

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 06 OF 2016

Mangal Gopinath Khade,
Age 35 years, Occ. Service,
Working as Staff Nurse,
R/o Quarter No. 29,
Govt. Hospital Quarters,
Jalna, District Jalna.

... Applicant

Versus

The State of Maharashtra

... Respondent

WITH
CRIMINAL REVISION APPLICATION NO. 07 OF 2016

Anisa @ Annu d/o Maujoddin Siddiqui
Age 35 years, Occ. Service as Staff Nurse
Civil Hospital, Jalna,
R/o Quarter No. 25,
Civil Hospital Quarters,
Jalna, District Jalna.

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. H.F. Pawar, Advocates for applicants.
B.A.Shinde, APP for respondent-State.
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CORAM : V. K. JADHAV, J.

RESERVED FOR ORDER ON : 29.02.2016
ORDER PRONOUNCED ON : 11.03.2016

ORDER :-

1. Both the Criminal Revision Applications are heard for final

disposal by consent of learned counsel for the parties.

2. Revision applicant Mangal Gopinath Khade is original accused no.3 and revision applicant Anisa @ Annu d/o Maujoddin Siddiqui is original accused no. 2 in Sessions Case No.225 of 2014. Revision applicant Mangal Khade as well as the revision applicant Anisa @ Annu had filed applications Exh.26 and Exh.21 respectively, for discharge under Section 227 of the Code of Criminal Procedure (for short "Cr.P.C.") in Sessions Case No. 225 of 2014 *inter alia* contending therein that there is no evidence against them to frame the charge. Learned Assistant Sessions Judge-2, Jalna, by impugned order dated 05.12.2015, rejected the application Exh.26 and by impugned order dated 14.10.2015, rejected the application Exh.21. Thus, the above two Criminal Revision Applications are preferred challenging the said orders.

3. Brief facts giving rise to the Criminal Revision Applications are as follows:

One Shakuntalabai Shivaji Kauchat has filed a complaint with Kadim Jalna Police Station, Jalna, alleging therein that her daughter namely Seema w/o Manoj Rajput was working as Staff Nurse in Civil Hospital, Jalna and she was subjected to ill-treatment by her

husband Manoj on account of unlawful demand of Rs. 10 lacs since last eight years. It is further alleged in the said complaint that said Manoj had illicit relation with original accused no.2 Anisa. It is further alleged in the said complaint that due to ill-treatment caused at the hands of accused no.1 Manoj and his illicit relation with original accused no.2 Anisa, deceased Seema had committed suicide by hanging herself. On the basis of said complaint, Crime No. I-54 of 2013 for the offences punishable under Sections 306, 498-A and 506 r/w 34 of the Indian Penal Code (for short "IPC") came to be registered at Kadim Jalna Police Station against accused nos. 1 to 3. During the course of investigation, it was revealed that deceased Seema had written a 12 pages suicidal note alleging therein that the accused persons are responsible for her suicide as they threatened her and mentally harassed her. Learned Assistant Sessions Judge-2, Jalna, by impugned orders as detailed above, has rejected the applications filed by original accused nos. 2 and 3 respectively. Hence, Criminal Revision Applications have been preferred before this Court.

4. Learned counsel for the revision applicants submits that so far as original accused no.3 Mangal Khade is concerned, there are no specific allegations to the effect that deceased Seema was subjected to harassment or mental torture by revision applicant-original

accused no.3 Mangal Khade. Learned counsel submits that revision applicant-original accused no.3 Mangal Khade is not in any way related with the husband of deceased or his relatives. Learned counsel submits that the revision applicant-original accused no.3 Mangal Khade is working as a Staff Nurse at Civil Hospital, Jalna. It is only alleged in the said suicidal note that on 24.03.2013, a quarrel took place between deceased Seema and other Staff Nurse and in that quarrel, the revision applicant-original accused no.3 Mangal Khade alleged to have remarked deceased Seema as "psycho". Learned counsel submits that there is absolutely no evidence against revision applicant-original accused no.2 Mangal Khade that she has provoked, incited or induced deceased Seema to commit suicide. Learned counsel submits that the suicide note denotes all the grievances against the husband-original accused no.1. Learned counsel submits that nothing was transpired during the course of investigation which would suggest that the revision applicant-original accused no.3 Mangal Khade is directly or indirectly connected to the alleged abetment of commission of suicide. There is no evidence on record that accused no.3 Mangal Khade has, in any manner, instigated the deceased or is involved in any conspiracy or intentionally aided by any act or illegal omission in abetting commission of suicide. Learned counsel submits that, thus, in the present case, framing of charge against accused no.3 Mangal Khade

is an exercise in futility and there is absolutely no prospect of the case ending in conviction.

