(2023) 01 BOM CK 0039

Bombay High Court (Nagpur Bench)

Case No: Criminal Revision Application No. 124 Of 20 22

Ratnamala		APPELLANT
	Vs	
State Of Maharashtra		RESPONDENT

Date of Decision: Jan. 7, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 107, 304B, 306, 498A
- Dowry Prohibition Act, 1961 - Section 4
- Code Of Criminal Procedure, 1973 - Section 227, 228, 482

Citation: (2023) 01 BOM CK 0039

Hon'ble Judges: G. A. Sanap, J

Bench: Single Bench

Advocate: Akshay A. Naik, S. A. Ashirgade

Final Decision: Dismissed

Judgement

G. A. Sanap, J

1. Heard.

2. ADMIT. Taken up for final disposal with consent of the learned advocates for the parties.

3. In this revision application, challenge is to the order dated 02.03.2022 passed by the learned Additional Sessions Judge, Chandrapur, whereby the

application (Exh.29) made by the applicant/ accused no.2 for discharge in Sessions Case No. 51/2016 for the offences punishable under Sections 498-

A, 306, 304-B read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961, came to be rejected.

4. The facts relevant for decision of the revision application can be summarized as follows :

Deceased Pradnya was married with Amol (accused No.1), son of the applicant/accused no.2. Their marriage took place on 24.12.2015. Deceased

Pradnya committed suicide on 26.01.2016. Before marriage, the deceased and Amol were having love affair. Love affair culminated into marriage

with the consent of the family members of Amol and the deceased. It is the case of the prosecution that in the marriage, father of the deceased paid

Rs.1,50,000/- as a dowry. After marriage, the husband/accused no.1 and the mother-in-law (accused no.2) made demand of Rs.40,000/- to the

deceased as a dowry to meet household expenses. The deceased was subjected to mental and physical cruelty on account of non-fulfilment of said

demand. Therefore, she committed suicide by taking jump on railway track in front of a running train. Father of the deceased reported the matter to

the police. Police carried out the investigation. During investigation, apart from recording the statements of the witnesses in the know of the facts, a

written note (chit) was found. The said written note has been placed on record as a suicide note. The investigation revealed complicity of accused

nos.1 and 2 in commission of the crime, which ultimately led to filing of the charge-sheet against accused nos.1 and 2.

5. The application made by the applicant/accused no.2 for discharge was rejected on 06.11.2019. Thereafter applicant/accused no.2 approached this

Court by filing revision. This Court (Coram : Avinash G. Gharote, J.) vide order dated 14.02.2022 set aside the said order and remanded the matter

back to the trial Court for granting an opportunity to the parties of hearing and to pass a reasoned order. The application for discharge was heard by

the learned Additional Sessions Judge and the order impugned in this revision came to be passed.

6. The sum and substance of the application made by accused no.2 is that there is no iota of evidence to establish her complicity in commission of the

crime and as such, to frame the charge against her. The available material relied upon by the prosecution owe-fully falls short to satisfy the basic

requirements of law to frame the charge against accused no.2. Accused no.2 is falsely implicated on the basis of the report lodged by the father of the

deceased.

7. The application was opposed by the State. It is the case of the prosecution that there is ample material in the form of written chit, WhatsApp

messages between the deceased and the witnesses and the statements of the witnesses in know of the relevant facts to establish direct involvement

of accused no.2.

8. I have heard Mr. Akshay A. Naik, learned advocate for the applicant and Mr. S. A. Ashirgade, learned Additional Public Prosecutor for the State.

Perused the record and proceedings.

9. Learned advocate for the applicant submitted that there is no iota of evidence to establish complicity of the accused no.2 in the commission of

crime. The facts stated in the first information report as well as in the statements of the witnesses are vague and the allegations are omnibus. No

specific role has been attributed by any of the witnesses to accused no.2. Learned advocate further submitted that on the basis of the written chit as

well as WhatsApp messages and the statements of the witnesses, the basic ingredients of the offences allegedly committed by the accused no.2 have

not been made out. Learned advocate submitted that no specific act has been attributed to the accused no.2 in the first information report, in the

written chit left by the deceased, in WhatsApp messages and in the statements of the witnesses. Learned Advocate, therefore, submitted that the

mens rea required to be prima facie established is absent in this case. In order to seek support to these submissions, learned advocate has placed

reliance on the decisions in the cases of Kahkashan Kausar alias Sonam and others .vs. State of Bihar and others, reported at AIR 2022 SC 820 ; in

M. Srinivasa Reddy .vs. State of Maharashtra and another, reported at 2021 All M.R. (Cri.) 3365 ; in Yogesh alias Sachin Jagdish Joshi .vs. State of

Maharashtra, reported in (2008) 10 SCC 394 ; and in Appasaheb and another .vs. State of Maharashtra, reported at (2007) 9 SCC 721.

