Allahabad High Court
Brijendra Kumar Misra vs State Of U.P.And 3 Ors. on 31 August, 2018
Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

AFR

Court No. - 29

Case :- CRIMINAL REVISION No. - 254 of 2005

Revisionist :- Brijendra Kumar Misra

Opposite Party :- State Of U.P.And 3 Ors.

Counsel for Revisionist :- Rakesh Kumar Tripathi,Prabhu Ranjan Tripathi

Counsel for Opposite Party :- Govt.Advocate,Sampurnanand,Wasim Ahmad

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Prabhu Ranjan Tripathi, learned counsel for the revisionist, Sri Wasim Ahmad, learned counsel for the opposite parties no. 2 to 4 and Sri Anirudh Singh, learned AGA for the State.

2. By means of this criminal revision filed under section 401/397 Cr.P.C. the orders dated 15.3.2005 and 18.3.2005 passed by the Additional Sessions Judge, Court no. 7, Sitapur in Sessions Trial no. 490/2004 under section 498A, 304B IPC read with section 3/4 Dowry Prohibition Act, P.S. Laharpur, District Sitapur: State vs. Kanhaiya Lal and others have been assailed.

3. The learned Additional Sessions Judge, vide order dated 15.3.2005 was pleased to discharge the accused persons / opposite parties no. 2 to 4 hereto from the charges under section 304B IPC. However, those accused persons have been directed to face trial before the competent Magistrate court under section 498A IPC read with section 3/4 Dowry Prohibition Act holding that the aforesaid charges against the accused persons are, prima-facie, made out. By means of order dated 18.3.2005 the learned Additional Sessions Judge concerned was pleased to send the paper-book to the Chief Judicial Magistrate, Sitapur for conducting trial under section 498A IPC read with section 3/4 Dowry Prohibition Act and further directed that the accused persons are being discharged under

section 304B IPC.

4. Assailing the aforesaid orders passed by the learned Additional Sessions Judge-VII, Sitapur the learned counsel for the revisionist has submitted that since the accused persons have been discharged by the learned Additional Sessions Judge, therefore, the Magistrate court i.e. the Chief Judicial Magistrate, Sitapur may not take a view at any stage of the trial that the charge against the accused persons under section 304B IPC is made out.

5. The aforesaid orders have also been assailed on the ground that despite all the ingredients of section 304B IPC being satisfied in the case in hand and the learned Additional Sessions Judge concerned has noted those ingredients but discharged the accused persons from the said charge which is a manifest error of law and fact both.

6. Brief facts of the issue are that the marriage of the daughter of the complainant who is revisionist hereto was solemnized with Mr. Ashutosh Tiwari, opposite party no. 3 hereto, on 4.5.2001. After the marriage she came to her in-laws place first time on 17.3.2002. On 29/30.9.2002 at about 12.00 A.M. (night) the complainant received telephone call from in-laws house of his daughter to the effect that his daughter Neelam has been electrocuted. Thereafter, at about 1.30 A.M. (night) he received another telephone call whereby he has been informed that his daughter has died. The complainant reached at the in-laws place of his daughter on 1.10.2002 in the early morning and found that his daughter has died and thereafter her final rites were done.

7. Since the complainant was suffering from serious mental agony and pain on account of demand of dowry by the family of in-laws of his daughter, more particularly, his son-in-law and his father from the very beginning and they were not ready to take 'Gauna' for the reason that their demand of dowry was not satisfied. However, as per the complainant he had given ample dowry / gifts / cash as per his capacity but that amount was not satisfactory for in-laws of his daughter. Since the complainant had seen her daughter's face which was blue after her death, so he was suspecting that it might be a case of poisoning or it might be a case of unnatural death, therefore, he lodged a first information report bearing Crime No. 377/2002 under section 498A/304B IPC read with section 3/4 Dowry Prohibition Act at P.S. Sadar, District Sitapur on 2.10.2002.

