

**(Mahendra Singh vs. State of M.P.)****10.1.2017**

None for the applicant.

Shri R.D. Agrawal, Panel Lawyer for the respondent/State.

Case diary is available.

This petition under Section 482 of Cr.P.C. has been filed for quashing the FIR in Crime No.392/2014 registered by Police Station Murar, District Gwalior for offences punishable under Sections 306, 498-A of IPC.

The State counsel is heard and perused the case diary.

From the perusal of the case diary it is apparent that a written complaint was made by Rajesh Singh to the SHO, Police Station Gormi, District Bhind on 11.4.2014 alleging that his cousin sister Meena was married to Sunil Singh and who was residing along with her children in Kashipura, Gwalior. Today at 2:30 in the night an information was received that Meena has committed suicide by hanging. After receiving the information they reached to Kutroli because these persons with an intention to perform the last rites of the dead body had brought the dead body to Kutroli and the dead body is kept in the matrimonial house of Meena. On the complaint made by the complainant Rajesh, inquest report was prepared. Postmortem of the dead body was done. As the incident was alleged to have been taken place within the jurisdiction of Police Station Murar, therefore, the file was sent to the said Police Station. The statements of the witnesses were recorded and subsequently a FIR was registered on 29.4.2014 against the applicant and co-accused persons for offences punishable under Sections 306, 498-A, 34 of IPC.

Durgapal Singh Rajawat in his statement has stated that on 12.6.2006 his daughter Meena was married to Sunil Tomar. He had given the dowry as per his financial condition. After sometime of marriage, his son-in-law Sunil started harassing his daughter and started demanding a motorcycle whereas at the time of marriage it was not settled that the motorcycle will be given in dowry. The father-in-law of the girl Shambhu Singh, elder brother-in-law Anil Singh and uncle-in-law (फूफा ससुर) the applicant and one relative Tinku @ Tunda were instigating his son-in-law Sunil to harass his daughter for demand of motorcycle. Whenever the elder brother-in-law came on leave he also instigated Sunil to harass his daughter Meena. Two children were born out of the wedlock. This witness along with his relatives had tried to convince his son-in-law Sunil and Shambhu Singh that they should not harass his daughter Meena for demand of motorcycle as he is still required to marry his another daughter. Whenever, they went to the matrimonial house of his daughter Meena or whenever Meena had come to her parents house, she used to tell that she is being harassed by her in-laws and by the applicant for the demand of motorcycle. On one day, his daughter Meena came along with his son-in-law Sunil and Sunil threatened this witness that in case the motorcycle is not arranged then he would not be able to see his daughter. The house of his younger brother Brijpal Singh is situated in Kalipura, Murar in which for the last two years his daughter, son-in-law Sunil are residing along with their children. On the first day of the last month, his daughter Meena had informed him on telephone that he should come immediately to Gwalior at her in-laws house because the

applicant and her in-laws are harassing her, otherwise they would kill her. Thereafter, this witness along with his wife and daughter Lovely went to Gwalior where they met with the in-laws of his daughter along with the applicant and objected that they should not harass his daughter, on that issue all the persons including the applicant started quarreling with this witness. The daughter Meena was crying and was saying that he should give a motorcycle, otherwise she will be killed. After coming back to Bhind he gave an application to Superintendent of Police, Bhind. In the morning of 17.4.2014 some body called his nephew Lokendra on telephone that Meena has expired and for performing her last rites, her dead body has been taken to some other place. Information was given to the Superintendent of Police, Bhind and the cremation of Meena was stopped. They went to the matrimonial house of Meena where dead body of Meena was lying and a complaint was made at Police Station Gormi, District Bhind where the postmortem was got done by the police. This witness further stated that it appears that because of non-fulfillment of demand of motorcycle his daughter has been killed by her in-laws and by the applicant.

The statements of all the witnesses including namely Lokendra Singh, Smt. Shivvati Devi, Ku. Lovely, Munendra Singh, Brijpal Singh are more or less in the same lines. Thus, from the evidence which has come on record, it is clear that the applicant is distantly relative to the co-accused Shambhu Singh. As per the arrest memo, Shambhu Singh is resident of Kutroli, Police Station Gormi, District Bhind whereas the applicant is resident of Village Sherpur, P.S. Joura, District Morena. Thus, it is clear that the

applicant is residing separately from the co-accused persons. Further the deceased was residing at Gwalior separately along with her husband and children. From the allegations made in the statements of the witnesses, it is clear that the applicant has been implicated because he is the husband of sister of Shambhu Singh uncle-in-law (फूफा ससुर) in which vague and omnibus allegation have been made against the present applicant. No specific allegation or overt act is alleged against the present applicant.