10. In Kahkashan KausarÃ¢â‚¬â„¢s case (supra), which mainly deals with quashing of the FIR under Section 482 of the Code of Criminal Procedure

Code, it is held that in absence of clear allegations against the in-laws, continuation of prosecution would constitute an abuse of process of law. It is

held that in order to maintain and continue the prosecution, there must be specific and distinct allegations against the accused persons. The prosecution

cannot be continued on vague, general and omnibus allegations.

11. In M.Srinivasa ReddyÃ¢â‚¬â„¢s case (supra), to which I was a party, it is held that in absence of specific allegation and evidence, the prosecution

cannot be allowed to continue. In this case, the evidence was in the form of suicide note left by the deceased. On consideration of the suicide note, it

was found that no specific role was attributed to applicant-Shrinivasa Reddy. The only allegation found in the suicide note was that co-accused of

Shrinivasa Reddy was a superior officer of the co-accused and when the deceased made a complaint of ill-treatment and torture to her at the hands of

co-accused, Mr. Reddy did not take any action against him. Considering the law laid down in various decisions, it was held that continuation of the

prosecution in absence of cogent and concrete evidence to make out the basic requirements of Section 107 of the IPC, would be an abuse of process

of law.

12. In Yogesh alias Sachin Jagdish JoshiÃ¢â‚¬â„¢s case (supra), the scope and ambit of Sections 227 and 228 of the Cr.P.C. has been considered. It is

held that if two views are equally possible and the Judge is satisfied that the evidence produced gives rise to suspicion only, as distinguished from

grave suspicion, he would be fully within his right to discharge the accused. It is further held that at the stage of decision on discharge application, the

Judge is not required to see whether the trial will end in conviction or not on the basis of the available evidence.

13. In AppasahebÃ¢â‚¬â„¢s case (supra), it is held that correlation between the giving and taking of property or valuable security with the marriage of the

parties is essential. Demand of dowry on account of some financial stringency or for meeting some urgent domestic expenses cannot be termed as a

demand for dowry.

14. Learned Additional Public Prosecutor for the State submitted that there was no delay in lodging the first information report. He further pointed out

that in the FIR as well as in the statements of the witnesses, in the WhatsApp messages and the written chit, specific role has been attributed to

accused nos.1 and 2. On the basis of the evidence compiled in the charge-sheet, learned APP submitted that the role attributed to accused nos.1 and 2

is identical and therefore, it cannot be said that the case of accused no.2 is on better footing than the case of accused no.1. Learned APP submitted

that the evidence compiled in the charge-sheet is sufficient to satisfy the requirements of Sections 227 and 228 of the Cr.P.C. for framing charge.

Learned APP submitted that if the exercise of appreciation of the evidence is undertaken as submitted by the learned advocate for the

applicant/accused no.2, then it would not be short of holding a mini trial at this stage. Learned APP submitted that the legal position settled in number

of decisions by the HonÃ¢â‚¬â„¢ble Supreme Court is against the case of the applicant/accused no.2. He relied upon a decision in the case of Tarun Jit

Tejpal .vs. State of Goa and another, reported at (2020) 17 SCC 556. It is pointed out that in this case , the decisions in the case of Niranjan Singh

Karam Singh Punjabi, Advocate .vs. Jitendra Bhimraj Bijjaya and others [(1990) 4 SCC 76] and in the case of Sajjan Kumar .vs. Central Bureau of

Investigation [(2010) 9 SCC 368] have been considered. It is held in these decisions that appreciation of evidence at the time of framing of charge

under Section 228 of Cr.P.C. or while considering discharge application filed under Section 227 of Cr.P.C. is not permissible. The Court is not

permitted to analyse all the material touching the pros and cons, reliability or acceptability of the evidence.