8. After the aforesaid F.I.R. being registered the investigation was carried out and charge-sheet was filed.

9. Since the charge-sheet was filed under section 304B IPC besides under section 498A IPC read with section 3/4 Dowry Prohibition Act, therefore, the trial was committed to the learned Sessions court and thereby the Additional Sessions Judge, Court no. 7, Sitapur was assigned to conduct the trial of the issue in question by registering the Sessions Trial number and thereby the issue in question was registered as Session Trial No. 490 of 2004.

10. The accused persons filed an application of discharge before the learned trial court i.e. the Additional Sessions Judge, Court no. 7, Sitapur in S.T. No. 490 of 2004, submitting therein that there is no cogent evidence against the accused persons establishing the charge under section 304B

IPC as well as charge under section 498A read with section 3/4 Dowry Prohibition Act and the accused persons have been falsely implicated in the matter. They have further submitted that the death of Smt. Neelam, the daughter of the complainant, was due to electrocution wherein there could be no culpability of the accused persons. They have further submitted that there was no mark of injury on the body of the deceased as per the postmortem report describing the anti-mortem injury. They have further submitted that the allegation leveled against the accused-persons is that they have administered poison to the deceased whereas the postmortem report does not reveal so. They have further submitted that the visra of the deceased was preserved and was sent for chemical examination and the report thereof reveals that there is no sign of poison in the body of the deceased. By means of order dated 15.3.2005 the learned trial court i.e. Additional Sessions Judge, Court no. 7, Sitapur, disposed of the application of the discharge of the accused persons. The aforesaid order reveals that the counsel for the accused persons and ADGC (Criminal) was heard and the documents / paper-book was perused. The order dated 15.3.2005 does not reveal that counsel for the complainant was afforded opportunity of hearing. It is a specific submission of learned counsel for the revisionist that the counsel for the complainant was not heard before the learned Sessions court concerned.

11. Before adverting to the order dated 15.3.2005 and other relevant facts and circumstances of the issue it would be pertinent to indicate some relevant provisions of law. Section 304B IPC is being reproduced herein below :

"304B. Dowry death.--

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or har□assment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.--For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.] Section 498A IPC is being reproduced herein below:

498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be pun□ ished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purpose of this section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.] Section 3/4 Dowry Prohibition Act is being reproduced herein below :

3. Penalty for giving or taking dowry.

(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable 2[with imprisonment for a term which shall not be less than 3[five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]: --1[(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable 2[with imprisonment for a term which shall not be less than 3[five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]:" Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than 4[five years].] 5[(2) Nothing in sub-section (1) shall apply to, or in relation to,-- 1[(2) Nothing in sub-section (1) shall apply to, or in relation to,--"

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act: Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry.--If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: 2[4. Penalty for demanding dowry.--If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees\:" Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.] Section 4 of the Indian Evidence Act, 1872 is being reproduced herein below:

4. "May presume".--Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume".--Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. "Conclusive proof".--When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Section 106 of the Indian Evidence Act, 1872 is being reproduced herein below:

106. Burden of proving fact especially within knowledge.--When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Section 113A of the Indian Evidence Act, 1872 is being reproduced herein below:

113A. Presumption as to abetment of suicide by a married woman.--When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.1[" Explanation.--For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).] Section 113B in The Indian Evidence Act, 1872 is being reproduced herein below:

113B. Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.--For the purposes of this section, "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]

12. The perusal of section 304B IPC clarifies that the essential ingredients of the aforesaid section are that :

(i) where a death of woman is caused by any burn or bodily injury or occurs otherwise than under normal circumstances;

(ii) within seven years of her marriage;

(iii) It is shown that soon before her death she was subjected to cruelty or harassment by her husband or by any relative of her husband for, or in connection with, any demand for dowry; and

(iv) such death shall be called 'Dowry Death' and such husband or relative shall be deemed to have caused her death.

13. In the instant case the learned trial court noted the statement of learned ADGC that all the aforesaid ingredients are being fulfilled and in the operative portion of the order dated 15.3.2005 the learned trial court has observed that it appears, prima-facie, her death was not caused in a normal circumstance. If it is so, then charge under section 304B IPC should have been framed and the aforesaid allegation should be dealt in the trial to be proved or disproved within the four corners of law.

