

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 338 OF 2015

1. Rihan Gafoor Shaikh	)	
2. Rafique Gafoor Shaikh	)	Applicants
vs.		
The State of Maharashtra	...	Respondent

Mr. M.K.Kochrekar i/b. Mr. Prakash V. Vare, Advocate, for the applicants.
Mr. D.R.More, APP, for the State.

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

P.C.

Rule. Rule returnable forthwith with consent of the parties.

2. The applicants herein are accused in Crime No.268/2011 registered at Nirmal Nagar Police Station on 8.12.2011. The investigation is completed and charge sheet is filed against the accused for the offence punishable under Section 306 read with Section 34 of IPC.

3. Upon perusal of the compilation of charge sheet, the accused had filed a discharge application as the compilation of charge sheet would not indicate that any offence under Section 306 read with Section 34 of IPC was made out.

4. It is the case of the prosecution that on 14.11.2011, Smt.

Shahajahan Yakub Shaikh was admitted in the hospital with history of consumption of rat poison. She was admitted in the hospital by her son. On 14.11.2011, i.e. the same day, the statement of Smt. Shahajahan was recorded by the PSI, Nirmal Nagar Police Station. She had disclosed to the police that she is residing at Room No.556, Gate No.18 Lane No.9, Navpada, Ghasbazar, Bandra. That the space in her house was insufficient to accommodate all the members of her family and, therefore, she was intending to raise the height of her house. That the present applicant happens to reside in the neighbourhood. They had abused her endeavour to raise the height of the house since it would affect the easement rights of the applicant. The said issue was the bone of contention between Smt. Shahajahan and the present applicant. On 13.11.2011, she had ensued the work of raising the height of her house. At that time, the applicant had approached her, abused her and threatened her of dire consequences. They stopped the construction work undertaken by Smt. Shahajahan.

5. In the intervening night, her sons had no space in the house to sleep and therefore they were sleeping on the open plot adjacent to the house. The sons of Smt. Shahajahan had informed her on 14.11.2011 at about 9.30 a.m. that the applicant had found them sleeping in the open plot and had threatened them of dire consequences. That 15 days prior to

14.11.2011, the applicants are alleged to have abused and humiliated Smt. Shahajahan and her sons and Smt. Shahajahan had got disturbed with the said conduct of the applicants and therefore, had consumed rat poison which was there in her house. She was taking treatment in Bhabha Hospital and she had succumbed to the pesticides on 23.11.2011.

6. That on 8.12.2011, the son of deceased Smt. Shahajahan lodged a report at the police station alleging therein that the applicant had harassed and abused his mother on account of her endeavour to increase the height of her house. That according to the first informant, the applicants had also told her “go and die” and therefore, she had consumed the rat poison. On the basis of the report of Imran Shaikh, Crime No.268/2011 was registered at Nirmal Nagar police Station against the present applicant for the offence punishable under Section 306 read with Section 34 of IPC. The applicants, who are accused in the said case, filed an application seeking discharge since the compilation of charge sheet did not disclose an offence under Section 306 read with Section 34 of IPC against the present applicants.

7. Perused the compilation of charge-sheet. It prima facie appears

that in fact on 23.11.2011, after the demise of Smt. Shahajahan, A.D. No.98/2011 was registered. The initial investigation was carried out in A.D. No.98/2011. It appears that no cognizable offence was made out in the preliminary investigation under Section 174 of Cr.P.C. and hence police had not registered any crime against the present applicant. That on 8.12.2011, i.e. practically after more than 15 days of the demise of Smt. Shahajahan, a cognizable offence was registered against the present applicants on an application made by the son of the deceased.

8. The statement of the deceased, which was recorded on 14.11.2011, did not disclose any cognizable offence. In fact, in the said statement itself, the deceased had disclosed that being fed up with the harassment of the present applicants, she had consumed the rat poison. Autopsy was conducted and the dead body of Smt. Shahajahan on 23.11.2011. The history shown in the post mortem notes is an alleged history of consumption of unknown poison by the deceased.

9. The learned counsel for the applicants rightly submits that taking into consideration the material collected by the investigating agency, without addition or subtraction of any material, it would be clear that the

present applicants cannot be held responsible for the suicidal death of Smt. Shahajahan as they had not abetted, instigated or facilitated the commission of suicide. The role attributed to the present applicants is that they had opposed the attempt by the deceased to increase the height of the house since it would seriously affect their elementary rights. That in doing so, they had no intention that the victim should die. In the first information report lodged by the son of the deceased, the informant has specifically stated that the applicants had passed a remark on his mother by saying that she should go and die. At this stage, the learned counsel for the applicants has placed implicit reliance upon a Judgment of the Hon'ble Apex Court in the case of **Sanju alias Sanjay Singh Sengar vs. State of M.P. (2002) 5 SCC 371**. The Hon'ble Apex Court had occasion to consider as to whether a remark made by the accused “go and die” would amount to instigation to commit suicide. The Hon'ble Apex Court had observed as follows :-

“Even if one accepts the prosecution story that the appellant did tell the deceased “to go and die” that itself does not constitute the ingredients of drastic or inadvisable action or to stimulate or incite. Presence of mens rea therefore is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words said to have been told to the deceased were on 25.7.1998 ensued by a quarrel.”

In the present case, first and foremost, the investigating agency had not formed an opinion that any cognizable offence was made out. Smt. Shahajahan expired on 23.11.2011 and the first information report under Section 154 of Cr.P.C. is lodged on 8.12.2011. There is no plausible explanation for the inordinate delay in lodging the FIR. On 14.11.2011 itself, the first informant who happens to be son of the deceased, was knowing that the accused had passed a remark “to go and die”.

10. In view of the above said facts of the case, this Court is of the opinion that this is a fit case for discharging the accused since the continuance of the proceedings in the facts of the present case would be an abuse of process of law and the accused would have to go through the ordeal of the trial, although no offence is made out against them.

11. If there is no legal evidence then framing of charge would be groundless and compelling the accused to face trial is contrary to the procedure. Offending Article 21 of the Constitution of India. In the present case, the accused deserves to be discharged as the material on record is not only not sufficient to frame charge – but prima facie offence punishable under Section 306 of IPC is not made out and the trial would be an exercise

in futility. This would not be a fit case for framing of charge and therefore, the applicants had rightly filed an application under Section 227 of Cr.P.C. Hence, the application succeeds.

ORDER

- (i) The application is allowed.
 - (ii) The applicants are discharged in S.C.C. No.803 of 2013 pending before the Sessions Court, Mumbai.
 - (iii) Bail bonds stand cancelled.
- Application is allowed in the above terms and stands disposed of.

(SMT.SADHANA S.JADHAV, J.)

CERTIFICATE

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