15. In Tarun Jit TejpalÃ¢â‚¬â„¢s case (supra), it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouth

piece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to

pass an order of discharge. It is held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that

the materials brought on record by prosecution are true and evaluate the said materials and documents with a view to find out whether the facts

emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, the Court is not

expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that what needs to be considered is whether

there is a ground for presuming that the offence has been committed and not whether a ground for convicting accused has been made out. It is further

held that the law does not permit a mini trial at the stage of deciding the discharge application or at the time of framing of charge.

16. In my opinion, in order to appreciate the submission and the applicability of the law laid down in the judicial pronouncements above, it would be

necessary to go through the record and proceedings. Charge-sheet has been filed after completion of the investigation. A complete copy of the

charge-sheet is placed on record in this revision. The deceased committed suicide on 26.01.2016. Father got the information in the evening at 7.00 pm.

He lodged report on 27.01.2016 at 19.31 hours. In the report, he has categorically stated about the amount paid before marriage towards dowry to the

accused. He has specifically stated the demand of Rs.40,000/- after marriage as a dowry to meet household expenses. The written chit left by the

deceased is placed on record. The said chit prima facie reveals that the deceased was forced to do abortion. In the chit, it has been stated that the

mother-in-law/ accused no.2 was instrumental or pressing very hard for abortion. She even suggested the names of the abortion pills to the deceased.

The deceased has stated her anguish in the written chit due to torture and ill-treatment meted out to her on this count by the husband and mother-in-

law. It is true that in the chit, there is no specific mention of demand of dowry.

17. In the written chit, the deceased has stated that she had WhatsApp communication with her brother-in-law Mr. Khobragade. The transcript of the

WhatsApp messages produced on record clearly indicates that torture meted out to her on this count was communicated by her to her brother-in-law

Mr. Khobragade. In the WhatsApp messages, the role attributed to the husband and mother-in-law has been specifically spelt out. The father has not

stated anything about this in the FIR. However, when his statement was recorded during the course of investigation, he has narrated about the same

as well. In the FIR, there is a specific allegation with regard to demand of Rs.40,000/- as a dowry to meet the household expenses. In the FIR, he has

categorically stated the amount paid to the accused for purchasing clothes before the marriage. His statement was recorded on 28.01.2016. He has

categorically stated that his daughter had informed him on phone about the demand of dowry, ill-treatment and torture to her on that count. He has

stated that he has given understanding to the daughter and pacified her. In his statement, he has further stated about the torture meted out to the

deceased for doing abortion. In his statement, he has further stated that in her purse, a written chit and a receipt of payment for sex determination was

found. It is to be noted that the remaining witnesses have consistently attributed specific role on both the counts to accused nos.1 and 2. One Ganesh

Khobragade, who was in contact with the deceased on phone, has specifically stated about the demand of Rs.40,000/- and the pressure applied on the

deceased to abort the child and ill-treatment on both the counts.

18. In my view, on the basis of the material placed on record, it is very difficult to distinguish the role attributed to the accused nos.1 and 2. The role

attributed to them is identical. The material on record, if considered at its face value, would indicate that it satisfies the basic requirements of law to

frame the charge. In my view,, if this material is appreciated and a finding is recorded as to the credibility or reliability of the same, it would amount to

a premature adjudication of the dispute. The law does not permit holding of a mini trial, as held in the decision in Tarun Jit TejpalÃ¢â‚¬â„¢s case (supra). In

my view, therefore, the material on record is prima facie sufficient to frame the charge against the accused. The submissions of the learned advocate

for the applicant, therefore, cannot be accepted. The law laid down in the decisions relied upon by the learned advocate for the applicant would,

therefore, be of no help to the case of the applicant at this stage. If the submissions are to be accepted, then this Court would be required to consider

the pros and cons of the evidence on merits. It is to be seen that the role attributed to the accused persons cannot be said to be vague and in the form

of omnibus allegations. In my view, therefore, the learned Judge was right in rejecting the application (Exh.29). The learned Judge has considered the

applicable law and came to the conclusion that the case in question was not a fit case to allow the application for discharge. The learned Judge has

recorded the reasons for rejecting the application. The reasons are according to law. In my view, therefore, no interference is warranted in the well

reasoned order passed by the learned Additional Sessions Judge, Chandrapur. The revision application, therefore, fails. Hence, the order :

ORDER

The revision application stands dismissed.