The Supreme Court in the case of **Kans Raj Vs. State of Punjab & Ors.** reported in **AIR 2000 SC 2324** has held as under:-

"5. We agree with the learned counsel for the respondents 3 to 5 that his clients, namely, Ramesh Kumar, brother of the husband, Ram Pyari, mother of the husband and Bharti sister-in-law of the husband-accused cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the appellant worth the name against the aforesaid respondents. Even PW Nos.5 and 6 have not brought on record any incriminating circumstance attributable to the aforesaid accused which could be made the basis for their conviction. Ram Kishan, PW-5 in his deposition before the Court had stated that "after the marriage Rakesh Kumar, accused raised a demand of Rs.15,000/- for a scooter and refrigerator. We fulfilled that demand by giving Rs.20,000/- to him for scooter and refrigerator..... Rakesh Kumar used to threaten Sunita that she would be done to death because of having inadequate dowry. On 21st September, 1988 Sunita had come to

my younger brother Tarsem in connection with a ceremony concerning his son. She also visited us as the house of Tarsem Kumar is close to our house. She stayed with us for the night. We gave her customary present i.e. clothes etc. and cash amount of Rs.500/-. She apprehended danger to her life in the house of her in-laws and was not willing to go there". He has not referred to any demand of dowry or harassment by the respondents except Rakesh Kumar. Tarsem Kumar, the other brother of the deceased at whose residence she had gone on 21st September, 1988 has not been produced as a witness in the case. Kans Raj PW6, the father of the deceased stated before the Trial Court that Sunit Kumari had told him that she was being taunted by her mother-in-law Ram Piari, accused Ramesh Chander and his wife Bharti accused besides her husband Rakesh Kumar. The details of the alleged taunting have not been spelt out. The only thing stated is that the accused used to tell the deceased that she being the daughter of BJP leader, who used to boast about his financial position had brought inadequate dowry. He further stated that various sums of money and the colour TV was given to Rakesh Kumar on his demand. Amar Nath and Janak Raj, President and General Secretary of Mahajan Sabha respectively and one Kundan Lal Gaba were taken by him to the residence of the accused persons. The deceased was alleged to have been taunted again in presence of the aforesaid witnesses. However, none of the aforesaid witnesses supported the case of the prosecution. In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that respondents 3 to 5 were roped in the case only on the

ground of being close relations of respondent No.2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The Supreme Court in the case of **Monju Roy & Ors. vs. State of West Bengal** reported in (2015) 13 SCC 693 has held as under:-

"8. While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfilment of dowry demand, we do find merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out. In *Kans Raj* (2000) 5 SCC 207, this Court observed: (SCC p.215, para 5)

"5. .... A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in the absence of any specific role and material to support such role.

11. The court has to adopt a pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against the brothers and sisters and other relatives do not stand on the same footing as husband and parents. In such case, apart from general allegation of demand of dowry, the court has to be satisfied that harassment was also caused by all the named members."

The Supreme Court in the case of **Geeta Mehrotra & Anr. vs. State of U.P. & Ors.** reported in **(2012) 10 SCC 741** has held as under:-

"17. Aggrieved by the order of the Madras High Court dismissing the petition under Section 482 Cr.P.C., the special leave petition was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz.: (Ramesh case (2005) 3 SCC 507, para 4)

"(i) that the allegations are frivolous and without any basis;

(ii) even according to the FIR, no incriminating acts were done within the jurisdiction of Trichy Police Station and the Court at Trichy and, therefore, the learned Magistrate lacked territorial jurisdiction to take cognizance of the offence and

(iii) taking cognizance of the alleged offences at [that] stage [was] barred under Section 468(1) Cr.P.C. as it was beyond the period of limitation prescribed under Section 468(2) Cr.P.C." Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

18. Their Lordships of the Supreme Court in Ramesh Case had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the



contents of the charge sheet, none of the alleged offences under Sections 498-A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed."

Thus, it is clear that merely bald allegations have been made against the relative of the husband without there being any specific overt act on their part and sending those persons to the ordeal of trial will not be proper. If the allegations made by the witnesses are considered in proper perspective, then it would be clear that the present applicant has been implicated only because he happens to be the distant relative of Sunil, the husband of the deceased. The applicant is resident of District Morena, whereas according to the prosecution witnesses themselves, the deceased was residing separately along with her husband and children in Gwalior. The co-accused persons i.e. the in-laws of the deceased are residents of District Bhind. There is no allegation that the deceased was residing jointly with the accused persons. When it is the case of the prosecution witnesses itself that the deceased was residing separately along with her husband and children in Gwalior then in such a situation the witnesses should have specifically

clarified that on what date and at which place and in what manner, the accused/applicant had harassed the deceased. Under these circumstances, this Court is of the considered view that it is a fit case where in exercise of powers under Section 482 of Cr.P.C., the FIR and the consequential proceedings qua the applicant are liable to be quashed.

Considering the facts and circumstances of the case, this petition is allowed. The FIR registered against the present applicant and all other consequential proceedings undertaken against the applicant are hereby quashed.

The petition succeeds and is hereby allowed.

**(G.S. Ahluwalia)**  
**Judge**

(alok)