

THE STATE OF MADHYA PRADESH

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v.

DEEPAK

(Criminal Appeal No. 485 of 2019)

MARCH 13, 2019

[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]

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Code of Criminal Procedure, 1973:

s.397 r/w s.401 – Revisional jurisdiction – Exercise of, scope – Discussed – In the instant case, the prosecution case was that the victim-deceased and the respondent were employees in the Central Bank – The deceased was subjected to harassment by the respondent which led to her committing suicide by consuming poison – Charges were framed against the respondent under s.306 IPC and s.3(2)(v) of SC & ST Act by the Special Judge – High Court discharged the respondent from charges on the ground that there was no evidence with regard to provocation, incitement or encouragement which led to commission of suicide by the deceased – On State's appeal, held: High Court evidently ignored what had emerged during the course of the investigation – The material indicated that several complaints were filed by the deceased alleging harassment caused to her by the respondent – The last of them was filed a few days before she committed suicide – It was alleged that the respondent had taken a loan of Rs 5 lakhs through fraudulent means in the name of the deceased and an altercation took place between him and the deceased in that regard – Moreover, the respondent was alleged to have got the deceased evicted from a rented house as well as terminated her from employment at Central Bank – There was a dying declaration also to that effect – Sufficient material was on record to uphold the order framing charges by the Special Judge – Therefore, discharge of the accused was not justified – High Court's order set aside – Penal Code, 1860 – s.306 – The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Acts, 1989 – s.3(2)(v).

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Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460 :

[2012] 7 SCR 988; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198 : [2017] 2 SCR 491; Chitresh Kumar Chopra v. State (NCT) of Delhi (2009) 16 SCC 605 : [2009] 13 SCR 230; Rajbir Singh v. State of U P (2006) 4 SCC 51 : [2006] 2 SCR 1134 – relied on.

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Case Law Reference

[2012] 7 SCR 988	relied on	Para 11
[2017] 2 SCR 491	relied on	Para 12
[2009] 13 SCR 230	relied on	Para 14
B [2006] 2 SCR 1134	relied on	Para 15

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 485 of 2019.

C From the Judgment and Order dated 31.01.2018 of the High Court of M.P., Bench at Indore in CRR No. 458 of 2018.

Vaibhav Srivastava, Praduman K., H. Parashar and Rahul Kaushik, Advs. for the Appellant.

Shivam Sharma, Ms. Meghna Mittal, R. K. Yadav and Raj Kishor Choudhary, Advs. for the Respondent.

D The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

E 2. The present appeal arises from a judgment dated 31 January, 2018 of a learned Single Judge of the Indore Bench of the High Court of Madhya Pradesh¹ discharging the Respondent from charges framed by the Special Judge, Neemuch. The Special Judge, Neemuch had by an order dated 13.10.17 in Special Case No. 51 of 2017 framed charges against the respondent under Section 306 of the Indian Penal Code,

F 1860² and Section 3(2)(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

G 3. In pursuance of the notice issued by this Court on 19 November, 2018, the respondent has entered appearance through learned counsel. We have heard the Deputy Advocate General for the State of Madhya Pradesh and learned counsel for the respondent.

H 4. On 9 August 2017, Jyoti Sharma committed suicide by consuming poison at her residence at Neemuch. Immediately after she consumed poison, she was moved to the District hospital for treatment. The dying

¹In Criminal Revision No. 458 of 2018

²"Penal Code"

declaration of the victim was recorded on 9 August 2017 in the presence A
of the Naib Tehsildar, Neemuch. The relevant part of the dying
declaration is extracted below:

“Question: What has happened to you?

Answer: I have consumed poison.

Question: Why you have consumed poison? B

Answer: I am not able to get the job, wherever I go, Deepak Bhamawat R/o Jeeran, get me sacked out from the job. Earlier he had molested me, on which, I had instituted a case against him, since then, he is harassing me. C

Question: Whether you want to say anything else?

Answer: No.”

5. Jyoti Sharma died on 10 August 2017 at a hospital in Udaipur where she was admitted for treatment. The First Information Report³ D was registered on 16 August 2017. During the course of the investigation, the respondent was arrested on 6 September 2017. On the completion of the investigation, the investigating officer submitted a charge-sheet on 22 September 2017 under Section 306 of the Penal Code and Section 3(2)(v) and Section 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act before the Special Judge, Neemuch. E Cognizance was taken on 13 October 2017. Charges were framed on 10 January 2018. Challenging the order framing charges, a Criminal Revision was filed before the High Court.

6. The Single Judge, by the order impugned in these proceedings, set aside the order of the trial judge and directed that the respondent be discharged. F

7. The Deputy Advocate General has adverted to the charge-sheet which has been submitted after the investigation was completed. Learned counsel submitted that there is a dying declaration of the victim which was recorded on 9 August 2017. It was urged that the investigation G has disclosed that the respondent and the deceased were employees in the Central Bank. The respondent had obtained a loan in the name of the deceased, allegedly after forging her signature. The loan was not paid, as a result of which on 3 August, 2017, Central Bank issued a

³“FIR”

- A notice to the deceased for the repayment of the loan. During the course of the investigation, the investigating agency found that three complaints were submitted by the victim: on 1 November 2016 to the Station House Officer, P.S. Jeeran; in December 2016 at P.S. Jeeran and another on 6 January 2017 to the Collector, Neemuch making specific allegations that the respondent was harassing her. The respondent is alleged to have caused the deceased to be terminated from employment and also allegedly caused her landlord to oust her from possession. On this material, which has emerged in the course of the investigation, it is urged that the case for discharge was not made out.

