IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 04.12.2021
Pronounced on: 20.12.2021

CRR No.14/2015
CrlM No.1966/2021
IA No.12/2015

JYOTI BALA AND OTHERS …PETITIONER(S)

Through: Mr. Sunil Sethi, Sr. Advocate, with
Mr. Sumit Nayyar, Advocate.

Vs.

STATE OF J&K ….RESPONDENT(S)

Through: Mr. Aseem Sawhney, AAG.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) This criminal revision petition filed by the accused in a criminal trial of FIR No.178/2014 for offences under Section 306, 304-B, 109 and 498-A RPC pending before the Court of 1st Additional Sessions Judge, Jammu ["the trial court"], is directed against the order of the trial court dated 25.02.2015, whereby the trial court has framed charges against all the accused for commission of offences under Section 306, 304-B and 498-A RPC.

FACTUAL MATRIX:

2) The case of the prosecution pending before the trial court is that on 13th October, 2014, a telephonic information was received at Police

Post, Gajansoo from Police Control Room, Jammu, that a lady, namely, Mst. Pooja Sharma W/o Santosh Kumar Sharma R/o Galbaday Chak, Tehsil and District Jammu, had been brought to Government Medical College, Jammu, as a poison case for medical treatment. The Police was informed that the lady Pooja Sharma was brought dead in the Government Medical College, Jammu and her body had been kept in the Mortuary Room of the hospital. On receipt of said information, the Police initiated proceedings under Section 174 of Cr. P. C. The Officer Incharge of Police Post, Gajansoo, along with other police officials rushed to Government Medical College, Jammu, and took possession of the dead body of the deceased in presence of her legal heirs and prepared farad maqboozgi naash on spot. After post-mortem, the dead body of the deceased was handed over to her legal heirs for last rites. Statements of witnesses under Section 175 of the Code of Criminal Procedure were recorded and on the basis of statements of witnesses so recorded, commission of cognizable offences was made out. Accordingly, FIR No.178/2014 was registered and the investigation was entrusted to Incharge Police Post, Gajansoo. The Investigating Officer inspected the place of occurrence, prepared site plan and recorded statements of witnesses under Section 161 of Cr. P. C. All the accused involved in the commission of offences were arrested. The statements of three material witnesses, namely, (1) Sonu Sharma S/o Sobha Ram R/o Nai Basti District Jammu, (2) Bawa Singh S/o Mela Ram Singh R/o Galbaday Chak, and (3) Mst. Bharti Sharma W/o Suraj Prakash Sharma, were got recorded under Section 164-A of Cr. P. C. The post-mortem report was

obtained which proved that the deceased had died due to consuming of poisonous substance. On the basis of evidence collected during investigation, it came to fore that the case pertained to dowry demand and, accordingly, Section 498-A RPC was held proved and added in the case. Since the death of deceased had taken placed within seven years of marriage, the offence under Section 304-B RPC too was proved and added in the case. On completion of investigation, Investigating Officer concluded that all the six accused, the petitioners herein, had committed the offences under Section 304-B, 306, 498-A and 109 RPC. On 13th December, 2014, the police presented the charge sheet in terms of Section 173 of Cr. P. C before the concerned Magistrate and the matter was committed by the Magistrate to the Court of Sessions and the Sessions Court assigned the case to the trial court for disposal under law.

3) The matter was considered by the trial court for framing of charge and the trial court, after considering the rival contentions of both the sides and having gone through the charge sheet in its entirety, came to the conclusion that the charges under Section 306, 304-B and 498 RPC are required to be framed against all the accused. Accordingly, vide order impugned dated 25.02.2015, the formal charges for the aforesaid offences were framed and the trial was directed to commence on 18th March, 2015.

4) It is this order dated 25.02.2015 which is assailed by the accused in this revision petition. It may be worth-while to notice that the accused have also prayed in the alternative to treat this criminal revision petition

as a petition under Section 561-A Cr. P. C and to quash the charges as well as the challan.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

5) Mr. Sunil Sethi, learned senior counsel appearing for the accused, has raised following contentions to assail the impugned order:

(1) That the evidence collected by the prosecution, even if read in its entirety against the accused without any rebuttal, does not make out the offences under Section 304-B, 306 and 498-A RPC with which all the accused have been charged by the trial court.