14. In the case at hand the learned trial court has however, framed the charge under section 498A IPC read with section 3/4 D.P. Act and has sent the issue for trial before the Chief Judicial Magistrate, Sitapur vide his subsequent order dated 18.3.2005. However, the accused persons were discharged for section 304B vide order dated 18.3.2005.

15. When the trial court concerned is satisfied that charge under section 498A IPC read with section 3/4 D.P. Act is, prima-facie, made out then it is beyond any comprehension as to why the learned trial court has discharged the accused persons under section 304B IPC. Further, section 498A IPC describes the cruelty committed by the husband or his relative upon a woman / wife and section 3/4 D.P. Act provides the sentence in respect of offence relating to dowry. The joint reading of section 498A IPC read with section 3/4 D.P. Act clarify that if any person or persons have been charged under these sections, they must be husband and his relative and are demanding dowry. Therefore, if the ingredients of these two sections i.e. 498A and 3/4 D.P. Act are being satisfied in the instant case and the death of the deceased Neelam is caused within seven years of marriage when she was at her in-laws place and she was allegedly being harassed and tortured and the death was not appearing to be a normal death then accused persons concerned should have been tried under section 304B IPC also and no discharge order can be passed on any otherwise presumption. The Hon'ble Apex Court has deprecated the view of lower court if mini trial is directed at the time of disposal of discharge application.

16. In the given case the accused persons might have been absolved from the charges of section 304B IPC or from any other charges but the complainant must have been afforded an opportunity to adduce the relevant witnesses, to produce the defence and cogent material to that effect at the stage of trial but no such inference may be drawn at the stage of disposal of discharge application.

17. The provision of section 113B of Indian Evidence Act, 1872 clearly provides about the presumption in respect of dowry death. As per section 113B the court shall presume that a person had caused the dowry death. Therefore, section 113B of Indian Evidence Act mandates that court shall presume as the court has got no other option except to presume that the person concerned had caused dowry death. However, section 113A of the Indian Evidence Act describes presumption as to abetment of suicide by a married woman and in that case the legislatures have mandated that the

court may presume that the married woman had died on account of suicide abeted by her husband or in-laws. Therefore, under section 113A of the Indian Evidence Act the court may presume something but in case of dowry death the court shall presume that such person had caused the dowry death in the light of the clear mandate of section 113B of the Indian Evidence Act.

18. Section 4 of the Indian Evidence Act describes the term 'may presume' and the term 'shall presume'. As per section 4 of Evidence Act the court may presume a fact, it may either record such fact as proved unless and until it is disproved or may call for prove of it but in case of presumption 'shall' the court shall presume a fact, it shall record a fact as proved unless it is disproved.

19. As per the statement of the husband and in-laws of the deceased daughter of the complainant it has nowhere been indicated as to how she was electrocuted because the burden lies on them to prove the circumstance as it were they who had got knowledge the manner of death. Section 106 of the Indian Evidence Act categorically provides that when any fact is specially within the knowledge of a person, the burden of proving that fact is upon him. In this case the manner as to how the deceased was electrocuted has not been apprised which creates doubt, however, prima-facie, and such opportunity should be given to the accused persons before the trial court to prove that they are innocent and to apprise the court concerned the manner the deceased was electrocuted and in the incident of electrocution of the deceased there was no role of these people. All these things could have been proved or disproved before the trial court only by adducing the relevant evidence and by examining the relevant material to that effect. At least the complainant should have been afforded an opportunity to establish his allegation of dowry death before the trial court by adducing the witnesses by examining and cross-examining the witnesses of either side.

20. Learned counsel for the opposite parties no. 2 to 4 has submitted that the orders under challenge being interlocutory orders, therefore, the revision may not lie. He has cited the judgments of Hon'ble High Court of Kerla reported in 1981 Cr.L.J. 460 : Jayaprakash vs. State and in 1988 Cr.L.J.1362 : Sarojini Amma vs. Sarojini. In the aforesaid case the criminal revision which was filed against the framing of charge was dismissed by the High Court, Kerla holding that the framing of charge does not put to end to the proceedings of the trial case until it culminates in acquittal or conviction, therefore, it is an interlocutory order. In the instant case since the trial has been directed to be conducted by the court of Magistrate on the direction of sessions court discharging the accused persons from section 304B IPC, therefore, the Magistrate court cannot frame charge if it so finds at any stage of the trial under section 304B IPC, therefore, these case laws are not applicable in this matter.

