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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 20th OF MARCH, 2024

CRIMINAL REVISION No. 5552 of 2019

BETWEEN:-

1. **GANESH S/O UMRAO SINGH, AGED ABOUT 23 YEARS, GRAM KANANRDI TEH. TARANA, DISTRICT-UJJAIN (MADHYA PRADESH)**
2. **RAMKANIYA W/O UMARAO SINGH, AGED ABOUT 54 YEARS, GRAM KANANRDI TEH. TARANA, DISTRICT-UJJAIN (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI JITENDRA SHARMA, ADVOCATE.)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THR.PS. TARANA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI D.G. MISHRA, GOVT. ADVOCATE.)

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This revision coming on for orders this day, the court passed the following:

ORDER

This criminal revision u/S 397 of Cr.P.C. filed by petitioners/ accused persons against the order dated 11/10/2019, passed by A.S.J., Tarana, Ujjain in S.T. no.152/19, whereby the learned trial court has framed charge u/S 306 r/w 34 of I.P.C.

2. Prosecution story, in brief is that marriage of the deceased Parvati Bai was solemnized with the petitioner no.1/ accused Ganesh, six years before the incident. After marriage, the deceased used to live in her matrimonial house

alongwith the petitioners and used to go to maternal house sometimes. No child was born from the wedlock of the deceased and petitioner Ganesh. Accused persons used to taunt her for the same and used to physically and mentally assault her. Accused persons had also got Tantrik Kriya done. The petitioners used to tell her that she is infertile and cannot give birth to a child, if she had died, Ganesh could marry someone else. Deceased had told her parents that she is really bothered by the petitioners and if the same continued, she will die. Parents of the deceased used to exhort her and send back to her matrimonial house. Around one month before the incident, when the deceased was at her maternal house, then too she had complained against the same for the last time. Again after being exhorted by her family members she had went back to her matrimonial house with her maternal uncle. On 08/01/2019 the deceased being abetted by the acts of the petitioners/ accused persons had tried to commit suicide by burning herself by kerosene lamp/ Dhibri. Thereafter, she was taken to district hospital, Shajapur by her in-laws. On the same day at 08:15 PM Naib Tehsildar had recorded dying declaration of the deceased. Accused Ram Kanyabai at 10:00 PM had called the parents of the deceased and had told them that the deceased got burnt by kerosene lamp/ Dhibri. On the next day, parents of the deceased had gone to district hospital, Shajapur to check her. They found that she was not able to speak properly. But she had told them that the accused persons have harassed her a lot. Thereafter, she was referred to MY Hospital, Indore for better treatment. On 24/01/2019 the deceased died while being treated. It is also alleged that the petitioners/ accused persons by intimidating the deceased have gotten her statement (dying declaration) recorded in their favour in absence of her parents at district hospital, Shajapur.

3. After death of the deceased Marg intimation was registered on the

same day i.e. 24/01/2019. During Marg inquiry, dead body of the deceased was sent for post-mortem. As per post-mortem report, the cause of death was cardiorespiratory failure due to ante-mortem burns and its complications. Marg statement of the parents were recorded. After completion of Marg inquiry, an FIR was lodged on 17/04/2019 against the petitioners.

4. Learned trial court after hearing both the parties, framed charge against the petitioners as stated above.

5. Learned counsel for the petitioners submits that, the petitioners are innocent, have not committed the offence and have falsely been implicated in the offence. He further submitted that, even if the allegations levelled against them are considered to be true, then too ingredients of abetment are not present as provided u/S 107 of IPC. Therefore, no offence u/S 306 of IPC is made out against the petitioners. Initial statement, i.e. during Marg inquiry, of the prosecution witnesses was in favour of the petitioners but same was changed in latter statement i.e. statement recorded u/S 161 of Cr.P.C. Therefore, statement of prosecution witnesses are not reliable. The petitioner have not abetted the deceased in any manner to commit suicide but the learned trial court has not considered the statement of prosecution witnesses properly. There is no material to frame alleged charge against the applicant. The learned trial court has committed error by framing charges against the petitioners. Hence, the impugned order is liable to be set aside.