(2) That the offences under Section 304-B and 306 RPC are mutually exclusive and, therefore, an accused cannot be simultaneously charged for commission of both these offences.

6) Elaborating his submissions, learned senior counsel appearing for the accused, submits that the charge under Section 304-B RPC cannot be framed unless there is sufficient evidence on record to demonstrate that the deceased was subjected to cruelty or harassment by her husband or any relative of the husband in connection with demand of dowry **soon before her death.** He argues that even the suicidal death is not covered by Section 304-B RPC, in that Section 304-B refers to dowry death being a death of woman caused by burns or bodily injury or that which occurs otherwise than under normal circumstances. Learned counsel argues that

the death by suicide is covered by a different provision i.e. Section 306 RPC.

7) The argument of learned senior counsel is, therefore, two fold, one that suicidal death does not come within the ambit of the term "occurs otherwise than under normal circumstances" and two that there ought to be evidence with the prosecution that "soon before her death", the deceased was subjected to cruelty or harassment by her husband or any of the relatives of the husband. With a view to bring home his point, learned senior counsel takes this Court to the statements of several witnesses, particularly the statement of father and mother of the deceased. He submits that none of the witnesses recorded by the prosecution demonstrate that soon before her death deceased was subjected to cruelty or harassment by her husband or his relations. He submits that all the witnesses in their statements have only spoken generally about the maltreatment to which the deceased had been subjected to right from the inception of her marriage with the accused Santosh Kumar. His further argument is that the evidence collected by the prosecution does not even constitute offence under Section 306 RPC. He argues that in the absence of any instigation by the accused which is sufficient to drive the deceased to commit suicide, Section 306 RPC cannot be said to have been attracted. He submits that there is no evidence on record which would demonstrate that the accused or any of them ever instigated the deceased to commit suicide and, therefore, there

was no warrant for framing the charge under Section 306 RPC against the accused.

8) To the similar effect is the argument of learned senior counsel with regard to framing of charge under Section 498-A RPC. He argues that to constitute the offence under Section 498-A RPC, the prosecution must demonstrate by reference to the evidence collected during investigation that a victim has been subjected to cruelty of such nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb or health (mentally or physically) of the woman or that the victim has been subjected to harassment with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security. Learned senior counsel concludes his argument by submitting that none of the offences with which the accused have been charged with are made out from the reading of the challan. The trial court has, thus, committed grave illegality in charge sheeting the accused and putting them to trial

9) *Per contra*, Mr. Aseem Sawhney, learned AAG, appearing for the respondent, raises following contentions to oppose the revision petition:

(I) That the framing of charge is an interlocutory order and, therefore, bar contained in Section 435(2) of Cr. P. C is attracted and the revision petition is not maintainable. He submits that even no case of exceptional nature is made out which may persuade this Court to exercise its inherent jurisdiction vested under Section 561-A Cr. P. C;

(II) That the Court at the stage of framing of charge is not to hold a mini-trial and evaluate the evidence on record to find out as to whether the accused can be convicted on the basis of such evidence. He submits that the role of the Court framing charge is limited to find out as to whether there is a prima facie case for proceeding against the accused. The pleas argued by learned senior counsel appearing for the accused may constitute their defence but cannot be taken into consideration at the time of framing of charge;

(III) That the evidence on record is adequate enough to frame the charges under Section 304-B, 306 and 498-A RPC. The witnesses are very categoric and specific with regard to consistent demand for dowry and the harassment caused to the deceased. He, therefore, submits that the death of the deceased has direct and proximate link with the harassment meted out to her by the accused jointly over a period of time;

(IV) That the offences under Section 306, 304-B and 498-A RPC are not mutually exclusive and the charges can be framed for all these offences, either independently or in the alternative. It is for the Court to ultimately decide as to whether the accused, on the basis of evidence recorded during trial, are to be punished for all or any of them.

DISCUSSION AND ANALYSIS:

10) Having heard learned counsel for the parties and perused record, the decision of this revision petition would turn on the determination of following questions:

(I) Whether framing of charge is an interlocutory order and, therefore, not revisable in view of bar created by sub-section (2) of Section 435 of Cr. P. C;

(II) What is the scope of interference in the order framing charge or refusing to discharge? This will also take in its sweep the nature of enquiry that is required to be made by the trial at the stage of framing of charges in a criminal case;

(III) Whether an accused can be charged simultaneously for offences under Section 304-B and 306 RPC?