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- C 8. On the other hand, learned counsel appearing on behalf of the respondent placed reliance on the fact that in the FIR all that has been adverted to is that the respondent had got the deceased terminated from her job in the Central Bank and thereby harassed her and tortured her as a woman belonging to a Scheduled Caste for depositing the installments of the loan. Learned counsel submitted that on the contents of the FIR,
- D the High Court was justified in coming to the conclusion that there was no provocation, inducement or incitement that would fall within the description of ‘abetment’ to sustain a charge under Section 306 of the Penal Code.

- E 9. The only circumstance which has weighed with the High Court in passing the impugned order is what has been stated in the following extract:

- F “11. Merely the deceased was failing to get any job and she is under impression that the petitioner is creating burden and hence she did not get any new job. He never intended that deceased should commit suicide.”

The High Court held thus:

- G “16 ...in the facts and circumstances of the present case, there is no evidence with regard to provocation, incitement or encouragement for commitment of suicide by the deceased...”

- H 10. We shall now examine whether the High Court has correctly exercised its revisional jurisdiction under Section 397 read with 401 of the Code of Criminal Procedure, 1973⁴ in discharging the respondent of the charges framed by the Special Judge, Neemuch.

H ⁴“Procedure Code”

11. In **Amit Kapoor v Ramesh Chander**⁵, a two-judge bench of this Court elucidated on the revisional power of the Court under Section 397. Justice Swatanter Kumar noted 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 scrutinise 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.

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 afore-stated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

The Court also enunciated a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provision:

“**27.** ... At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with

⁵(2012) 9 SCC 460

- A regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:
 - 27.2. The Court should apply the test as to whether the uncontested allegations as made from the record of the case and the documents submitted therewith **prima facie** establish the offence or not. **If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.**
 - 27.3. **The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.**
 - 27.4. **Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.**
 - 27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
- G **27.13. Quashing of a charge is an exception to the rule of continuous prosecution.** Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.”

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(Emphasis supplied)

12. In **State of Rajasthan v Fatehkaran Mehdū**⁶, a two-judge bench of this Court has elucidated on the scope of the interference permissible under Section 397 with regard to the framing of a charge. Justice Ashok Bhushan held thus:

“**26.** The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. **At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.** Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.”

(Emphasis supplied)

13. In view of the above decisions of this Court, we shall now determine whether the High Court has correctly exercised its revisional jurisdiction. The High Court had held that the lower court had erred in framing charges in the present case as there was no evidence with regard to provocation, incitement or encouragement which would lead to the commission of suicide by the deceased.

14. It is of relevance to refer to certain judgements of this Court. In **Chitresh Kumar Chopra v. State (NCT of Delhi)**⁷, the appellant and two other individuals were charged under Section 306 read with Section 34 of the Penal Code. It had been alleged that the appellant and the other accused persons had forcibly compelled the deceased to sign a settlement giving up a part of his share in the profits from the sale of certain land. This led to a dispute and as a result of the mental harassment suffered by the deceased, he committed suicide. The Court affirmed the framing of charges by the trial court. The two-judge Bench of this Court laid down the ingredients of the offence of abetment of suicide. Justice D K Jain held thus:

⁶(2017) 3 SCC 198

⁷(2009) 16 SCC 605

- A “**19.** As observed in *Ramesh Kumar* [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , **where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred.** In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

 - B (i) the accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful omission or conduct to make the deceased move forward more quickly in a forward direction; and
 - C (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.”

(Emphasis supplied)

After due consideration of the facts and circumstances, the Court noted that *prima facie*, the offence of abetment of suicide was made out:

- E “**22.** In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. ***Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and therefore, clause Firstly of Section 107 IPC was attracted.***”

(Emphasis supplied)

- G It was also noted that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that the accused had committed the offence:

 - H “**25.** It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their

face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

15. A two-judge Bench of this Court, in **Rajbir Singh v State of U P⁸** noted that in accordance with Section 227, the High Court must ascertain whether there is “sufficient ground for proceeding against the accused” or there is ground for “presuming” that the offence has been committed. Justice G P Mathur held thus:

“9. In *Stree Atyachar Virodh Parishad v. Dilip Nathumal Chordia*, the Court while examining the scope of Section 227 held as under:

“... Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that ‘the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused’. The ‘ground’ in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime.”

10. The High Court did not at all apply the relevant test, namely, whether there is sufficient ground for proceeding against the accused or whether there is ground for presuming that the accused has committed an offence. If the answer is in the affirmative an order of discharge cannot be passed and the accused has to face the trial. The High Court after merely observing that “as the firing was aimed at the other persons and accidentally the deceased Pooja Balmiki was

⁸(2006) 4 SCC 51

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- A passing through that way and she was hit" and further observing that "the applicant neither intended to kill the deceased nor was she aimed at because of the reason that she was a Scheduled Caste" set aside the order by which the charges had been framed against Respondent 2. There can be no manner of doubt that the provisions of Section 301 IPC have been completely ignored and the relevant criteria for judging the validity of the order passed by the learned Special Judge directing framing of charges have not been applied. The impugned order is, therefore, clearly erroneous in law and is liable to be set aside."
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- C (Emphasis supplied)
- D 16. In the present case, there is sufficient material on record to uphold the order framing charges of the Trial Court. The discharge of the accused was not justified. The High Court has evidently ignored what has emerged during the course of the investigation. The material indicates that several complaints were filed by the deceased. The last of them was filed a few days before the suicide. It is alleged that the respondent had taken a loan of Rs 5 lakhs through fraudulent means in the name of the deceased and an altercation took place between him and the deceased in that regard. Moreover, the respondent is alleged to have got the deceased evicted from a rented house as well as terminated from her employment at Central Bank. There is a dying declaration.
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17. We, however, clarify that this judgment shall not affect the merits of the trial.

18. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 31 January 2018.

Devika Gujral

Appeal allowed.