21. However, learned counsel for the revisionist has cited the judgment of Hon'ble Apex Court reported in (1990) 3 SCC 588 : Haryana Land Reclamation and Development Corporation vs. State of Haryana and another submitting that the revision against the order of discharge of the accused on the basis of police report is not interlocutory order and, therefore, the revision shall be maintained before the High Court. Para 4 thereof is as under:

"4. There are several decisions of this Court explaining the term "interlocutory order" occurring in Section 397(2) of the Code. In Amar Nath and Ors. v. State of Haryana and Anr. the said term is

defined thus:

The term "interlocutory order" is a term of well-know legal significance and does not present any serious difficulty. It has been used in various statutes including the CPC, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision of the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code.

Untiwalia, J speaking for the Bench in Madhu Limaye v. State of Maharashtra 1977(4) SCC 55 after referring to Amar Nath's case and to some more decisions and after explaining what the term "interlocutory order" means finally observed as follows:

If a complaint is dismissed under Section 203 or under Section 204(4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make Section 398 of the new Code otiose.

When the question that has arisen in the present case is examined in the light of the above observations made in Amar Nath's case and Madhu Limaye's case, it is clear that the order of the High Court is not sustainable and as such is liable to be set aside as the order of discharge passed by the Chief Judicial Magistrate does not fall within the definition of the term "interlocutory order" and the inherent power of the High Court is not limited."

22. Learned counsel for the revisionist has also cited the judgment of Apex Court in the case of Amar Nath and others vs. State of Haryana reported in (1977) 4 SCC 137 referring para nos. 6 and 10 thereof, which is being reproduced herein below:

"6. Let us now proceed to interpret the provisions of s. 397 against the historical background of these facts. Sub- section (2) of s. 397 of the 1973 Code may be extracted thus :

"The powers of revision conferred by Sub- section (1) shall not be exercised in relation to any interlocutory order passed ;in any appeal, inquiry, trial or other proceeding."

The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in sub-s. (2) of s. 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes

including the Codeof Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in s. 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the, right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in s. 397 of the, 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under s. 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be. outside the purview of the revisional jurisdiction of the High Court.

10. Applying the aforesaid tests, let us now see whether the order impugned in the instant case can be said to be an interlocutory order as held by the High Court. In the first place, so far as the appellants are concerned, the police had submitted its final report against them and they were released by the Judicial Magistrate. A revision against that order to the Additional Sessions Judge preferred by the complainant had failed. Thus the appellants, by virtue of the order of the Judicial Magistrate as' affirmed by the Additional Sessions Judge ,acquired a valuable right of not being put on trial unless a proper order was made against them. Then came the complaint by respondent No. 2 before the Judicial Magistrate which was also dismissed ,on merits. The Sessions Judge in revision, however, set aside the order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightaway which meant that the appellants were to, be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the appellants, nor were ,any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, ,or that any right of theirs was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-ss. (1) and (2) of s. 397 of the 1973 Code. The order of the Judicial Magistrate 'summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the

appellants to be put on trial."

23. Learned counsel for the revisionist has also cited has also cited the judgment of Apex Court in the case of Madhu Limaye vs. State of Maharashtra reported in (1977) 4 Supreme Court Cases 551 referring paragraphs no. 13,15 and 17 which are being reproduced as under :

"13. ..... In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case (supra), but, yet it may not be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we, think that the bar in sub-section (2) of section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of subsection (2) of section 397. In our opinion it must be taken to be an order of the type falling in the middle course."

15. ..... Yet for the reasons already alluded to, we feel no difficulty in coming to the conclusion, after due consideration, that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of section 397(2).

17. ..... If a complaint is dismissed under section 203 or under section 204(4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make section 398 of the new Code otiose. Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it ? ....."