(IV) Whether the evidence collected by the prosecution makes out the offences under Section 306, 304-B and 498-A RPC against the accused for the purposes of framing the charge.

Question No.(I)

11) Framing of charge, whether it is an interlocutory order or a final order, has been subject matter of debate for long. Earlier view of the Hon'ble Supreme Court and various High Courts appears to be that it is an interlocutory order and, therefore, not revisable in view of the bar created by sub-section (2) of Section 435 of the Code of Criminal Procedure. This Court was confronted with this issue way back in the year 1981 in the case of **S. K. Mahajan and others v. Municipality, 1982 CriLJ 646.** Before the Division Bench consisting of Justice A. S. Anand

and I. K. Kotwal, out of the three framed questions that fell for consideration, question No.2 was as under:

> "Whether an order framing a charge is an interlocutory order so as to attract the bar created by Sub-section (4-a) of Section 435?

12) It may be noted that sub-section (4-a) of Section 435, as it stood then, was in *pari materia* to sub-section (2) of Section 435 as was substituted by Act No.XI of 2006 dated 04.04.2006. The Division Bench considered the issue at length and placing reliance upon several judgments of the Supreme Court held thus:

> "(i) The bar created by Sub-section (4-a) of Section 435 would be attracted to it, and the court would be powerless to revise an order framing a charge in exercise of its powers Under Section 439 read with Section 435, where the challenge to the order is based upon the merits of the main controversy, viz. whether or not the accused has been guilty of the offence charged.
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> (ii) Such a bar would not be, however, attracted to it, and the Court would be competent to revise an order framing a charge in exercise of its aforesaid powers, in case the challenge to the order is based upon a plea, which is independent of the main controversy, and which if accepted, would conclude the proceedings against the accused."

13) This has been the law which this Court has been consistently following ever since. The view of the Hon'ble Supreme Court as also of various High Courts has seen a shift in recent times. The Courts are of the view that framing of charge decides a vital right of the accused to be put on trial and, therefore, cannot be termed as a mere interlocutory order. Some Courts have taken the view that notwithstanding that

framing of charge does determine right of an accused to be put on trial, it is an interlocutory order as the charge once framed can be altered later on at any stage of the trial. The controversy has now been set at rest by the Supreme Court in recent three Judge Bench judgment in the case of **Sanjay Kumar Rai v. State of Uttar Pradesh and another, 2021 SCC Online SC 367**, wherein the Hon'ble Supreme Court, after referring to the earlier judgments in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation, (2018) 16 SCC 299** and **Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551,** has held that the orders framing charges or refusing discharge are neither interlocutory nor final in nature and, therefore, not affected by the bar of Section 397(2) of Cr.P.C, 1973. It may be noted that Section 397(2) of Cr. P. C is in *pari materia* with Section 435(2) of Cr. P. C of Samvat 1989, which at the relevant point of time was in force in the State of Jammu and Kashmir. Paras 13, 14, 15 and 16 of the **Sanjay Kumar Rai's** judgment (supra) are noteworthy and are, therefore, reproduced as under:

> **"13.** At the outset, we may note that the High Court has dismissed the Criminal Revision on the ground of lack of jurisdiction under Section 397 of Cr.P.C. The High Court did not examine the issue in detail to find out whether the continuation of proceedings will amount to abuse of process of law in this case. The impugned order cites the decision of this Court in *Asian Resurfacing* (supra) wherein it was noted as under:—
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> > *"…Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an*

> *order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter."*

14. It appears to us that while limiting the scope of a criminal revision to jurisdictional errors alone, the High Court apparently under-appreciated the Judgment in *Asian Resurfacing* (supra). We say so at least for two reasons. *First*, the material facts in the above-cited case dealt with a challenge to the charges framed under the Prevention of Corruption Act, 1988 ("POCA"). The cited judgment itself enlightens that not only is POCA a special legislation, but also contains a specific bar under Section 19 against routine exercise of revisional jurisdiction. Second, This Court in *Asian Resurfacing* (Supra) while expressing concern regarding the need to tackle rampant pendency and delays in our criminal law system, followed the ratio laid down in an earlier decision in *Madhu Limaye* v. *State of Maharashtra*[4] as can be seen from the following extract:

> *"27. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 CrPC,* ***the principle laid down in*** Madhu Limaye [Madhu Limaye *v.* State of Maharashtra, ***(1977) 4 SCC 551 : 1978 SCC (Cri) 10] still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in a exceptional situation."***
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> (emphasis supplied)

15. In *Madhu Limaye* (supra), this Court authoritatively held:

> *"9… Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court.*
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> *10. … Even assuming, although we shall presently show that it is not so, that in such a case an order*

> *of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercises for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end?* ***The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial.***
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> *(emphasis supplied)*
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> **16.** The correct position of law as laid down in *Madhu Limaye* (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law."

14) In view of the categoric pronouncement by the Supreme Court in the case of **Sanjay Kumar Rai** (supra), there is hardly any scope for further discussion on the issue. The Division Bench of this Court in **S. K. Mahajan** (supra) cannot be said to have laid down correct position of law in so far as the issue under discussion is concerned. The answer to Question No.(I) is, therefore, that framing of charge is neither an interlocutory nor a final order. Since the framing of charge determines a vital right of the accused to be put or not to be put on trial, as such, the

same cannot termed as a mere interlocutory order which can attract bar created under sub-section (2) of Section 435 of Cr. P. C. The revision petition is, thus, held maintainable.

Question No.(II):

15) In a trial before a Court of Sessions, the provisions which deal with discharge or charge are contained in Section 268 and 269 of the Code of Criminal Procedure, Svt. 1989. The provisions of both the Sections are set out below:

> "**268. Discharges:**
> 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 no sufficient ground for proceedings against the accused, he shall discharge the accused and record his reasons for so doing.
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> 269. **Framing of charge:** (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 -
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> a) is not exclusively triable by the Court of Sessions, he may frame charge against the accused and by order, transfer the case to the Chief Judicial Magistrate or any Judicial Magistrate competent to try the case, and thereupon the Chief Judicial Magistrate or any Judicial Magistrate to whom a case may have been transferred shall try the offence in accordance with the procedure provided for the trial or warrant cases instituted on police report,
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> 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 pleads guilty of the offence charged or claims to be tried."

16) From a conjoint reading of provisions of both the above quoted provisions, it clearly transpires that if the Court after hearing submissions of the accused and the prosecution and upon consideration of the record of the case and the documents submitted therewith is of the view that there is no sufficient ground for proceeding against the accused, it shall discharge the accused and record its reasons for so doing. But if the Court is of the opinion that there is ground for presuming that the accused has committed an offence exclusively triable by it, it shall frame in writing a charge against the accused. It is, thus, trite law that the trial court while considering the discharge application is not to act as a mere post office. It can evaluate the evidence for a limited purpose to find out whether there are sufficient grounds to try the accused. The Court has to consider the broad probabilities, cumulative effect of the evidence, the documents and record and other basic infirmities if any appearing in the case.

17) The Hon'ble Supreme Court in the case of **Union of India v. Prafulla Kumar Samal and another, (1979) 3 SCC 4,** considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After surveying the case law on the point, the Supreme Court, in paragraph 10 of the judgment, laid down the following principles:

> "(1) That the Judge while considering the question of framing the 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.
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> (2) Where the materials 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.
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> (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.
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> (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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 enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

18) There are several other judgments from the Supreme Court even thereafter delineating the scope of Court's powers in respect of framing of charges in a criminal case, latest being **Dipakbhai Jagdishchndra Patel vs. State Of Gujarat, (2019) 16 SCC 547,** wherein the law relating to framing of charge and discharge is discussed elaborately in paragraph 15 and 23 and the same are reproduced as under:

> "15. We may profitably, in this regard, refer to the judgment of this Court in *State of Bihar v. Ramesh Singh* wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

"4…..Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial…. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

> "23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

19) From the above it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. The material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini-trial to find out guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material

that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of Cr. P. C, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See also **Bhawna Bai Vs Ganshyam (2020) 2 SCC 217**)

20) So far as scope of this Court interfering with the order of framing charge either in the exercise of revisional or inherent jurisdiction is concerned, the same is well circumscribed. This Court will interfere with the charge framed by the trial court only if the trial court has committed any patent illegality, impropriety or incorrectness. The power to interfere with order of framing charge is to be exercised very sparingly. In **Amit Kapoor Vs. Ramesh Chander (2012) 9 SCC 480**, Hon'ble Supreme Court in para (12) and (13) held thus:

> 12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an

> interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Cr. P. C.

