Mr.OP Rathi, P.P.

HON'BLE MR. JUSTICE SANDEEP MEHTA

Judgment / Order

21/12/2017

The petitioner Vinod Kumar has approached this Court by way of this revision being aggrieved of the order dated 22.8.2013 passed by the learned Additional Sessions Judge, Dungarpur Camp Sagwara in Sessions Case No.55/2013 whereby, charges were directed to be framed against him for the offences under Sections 498A and 306 IPC.

Facts in brief are that Smt. Deepika (referred to herein as the deceased) was married to Suresh Chandra Panchal about 12 years before the incident. A son and a daughter were born from her wedlock with Suresh Panchal. She allegedly called her brother Deepak on 14.7.2012 in the morning at about 9:30 AM and complained that her mother-in-law and her husband were quarreling with her and her brother-in-law (Devar) was also

threatening that she should either be turned out of the house or killed. Just 15 minutes later, Suresh called him and informed that Deepika had caught fire. On this, Deepak rushed to the Village Diwara Bada and saw the dead body of Deepika lying in the rear courtyard of her matrimonial home. An FIR was lodged by Deepak at P.S. Chitari with the specific allegation that his sister was harassed and humiliated by her husband, mother-in-law and Pawan and as a result thereof, she committed suicide. On the basis of this report, an FIR No.129/2012 was registered for the offences under Sections 498A and 306 IPC and investigation commenced. During course of investigation, the I.O. collected evidence to the effect that the deceased was carrying on an affair with the present petitioner who happens to be a cousin brother of Suresh. She went missing upon which Suresh got a search warrant issued from the Court of S.D.M., Sagwara and in pursuance thereof, the lady was traced out on 12.7.2012. As desired by her, she was allowed to go with her husband. The first informant, upon being examined under Section 161 Cr.P.C. resiled from the allegations set out in the FIR and stated that the FIR had been lodged against the husband and inlaws on an impulse and as a matter of fact, the deceased had committed suicide because she felt grave ignominy on account of her seduction by Vinod. He further alleged that Vinod had done some black magic on his late sister and as a result, she committed suicide. Similar allegations were leveled by Suresh Chand husband of the deceased, Smt. Santok her mother-in-law, Geeta and numerous other witnesses examined during investigation. These witnesses also alleged that

accused forcibly put a sim in Deepika's mobile and also did some black magic on her and as a result thereof, she became mentally perturbed. She was very troubled because of the situation created by the disclosure of her relations with the petitioner and as a result, feeling ashamed, she committed suicide. In view of these statements, the I.O. filed a charge-sheet against the petitioner for the offences under Sections 498A and 306 IPC.

The trial Court drew the following inferences and directed framing of charges against the petitioner as above :-

"विद्वान् अभिभाषक श्री मयंक दोशी का तर्क है कि मृतका को उसके ससुराल वालों ने अभियुक्त विनोद के साथ भाग जाने को लेकर ताने दिए थे, जिससे परेशान होकर मृतका ने स्वयं को आग लगाकर आत्महत्या की है, जिसके लिए अभियुक्त विनोद को उत्तरदायी नहीं ठहराया जा सकता।

लेकिन मैं इस तर्क से बिल्कुल भी प्रभावित नहीं हूँ, क्योंकि पति, सास व जेठ का घर की बहु को किसी दीगर व्यक्ति के साथ भाग जाने पर ताने देना नितांत स्वाभाविक बात है। मृतका 8 वर्षीय पुत्री व 5 वर्षीय पुत्र की मां थी व विवाहिता पत्नी के रूप में अपने ससुराल में रह रही थी, जिसे अपने साथ संबंध बनाने के लिए उकसाने का अभियुक्त विनोद को न तो कानूनन, न ही नैतिक कोई अधिकार था, विशेषतः जबकि यदि अभियुक्त जादू मंत्र कर मृतका को धागा नहीं पहनाता या अपनी सिम द्वारा उसे फोन नहीं करता, उसे अपने साथ भाग जाने के लिए नहीं उकसाता व अपने साथ नहीं ले जाता तो यह सम्पूर्ण घटनाक्रम ही जन्म नहीं लेता, इसलिए इस स्टेज पर अभियुक्त विनोद मृतका की आत्महत्या के उत्तरदायित्व से मुक्त नहीं माना जा सकता है। चूंकि अभियुक्त विनोद मृतका का रिश्ते में जेठ लगता है तथा उसके इस कृत्य से मृतका आत्महत्या के लिए प्रेरित हुई है।

इस प्रकार मेरी विनम्र राय में अभियुक्त विनोद पंचाल के विरुद्ध भा०द०सं० की धारा 498ए व 306 के अधीन दण्डनीय अपराध कारित किए जाने की उपधारणा करने के प्रथम दृष्ट्या पर्याप्त आधार उपलब्ध पाये जाते हैं।"

The said order is under challenge in this revision.

