REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2087 OF 2013
[Arising out of S.L.P.(Crl.)No.6067 of 2008]

Sherish Hardenia & Ors. .....Appellants

Versus

State of M.P. & Anr. .....Respondents

WITH

CRIMINAL APPEAL NO. 2088 OF 2013
[Arising out of S.L.P.(Crl.)No.7424 of 2008]

Amrish Hardenia .....Appellant

Versus

State of M.P. .....Respondent

J U D G M E N T

VIKRAMAJIT SEN, J.

1. Leave granted. These appeals assail the Judgment of the learned Single Judge of the High Court of Madhya Pradesh at Jabalpur delivered in Crl. Revision Nos.1400 and 1445 of 2004 passed on 6.5.2008. The learned Single Judge was called upon to decide two

Revision Petitions against the Order dated 26.08.2004 passed by the First Additional Sessions Judge, Bhopal in Sessions Trial No.83 of 2004. Amrish Hardenia, the Petitioner in Cr.R.No.1445/2004 stood charged with offences punishable under Sections 498-A and 306 of the Indian Penal Code (IPC). Four other accused namely, his parents, Shri Lajja Shankar and Smt. Meera, as also his brother and sister-in-law Shri Sherish Hardenia and Smt. Sangeeta have been similarly charged by the prosecution. The First Additional Sessions Judge, however, favoured the view that no case worthy of trial had been made out against the latter four persons, and therefore had discharged them. Proceedings against Amrish Hardenia, husband of late Archana Hardenia had been ordered to continue. In these circumstances, the father of the deceased, Dr. R.K. Sharma had approached the High Court in Criminal Revision No.1400 of 2004 challenging the legal propriety of the said Order of the Sessions Judge discharging his deceased daughter's parents-in-law and borther-in-law and his wife. Amrish Hardenia, widower of the deceased Archana who was the daughter of Dr. R.K. Sharma, had filed Cr.R. No.1445 of 2004 asserting in essence that no case worthy of trial had been disclosed against him either. We must recognise, at the threshold, that the impugned Order manifests a comprehensive marshalling of the facts and of the law applicable to the controversy.

2. Amrish and Archana were married to each other on 19.11.1995, and immediately turmoil in the marriage appears to have started, allegedly owing to dowry demands, the evidence of which is founded on contemporaneous letters written by her to her parents. In those instances where the assertion is that dowry demands had been made as early as within one year of marriage, it would be sanguine and far too optimistic to surmise that such demands would not be reiterated, rearticulated and repeated during the marriage. Of course, a change in the mindset of the husband is theoretically possible and we expect that evidence in this regard would be led to dispel the veracity of the initial demand which has been reduced to an epistolary document and/or its recurrence thereafter. Although it is not an inflexible rule, a demand for dowry made by a husband will invariably be prompted and encouraged by the thinking of his parents. In making these observations we should not be misunderstood to indicate that we have formed an unfavourable opinion as to the culpability of Amrish, his parents Shri Lajja Shanker and Smt. Meera and his brother Sherish. However, Judges cannot be blind to the disgraceful and distressing reality vis-à-vis dowry, which prevails in some sections of our society. What we find extremely disconcerting is that this social malaise is spreading amongst all religious communities. The demand of dowry is a social anathema, which must be dealt with firmly.

3. So far as the prosecution is concerned it was of the opinion that a triable case had been established against Amrish, the husband, both his parents, his brother. The prosecution had made out a case even against his brother's wife who came into the family five years after the performance of the hapless marriage and approximately two years before the tragic suicide of late Archana. At this stage therefore, in discharging all four persons other than the husband/widower Amrish, the Sessions Judge had necessarily to have come to the conclusion that on a perusal of the material before the Court there was no likelihood of a conviction being returned, nay, that not even a prima facie case against them had been disclosed. We need not travel beyond the decisions rendered by this Court in State of Maharashtra v. Somnath Thapa AIR 1996 SC 1744 = (1996) 4 SCC 659; State of Bihar v. Ramesh Singh AIR 1977 SC 2013 = (1977) 4 SCC 39; Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4 and Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia (1989) 1 SCC 715. We also think that the line of decisions including State of Haryana v. Bhajan Lal (1992) Supp. 1 335 as well as Michael Machado v. CBI (2000) 3 SCC 262 and Suman v. State of Rajasthan (2010) 1 SCC 250 = AIR 2010 SC 518 are also apposite in the context of Section 319 of the CrPC. Whether it is quashing of an FIR or a Charge-Sheet, or summoning a party under Section 319, CrPC, this Court has repeatedly opined that