Question No.(III)

21) The issue raised by Mr. Sethi, learned senior counsel appearing for the accused, is no longer *res integra*. The issue has come up for consideration before the Hon'ble Supreme Court on more than one occasion and each time Supreme Court has held that Section 304-B and Section 306 IPC are not mutually exclusive and if the material is sufficient, the charges can be framed both under Section 304-B and 306 IPC. In the case of **Bhupendra v. State of Madhya Pradesh, (2014) 2 SCC 106,** the question before the Supreme Court was whether the accused had been rightly convicted by the Additional Sessions Judge, Morena, Madhya Pradesh for offences punishable under Section498-A, 304-B and 306 IPC. It may be pointed out that in the instant case we are, however, dealing with Section 498-A, 304-B and 306 of RPC which, in all material particulars, are in *pari materia*. The Apex Court, after discussing at some length the ingredients of Section 498-A, 304-B and 306 IPC, held that Section 306 IPC is wide enough to take care of an offence under Section 304-B also and that these two Sections are not mutually exclusive. If a conviction for causing suicide is based on Section 304-B IPC, it will necessarily attract Section 306 of the IPC, though the converse may not be true. The Hon'ble Supreme Court placed

strong reliance upon its earlier judgment rendered in the case of **Satvir Singh and others v. State of Punjab and another, (2001) 8 SCC 633.** In the case of **Satvir Singh** (supra), the Hon'ble Supreme Court, in para 17, has held thus:

> "17. No doubt Section 306 IPC read with Section 113A of the Evidence Act is wide enough to take care of an offence under Section 304B also. But the latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even upto imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113A of the Evidence Act) and made a separate offence."

22) Taking note of the aforesaid observations of the Supreme Court in the case of **Satvir Singh** (supra), the position of law on the point was re-stated in para 35 of the judgment of **Bhupendra** (supra), which, for facility of reference, is also reproduced as under:

> "35. We are, therefore, of the opinion that Section 306 of the IPC is much broader in its application and takes within its fold one aspect of Section 304-B of the IPC. These two Sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304-B of the IPC, it will necessarily attract Section 306 of the IPC. However, the converse is not true."

23) The Supreme Court in its recent judgment rendered in the case of **Bhagwanrao Mahadeo Patil v. Appa Ramchandra Savkar & Ors. (**Criminal Appeal No.601 of 2021 decided on 14th July, 2021), has reiterated the aforesaid position of law. It may be interesting to note that

in the aforesaid case, the accused was charged for offences under Section 306 and 304-B IPC. The accused filed an application for discharge before the trial court which was rejected on the ground that on the basis of statements of the witnesses and the suicide note, prima facie, there was sufficient material to frame charges against the accused. This order was challenged by the accused before the High Court by way of a criminal revision petition. The High Court partly allowed the revision petition and discharged the accused of the offence under Section 306 IPC. Before the Supreme Court, the aggrieved party contended that once the charge under Section 304-B IPC had been framed, the charge under Section 306 IPC could not have been dropped. Reliance was placed on the judgment of **Bhupendra vs. State of Madhya Pradesh, (2014) 2 SCC 106.** The Hon'ble Supreme Court relying upon the judgment of **Bhupendra** (supra), held that once the accused had been charged under Section 304-B IPC, there was no justification to discharge the accused of the offence under Section 306 IPC.

24) In view of the settled legal position, it is no more available to the accused/petitioners herein to contend that they cannot be charged for the offences under Section 306 and 304-B RPC together on the ground that these two offences are mutually exclusive. The opinion of the Hon'ble Supreme Court is otherwise.

