

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 211 OF 2015

Jalindar Tukaram Jarande & ors. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. S.D. Nangre a/w. Mr. Ranjit Pawar a/w. Mr. Suraj Nangare,
advocate for Applicants.

Mrs. A.A. Mane, APP for State.

Mr. V.S. Dhone, Havildar, Baramati City Police Station, Dist. Pune.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 15, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The applicants herein are charge-sheeted in Crime No. 105 of
2012 for offence punishable under Section 498A, 306 read with
Section 34 of the Indian Penal Code registered at Baramati Taluka
Police Station. The charge-sheet is filed.

4 It is the case of the prosecution that the applicant No. 3 got
married with Poonam on 28/5/2006. On 23/8/2012 the parents of
Poonam were informed that she has been admitted in the hospital.
Her parents reached the hospital and learnt that she has expired. On
24/8/2012 the mother of Poonam, Smt. Indubai Atole lodged a report
at the police station alleging therein that her daughter Poonam was
ill-treated and harassed in her matrimonial home by the present
applicants. She was humiliated on the ground that at the time of
marriage, the applicants were not given proper honour. That she was
abused, threatened and starved in her matrimonial house. Poonam
had informed her parents telephonically about the said ill-treatment
and cruelty meted out to her. However, the parents and relatives
were of the opinion that time was the best medicine and that the
things would change. A week prior to 23/8/2012 at about 8 p.m.

Poonam called upon her mother and informed her that the present applicants had harassed and ill-treated to her to such an extent that she does not wish to live any more. She was insisting upon her parents to take her to her maternal home. But her father was ill and therefore, the parents could not go to the house of Poonam. On 23/8/2012 at about 4.30 p.m. Vitthal Jarande called upon her parents and informed them that Poonam is serious and that she has been taken to Hospital of Dr. Deshpande at Baramati and that she had already expired. On the basis of her report, Crime No. 105 of 2012 was registered at Baramati Police Station against the applicants for offence punishable under Section 498A, 306 of the Indian Penal Code. After completion of investigation, charge-sheet was filed.

5 The compilation of the charge-sheet would show that the complete proforma of the post mortem notes was not given to the accused. The accused were of the opinion that they were innocent and they have not ill-treated Poonam on any count. According to them, Poonam had died natural death.

6 It is pertinent to note that inquest panchanama, which was annexed alongwith the charge-sheet clearly indicates that Poonam had died natural death. It was further noticed that initially A.D. No. 39 of 2012 was registered. The inquest panchanama was conducted in A.D. Enquiry. There were no marks of injury on the person of Poonam. There was a categorical opinion that she had died a natural death. The dead body was sent for autopsy to Baramati Hospital. Column No. 5 of the post mortem notes would indicate as follows : “supposed cause of death- Natural.” The last page i.e. Column No. 22 onwards was not included into compilation of the charge-sheet. Hence, the applicants filed an application seeking discharge. The learned Assistant Sessions Judge, Baramati vide Judgment and Order dated 8/4/2015 rejected the application seeking discharge. Hence, this Revision Application.

7 On the date of first hearing of the application, the learned Counsel for the applicants was asked as to why he had filed an incomplete post mortem notes. The learned Counsel submitted that the post mortem notes in the charge-sheet were itself incomplete and

therefore, this Court had called upon the learned APP to furnish the original copy of the post mortem notes. In fact, by an order dated 11/9/2015, this Court had called upon the Investigating Officer in Crime No. 105 of 2012 to remain present before this Court alongwith original papers of investigation in the said Crime. The matter was called on 14/9/2015. The learned APP submitted that she has received complete proforma of the post mortem notes by fax and the investigating officer has not remained present on 14/9/2015. This Court had issued notice to the Investigating Officer. Today he is present before this Court pursuant to the said notice.

8 In the course of hearing of this matter, this Court had called upon the prosecution to explain as to why incomplete pro-forma was filed alongwith charge-sheet. There was no plausible explanation for the same. The original post mortem notes are still in the custody of the investigating officer, which he had presented before this Court today. The last column of the post mortem notes show that the post mortem was conducted on 24/8/2012. The opinion as regards cause of death was reserved and viscera preserved for chemical analysis.

The C.A. Report was received by the Investigating Officer. Upon perusal of the CA report, the medical officer, Rural Hospital, Rui has arrived at a conclusion as follows :

“As per the chemical analysis report of the viscera in this case P.M. No. 36/12 dated 24/8/2012 of Rural Hospital, Rui, “General and specific chemical testing does not reveal any poison in exhibit No. 1, 2, 3. As per PM findings the probable cause of death may be due to “Acute Myocardial Infarction.”

9 It is pertinent to note that this is the rarest of the rare case where the Investigating Officer has retained with him last page of the post mortem notes and had carried the same to the medical officer practically after 3 years i.e. on 8/5/2015 i.e. the day on which the medical officer had made above observations. It is clear that the investigating agency has not conducted the investigation in a fair and impartial manner. The practice of retaining the last page of the post mortem notes and not filing the same in charge-sheet is unknown to Section 173 of the Code of Criminal Procedure, 1973. Moreover, the case is posted for framing of charge.

10 At this stage, the learned Counsel for the applicants submits that the charge is framed against the accused on 9/9/2014. The prayer in the present Writ Petition is for quashing and setting aside the order rejecting the application for discharge.

11 It is seen from the records that Poonam had died a natural death. However, since learned Judge has framed charge against the accused under Section 306 of the Indian Penal Code, there is no question of setting aside the framing of charge as the specific prayer in the present petition was to discharge the accused. There is no provision contemplated in the Code of Criminal Procedure, 1973 to discharge the accused after framing of charge and the very framing of charge would amount to commencement of trial, which has to be taken to its logical end. In view of this, prayers in the Petition have become infructuous. The Petition stands disposed of accordingly. The learned Assistant Sessions Judge shall proceed with the trial in accordance with law and conclude the same at the earliest. Needless to say that the interim relief granted vide order dated 5/5/2015 stands vacated.

12 Rule is discharged accordingly.

13 However, the Deputy Superintendent of Police, Baramati Division shall enquire into the action/inaction of the Investigating Officer of Crime No. 105 of 2012 registered at Baramati Police Station and shall give him reminder that he shall not indulge into such practice in future. The matter is kept pending only for a report from the DYSP, Baramati in respect of enquiry of the erring officer. Stand over to 12/10/2015.

(SMT. SADHANA S. JADHAV,J)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment/order.**