24. In view of the settled proposition of law by the Hon'ble Apex Court the objection of learned counsel for the opposite parties no. 2 to 4 is turned down so far as maintainability of present revision is concerned.

25. The facts and circumstances of the issue in question reveals that presumptions given under section 113B of the Indian Evidence Act are fully applicable in this case and the accused persons should be tried for offence under section 304B of the Indian Penal Code. The Hon'ble Apex Court in re: Pathan Hussain Basha Vs. State of Andhra Pradesh reported in (2012) 8 SCC 594 and Rajesh Bhatnagar Vs. State of Uttarakhand reported in (2012) 7 SCC 91 has held that when a death of any

married woman occurred in unnatural circumstance within seven years of her marriage and she was subjected to cruelty in connection to demand of dowry, then such death is called dowry death.

26. Besides the Hon'ble Apex Court in Indu Jain vs. State of Madhya Pradesh and others reported in (2008) 15 Supreme Court Cases 341, has held that the trial court is not required to go into the details of the investigation but to only arrive at, prima-facie, finding to the material made available as to whether the charge could be sustained. The Hon'ble Apex Court has observed that holding a mini trial at the time of framing of charge is deprecated.

27. The Hon'ble Apex Court in the case of Bansi Lal vs. State of Haryana reported in (2011) 11 Supreme Court Cases 359 has held that in case the essential ingredients of the dowry death has been established by the prosecution, it is the duty of the court to raise a presumption that accused caused dowry death and that shall be proved in trial only. The Hon'ble Apex Court in the case of Maya Devi and another vs. State of Haryana reported in (2015) 17 Supreme Court Cases 405 has held that in case of dowry death if the ingredients of dowry death are satisfied, the burden shall be on the accused to disprove the presumption of causing dowry death as defined under section 113B of the Indian Evidence Act.

28. In view of the above submissions the learned counsel for the revisionist has prayed that the impugned order dated 15.3.2005 and 18.3.2005 be set aside and the learned Sessions Court be directed to pass a fresh order on the discharge application by affording an opportunity of hearing to the counsel for the revisionist also strictly in the light of the settled propositions of law by the Hon'ble Apex Court as cited above.

29. Learned AGA has also submitted that the case was properly argued before the learned sessions court concerned but the orders dated 15.3.2005 and 18.3.2005 has been passed without appreciating the legal and factual matrix of the matter. He has submitted that the allegation of section 304B IPC must have been proved before the trial court by providing an opportunity of hearing to all the parties concerned strictly in accordance with law. He has however, informed the court that the State had filed one criminal revision bearing no. 366 of 2005 : State vs. Kanhaiya Lal Tiwari assailing same orders which are impugned herein but the said revision was dismissed being infructuous vide order dated 25.3.2014.

30. However, learned counsel for the complainant has submitted that since he has not been afforded any opportunity of hearing before learned Sessions Court concerned while passing orders dated 15.3.2005 and 18.3.2005 and he is the person aggrieved, therefore, in the light of the judgment of Hon'ble Apex Court which are referred herein above, the impugned orders dated 15.3.2005 and 18.3.2005 may be set aside.

31. Considering the rival submissions of the counsel for the respective parties and AGA and considering the relevant provisions of law viz. a viz. the mandate of the Hon'ble Apex Court, I am of the considered view that the orders dated 15.3.2005 and 18.3.2005 passed by the Additional Sessions Judge, Court no. 7, Sitapur in Sessions Trial no. 490/2004 are perverse and those orders have been passed without considering the settled propositions of law by the Ho'ble Apex Court,

therefore, those orders deserve to be set aside and are hereby set aside.

32. Accordingly, the criminal revision is Allowed.

33. The matter is remanded back to the learned Sessions Court concerned to decide the discharge application afresh by providing an opportunity of hearing to the learned counsel for the revisionist as well as learned counsel for the accused persons and DGC (Criminal) strictly in accordance with law with expedition say within a period of three months from the date of production of the certified copy of the order of this court.

34. Let the lower court record be sent back.

Order Date :- 31.8.2018 Om [Rajesh Singh Chauhan, J.]