Question No.(IV)

25) For determining this question, I have gone through the evidence on record. The trial court has also, to some extent, discussed the

statements of some relevant witnesses. It has amply come on record in the shape of statements of prosecution witnesses that right from solemnization of marriage of the deceased with accused Santosh Kumar, the accused had been harassing the deceased for not brining enough dowry. There were persistent demands for getting car or motorcycle from her parents. It has also come in the statements of witnesses that a few days before the occurrence, there was marriage of the brother of the deceased and despite repeated requests made by her parents, the deceased was not allowed to attend the marriage. Most of the witnesses in their statements have consistently stated that the deceased whenever she would visit her parental home, she used to narrate her tale of woe to her mother, father, brother and other relatives. She was always reluctant to go back to her in-laws fearing that they would make her life hell. It has come in the statement of father and mother of the deceased that they would persuade their daughter to go back to her matrimonial home with the hope that the position might change with the passage of time. They have very categorically narrated that a few days back when there was marriage of their son, they invited the deceased and her husband to attend the marriage but they refused to send the deceased to attend the marriage of her real brother. It is true that in the statement of one of the witnesses it has come that the deceased eventually attended the marriage. It is this contradiction which was tried to be exploited by the learned senior counsel appearing for the accused to persuade this Court to hold that there was no instance of any cruel treatment or harassment with regard to demand of dowry soon before the death of the deceased.

26) Having regard to the facts and circumstances of the case which have come to fore on the sifting of evidence on record, his Court has no doubt in the mind that not only the offence under Section 304-B RPC is made out but the offences under Section 306 and 498-A RPC too are clearly made out against the accused. The argument of learned senior counsel appearing for the accused that offence under Section 304-B RPC cannot be said to have been made out unless it is demonstratively shown that soon before the death, the deceased was subjected to cruelty or harassment at the hands of her husband or relatives of her husband, is without any substance. The expression "soon before" cannot be narrowly construed, as is argued by learned senior counsel. "Soon before" does not mean and should not be construed to mean "immediately before". It depends on the facts and circumstances of each case and no straightjacket formula in this regard can be laid down. In the instant case the evidence on record clearly points towards constant harassment of the deceased on account of dowry demand. It started from the year of her marriage i.e. 2012 and ended with the unfortunate death of the deceased. As has clearly come in the challan, only a few days before the death of the deceased, she was prevented by her husband and his other relatives from attending the marriage of her only brother. The marriage of the brother of the deceased took place somewhere in the month of September whereas the deceased committed suicide on 30th of October, 2014. In these facts and circumstances emerging from the evidence, it is a foregone conclusion that there is enough evidence on record to demonstrate that soon before her death, the deceased was subjected to

cruelty and harassment by her husband and his relatives and, therefore, proximate link between the cause and effect is established. From the evidence, it can be, prima facie, seen that the death of the deceased by suicide was a proximate result of the constant harassment meted out to her all along. The legal position in this regard is well settled. The expression "soon before death", as stated above, has to be analyzed depending upon facts and circumstances leading to the death of the victim and then to decide as to whether there is any proximate link between demand of dowry and act of cruelty and harassment and death. No specific time limit in this regard can be laid down. It is a relative term to be considered under specific circumstances of each case. However, "soon before" cannot be considered synonymous with "immediately before". The observations made by the Supreme Court in the case of **Gurdeep Singh v. State of Punjab and Ors., (2011) 12 SCC 408**, are relevant in the context of the issue and are thus reproduced hereunder:

> "Indisputably, in order to attract Section 304B, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased `soon before her death'. There cannot be any doubt or dispute that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fixed period can be indicated therefor. It, however, must undergo the test known as `proximity test'. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim."

27) In the later judgment of **Satbir Singh and another v. State of Haryana, (2021) 6 SCC 1,** the term "soon before" occurring in Section 304-B IPC has been interpreted yet again. What is held by Supreme

Court with regard to the issue in question is contained in paras 9 to 17 of the judgment and the same are reproduced hereunder:

> "9. The first contentious part that exists in the interpretation of Section 304B, IPC relates to the phrase "soon before" used in the Section. Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities. [refer *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company, , State of Gujarat v. Mansukhbhai Kanjibhai Shah,*]. At this juncture, it is therefore necessary to undertake a study of the legislative history of this Section, in order to determine the intention of the legislature behind the inclusion of Section 304B, IPC.
>
> 10. Section 304B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a long-standing social evil. The pestiferous nature of dowry harassment, wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unnoticed. The Parliament enacted the Dowry Prohibition Act, 1961 as a first step to eradicate this social evil. Further, as the measures were found to be insufficient, the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) was passed wherein Chapter XXA was introduced in the IPC, containing Section 498A.
>
> 11. However, despite the above measures, the issue of dowry harassment was still prevalent. Additionally, there was a growing trend of deaths of young brides in suspicious circumstances following demands of dowry. The need for a stringent law to curb dowry deaths was suo motu taken up by the Law Commission in its 91st Law Commission Report. The Law Commission recognized that the IPC, as it existed at that relevant time, was insufficient to tackle the issue of dowry deaths due to the nature and modus of the crime. They observed as under:
>
> > "1.3 If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. IN practice, however, two main impediments arise
> >
> > (i) either the facts do not fully fit into the pigeonhole of any known offence; or

(ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult."