Shri M.C. Bishnoi learned counsel for the petitioner

vehemently urged that ex-facie there is no material on record so as to justify the order framing charges against the petitioner. He contended that by no stretch of imagination, an illicit extra marital affair can be considered to be an act of cruelty within the meaning of Section 498A IPC. He further urged that there is no material whatsoever on record of the case to show that the accused ever instigated the deceased to commit suicide. As per him, the husband of the deceased was working in the Middle East and in his absence, the deceased developed an extra marital love affair with the petitioner. She eloped with the petitioner and her husband filed an application under Section 98 Cr.P.C. and got issued a search warrant. In furtherance of the search warrant, the lady was discovered and at her request, she was allowed to go with her husband. He urged that there was no contact between the deceased and accused after the deceased had been sent with the husband in the proceedings under Section 98 Cr.P.C. and thus, by no stretch of imagination can the petitioner be held responsible for instigating or abetting her to commit suicide. Rather, as per Shri Bishnoi, the matrimonial relatives of the deceased should be held responsible for her suicide as they taunted the lady after she returned to the matrimonial home pursuant to the proceedings under Section 98 Cr.P.C. and as a result thereof, she became perturbed and ended her life. He thus urged that the revision is fit to be accepted and the impugned order deserves to be quashed.

Per contra learned P.P. vehemently opposed the submissions advanced by the petitioner's counsel and urged that the petitioner is the elder brother-in-law (Jeth) of the deceased. He established

immoral extramarital affairs with the deceased knowing very well that such a relationship was a Taboo in the society and if exposed, the matrimonial status of the lady would be destroyed and her image would be tarnished in the society beyond redemption. The deceased was regularly called by the accused on a mobile phone, the sim whereof was provided to her by the accused himself. When the relationship between the accused and the deceased became public, the lady became severely perturbed and felt humiliated and as a direct consequence of the immoral acts of the accused, she committed suicide. Thus, he contended that the impugned order does not warrant any interference whatsoever.

I have given my thoughtful consideration to the arguments advanced at the Bar and have gone through the impugned order and the charge-sheet.

The offence under Section 498A IPC is attracted when there is an allegation that any matrimonial relative of a woman subjects her to cruelty either mental or physical on account of demand of dowry or such cruelty which may lead her to commit suicide. The circumstances emanating from an extra-marital affair established by a matured married woman with another man can by no stretch of imagination can be termed to be cruelty within the meaning of Section 498A IPC unless the relationship is procured by the male paramour by fraud or deceit. Thus, ex-facie the impugned order is grossly illegal to the extent charge under Section 498A IPC was framed against the accused petitioner.

So far as the charge under Section 306 IPC is concerned that

is also based on the sole inference that Smt. Deepika committed suicide as a direct result of the exposure of her illicit relations with the accused petitioner. The deceased was a mature married woman and she consciously and voluntarily established such relations with the petitioner. That she felt so perturbed by the exposure of the relations and could not withstand the ignominious situation created thereby and ended her life is indeed regrettable but the fact remains that when two major persons enter into such type of extra marital liaison, then no extra burden can be put on the male paramour involved in such amorous relationship. When the deceased established extramarital relations with the petitioner, she had to be conscious of the consequences that in case, the relations were exposed, her image would be tarnished in the society and her marriage would be put to risk. Thus, the conclusions drawn by the trial Court in the impugned order that the suicide committed by the deceased was purely the culmination of the extramarital relationship and that the petitioner alone was responsible for such act is totally without foundation. Further, the conclusion drawn by the trial Court that the accused practiced some black magic on the deceased and made her to wear some threads etc. and that had he not made a mobile call to her, the incident would not have occurred is absolutely conjectural and fictional. The very fact as mentioned in the impugned order that the deceased committed suicide as a result of ignominy faced by her owing to the exposure of her illicit relations with the petitioner is in itself sufficient to hold that the act in which she indulged was immoral and she was equally responsible to face the

consequences thereof. It is also relevant to mention here that as per observations made by the trial Court in the impugned order, the matrimonial relatives taunted the lady after she returned home pursuant to the proceeding taken by her husband under Section 98 Cr.P.C. and soon thereafter, she committed suicide. Apparently thus, taunts and insinuations given by the matrimonial relatives were the direct cause of suicide committed by the lady rather than the illicit liaison between her and the petitioner.

As an upshot of the above discussion, I am of the firm opinion that the impugned order whereby charges were framed against the petitioner by the learned trial Court for the offences under Sections 498A and 306 IPC is absolutely illegal and unjustified. Ex-facie no ingredients of the offences alleged are made out against the accused petitioner from the highest allegations of the prosecution.

Consequently, the instant revision petition deserves to be and is hereby allowed. The impugned order dated 22.8.2013 passed by the learned Additional Sessions Judge, Dungarpur Camp Sagwara in Sessions Case No.55/2013 is hereby quashed and set aside. The petitioner is discharged from the above offences.

Stay petition also stands disposed of.

(SANDEEP MEHTA)J.

S.Phophaliya/-