the approach of the Judge must be to consider whether the collected material and evidence is indicative of existence of merely a prima facie case. It is only where there is absence of even a prima facie case that the Judge would be justified in cancelling the FIR, or quashing the Charge-Sheet, or declining the summoning of a third person under Section 319, CrPC. The learned Single Judge, as we have already noticed above, comprehensively and correctly analyzed the case law and appreciated the evidence to come to the conclusion that there was enough material available even at that stage for maintaining the trial, i.e. reversing the view of the Sessions Judge on this score. The Single Judge was correct in maintaining that there was inadequate material in regard to Sangeeta as had been held by the Sessions Judge.

4. An argument has been continuously raised vis-à-vis the passage of seven years before the subject marriage ended with the suicide of Archana. This has rightly been found not to vitiate the trial against any of the persons (except Sangeeta). There can be no gainsaying that no case can possibly be made out under Section 306 read with Section 498-A, IPC after a marriage has crossed the seven years' period; it is only the statutory presumption that stands removed, thereby also shifting the onerous burden from the shoulders of the accused to that of the prosecution.

5. It would be idle and in fact illogical to contend that law expects that on

the first demand of dowry, prosecution under Section 498-A has to be commenced. In the Indian idiom, where it is oftspoken that on her marriage a daughter ceases to be a member of her parents' family and may return to it only as a corpse, the reality is that only when it is obvious that the marriage has become unredeemably unworkable that the wife and her family would initiate proceedings under Section 498-A, IPC. Before that stage is arrived at, the bride endures the ill treatment and taunts knowing that the marriage would be undermined and jeopardized by running to the police station. We must hasten to add that a malpractice is now widely manifesting itself in that lawyers invariably advise immediate commencement of Section 498-A proceedings employing them as a weapon of harassment. Courts however, are aware and alive to this abuse of otherwise salutary statutory provision. Therefore, pleas founded on limitation have to be viewed with great circumspection. In this regard the statement of Ms. Sheetal Bhandari pertaining to conversations held by the deceased Archana in August, 2003 will indubitably be cogitated upon by the Trial Court.

6. In the impugned Order the learned Single Judge has kept in perspective the time endured decision in Sheoprasad Ramjas Agrawal v. Emperor AIR 1938 Nagpur 394 and of this Court in Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra AIR 1972 SC 545 =

(1972) 3 SCC 282 and State of Karnataka v. L. Muniswamy AIR 1977 SC 1489 = (1977) 2 SCC 699 to be satisfied that the material and evidence on record sufficiently support the trial against Amrish, Shri Lajja Shankar, Smt. Meera and Sherish.

7. The learned Single Judge has also rightly supported the decision of the Sessions Judge in holding that the material on record was insufficient to even prima facie indicate the complicity of Sangeeta in the alleged offences of cruelty and abetment of suicide. We entirely agree with the conclusion arrived in the impugned Order to the effect that a prima facie case justifying the trial of the Lajja Shankar, Meera and Sherish have been established and that the Sessions Judge erred in discharging these three persons.

8. Accordingly, the appeals fail and are dismissed being devoid of merits. We would have imposed exemplary costs on the Appellants in these proceedings but for the fact that the impugned Order reverses the order passed by the Sessions Court. In other words if we had been confronted with concurrent findings punitive costs would have followed.

.....J.
[T.S.THAKUR]

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J.
[VIKRAMAJIT SEN]

New Delhi
December 13, 2013.