6. On other hand learned counsel for the respondent/State has opposed the prayer and submitted that there are sufficient material available on record to frame alleged charge against the petitioners. Therefore, the learned trial court has rightly framed charge against them hence, revision petition is liable to be

rejected.

7. Heard learned counsel for both the parties and perused the records.

8. Hon'ble Supreme Court in the case of **Ghulam Hassan Beigh Versus Mohammad Maqbool Magrey & Ors. [2022 LiveLaw (SC) 631]**

has held as under:-

“21. This 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 an exhaustive survey of the case law on the point, this 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.

(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.

(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.

(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.”

9. In the case of **State of Gujarat Vs. Dilipsinh Kishorsinh Rao [Criminal Appeal No.2504 Of 2023]**, the Apex Court has opined as under:-

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for

proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which *prima facie* it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.”

10. In the instant case, it appears that the prosecution witnesses supported the case of prosecution in their Marg statement as well as case diary statement recorded u/S 161 of Cr.P.C. Therefore, submission of learned counsel for the petitioners that initial statement of prosecution was in favour of the petitioners, has no stand.

11. It also appears from the statement of the witnesses that the petitioners did not inform about the incident immediately after the incident took place but they informed them after recording of dying declaration of the deceased at around 10:00 PM on 24/01/2019. It also appears from the statement of the parents of the deceased that the petitioners/ accused persons had intimidated the deceased in absence of her parents, before she was about to give her dying declaration, and in result of such intimidation, the deceased had given statement in favour of the petitioners. From the perusal of the statement of prosecution witnesses, it appears that the deceased committed suicide within 7 years of her marriage and after marriage the petitioners being husband and mother-in-law used to keep her in continuous harassment and cruelty, as she was unable to

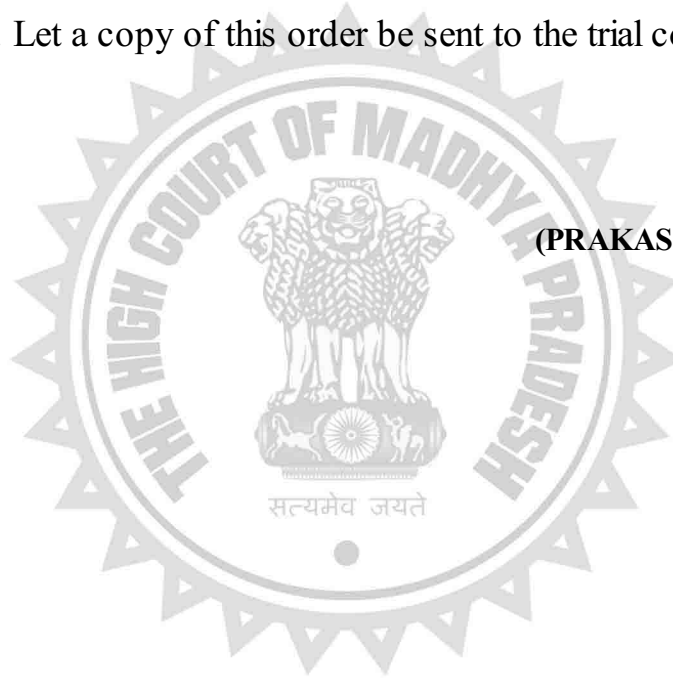
bear a child. Therefore, *prima facie* it appears that the petitioners had abetted the deceased to commit suicide, in result of which she had committed suicide by setting herself on fire.

12. In view of the aforementioned discussion, it is apparent that there are sufficient material to frame charge against the petitioners, hence, the learned trial court has not committed any error by framing alleged charge against the petitioners. This revision petition *sans merits*.

13. Resultantly, the impugned order is hereby affirmed and the revision petition is **dismissed**.

14. Let a copy of this order be sent to the trial court for intimation.

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(PRAKASH CHANDRA GUPTA)
JUDGE