(emphasis supplied)

12. Taking into consideration the aforesaid Law Commission Report, and the continuing issues relating to dowry related offences, the Parliament introduced amendments to the Dowry Prohibition Act, as well as the IPC by enacting Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). By way of this amendment, Section 304B, IPC was specifically introduced in the IPC, as a stringent provision to curb the menace of dowry death in India.

13.Shrimati Margaret Alva, who presented the Amendment Bill before Rajya Sabha observed as follows:

"This is a social evil and social legislation, as I said cannot correct everything. We are trying to see how and where we can make it a little more difficult and therefore we have increased the punishment. We have also provided for certain presumptions because upto now one of our main problem has been the question of evidence. Because the bride is generally burnt or the wife is burnt behind closed doors in her inlaw's home. You have never really heard of a girl being burnt while cooking in her mother's house or her husband's house. It is always in the mother in law's house that she catches fire and is burnt in the kitchen. Therefore, getting evidence immediately becomes a great bit problem. Therefore, we have brought in a couple of amendments which give certain presumptions where the burden of proof shifts to the husband and to his people to show that it was not a dowry death or that it was not deliberately done."

(emphasis supplied)

14. There is no denying that such social evil is persisting even today. A study titled "Global study on Homicide: Gender - related killing of women and girls", published by the United Nations Office on Drugs and Crime, highlighted that in 2018 female dowry deaths account for 40 to 50 percent of all female homicides recorded annually in India. The dismal truth is that from the period 1999 to 2016, these figures have remained constant. In fact, the latest data furnished by the National Crime Records Bureau indicates that in 2019 itself, 7115 cases were registered under Section 304B, IPC alone.

15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is

> quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase "soon before" entails.
>
> 16. The aforesaid position was emphasized by this Court, in the case of Kans Raj v. State of Punjab, (2000) 5 SCC 207, wherein the three Judge Bench held that:
>
> > *"15. ... "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit....In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. .... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."*
> >
> > (emphasis supplied)
>
> A similar view was taken by this Court in Rajinder Singh v. State of Punjab.
>
> 17. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term "soon before". What is pivotal to the above determination, is the establishment of a "proximate and live link" between the cruelty and the consequential death of the victim."
>
> *(underlining by me)*

28) In view of clear dictum laid down by the Supreme Court, when the evidence on record is analyzed in the context of legal position discussed above, it is abundantly clear that there is sufficient evidence on record to, prima facie, hold that soon before death, the deceased was subjected to harassment on account of dowry demand by the accused.

29) The other argument raised by Mr. Sethi, learned senior counsel that suicidal death does not fall within the ambit of Section 304-B RPC

as the same is separately dealt with in Section 306 RPC, is also without any substance and is no longer *res integra*. In the case of **Satbir Singh** (supra) followed by the judgment of the Supreme Court in the case of **Bhupendra**, it is now beyond any pale of discussion that suicide is one of the modes of death falling within the ambit of Section 304-B IPC. The expression "otherwise than under normal circumstances" would comprehend within its sweep, the death caused by burns or bodily injury or even the suicidal death.

CONCLUSION:

30) In view of the foregoing discussion, I do not find any illegality or infirmity in the order impugned, as a result whereof, this revision petition is found to be without any merit and is, accordingly, dismissed along with connected applications. It is, however, made clear that the observations made hereinabove are merely for considering the sustainability and validity of the impugned order and shall not be taken as final expression of opinion on the merits of the case.

31) Copy of this order be sent to the learned trial court for information.

(Sanjeev Kumar)
Judge

Jammu
20.12.2021
"Vinod, PS"

Whether the order is speaking: ***Yes/No***
Whether the order is reportable: ***Yes/No***