5. Learned counsel submits that so far as revision applicant-original accused no.2 Anisa is concerned, deceased Seema was merely suspecting that her husband is having illicit relations with her. Learned counsel submits that even assuming for the sake of argument that husband of deceased Seema was having illicit relations with original accused no.2 Anisa, there is nothing in the charge sheet which would suggest that original accused no.2 Anisa is directly or indirectly connected with the alleged offence of abetment of commission of suicide. There is no evidence against original accused no.2 Anisa that she has, in any manner, instigated the deceased for commission of suicide or is involved in any conspiracy or has intentionally aided by any act or illegal omission in the alleged abetment of commission of suicide. Learned counsel submits that there is no direct or indirect evidence to indicate that original accused no.2 Anisa is in any way linked with the suicide of deceased Seema.

6. Learned counsel for the applicants, in order to substantiate his submissions, placed reliance on the decisions in following cases :

1. ***Ghusabhai Raisangbhai Chorasiya and others vs. State of Gujarat***, reported in **2015 (2) JT 345**,
2. ***Vijay @ Munna Bharat Gurkhude vs. State of Maharashtra***, reported in **2014 (4) Bom.C.R.(Cri.) 72**,
3. ***M. Mohan vs. State Represented By The Deputy Superintendent Of Police***, reported in **(2011) 3 Supreme Court Cases 626**,
4. ***Gangula Mohan Reddy vs. State of Andhra Pradesh***, reported in **(2010) 1 Supreme Court Cases 750**,
5. ***Avinash J. Mahale and others vs. State of Maharashtra***, reported in **2006 All MR (Cri) 1723**,
6. ***Girish s/o Sanjay Bole vs. The State of Maharashtra***, reported in **2012 ALL MR (Cri) 3863**,
7. ***Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra***, reported in **2009 (1) SCC (Cri) 51** and
8. Judgment dated 02.03.2010 delivered by this Court in ***Criminal Revision Application No. 15 of 2010 (Ramesh s/o Mansingh Patil vs. The State of Maharashtra)***.

7. Learned APP for the respondent-State submits that *prima facie*, there is evidence against both the revision applicants to connect them with the crime. Learned APP submits that the deceased had written a suicidal note which runs into 12 pages mentioning all the accused as responsible for her suicide. Learned

APP submits that there is ample evidence by way of suicidal note that original accused no.3 Mangal Khade has threatened deceased Seema and also mentally harassed her. Learned APP further submits that there were illicit relations between accused nos. 1 and 2 and even deceased Seema had witnessed the same on one occasion. Learned APP submits that deceased Seema had written suicidal note in her own hand writing and narrated the incident in detail. Learned APP submits that the material on record is sufficient to proceed against all the accused including the present revision applicants. Learned APP submits that learned Assistant Sessions Judge-2, Jalna has rightly rejected the applications Exh.26 and Exh.21 filed by the revision applicants respectively.

8. So far as the scope of Section 227 is concerned, after adverting to various decisions, the Hon'ble Supreme Court has enumerated following principles:

- "1. That the Judge while considering the question of framing the charges has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
- 2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing*

a charge and proceeding with the trial.

3. *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
4. *In exercising his jurisdiction under sec.227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
5. *At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

6. *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

9. So far as original accused no.3 Mangal Khade is concerned, she is not a member of the family of deceased Seema. I have perused the suicidal note, which runs into 12 pages, carefully. Deceased Seema, in the opening paragraph of the said suicidal note, stated that she makes her husband Manoj and accused no.2 Anisa @ Annu Siddiqui, Staff Nurse, mainly responsible for her suicidal death. By referring the incident dated 24.03.2013, she further stated that unnecessarily, accused no.3 Mangal Khade, by taking side of accused no.2 Anisa, quarreled with her. It further appears in the suicidal note that deceased Seema referred an incident dated 16.03.2013, which is eight days prior to the alleged incident of suicide. On that day, at about 8:30 p.m., she had a quarrel with her husband in consequence of which, her husband-accused no.1 started beating her and at that time, one Kavita Waghmare, Staff Nurse, the present revision applicant-accused no.3 Mangal Khade and her husband rescued her. Even deceased Seema further stated that accused no.3 Mangal Khade and said Kavita Waghmare gave understanding to the husband of deceased Seema i.e. accused no.1.

However, on 24.03.2013, in the disturbed mental condition, deceased Seema had some quarrel with accused no.3 Mangal Khade and at that time, the suicidal note says that accused no.3 Mangal Khade referred to deceased Seema as “psycho” and quarreled with her.

10. The aforesaid facts as emerging from the suicide note, if taken at their face value, do not disclose existence of the ingredients constituting the alleged offence.

11. So far as accused no.2 Anisa @ Annu Siddiqui is concerned, deceased Seema, in the said suicidal note states that her husband Manoj and Anisa Siddiqui are mainly responsible for her suicidal death. Deceased Seema had referred the incident dated 15.03.2013 when she returned to the residential quarter at about 9.45 to 10.00 a.m., she found that the door of her residential quarter was chained from outside. The residential quarter of accused no.2 Anisa is situated in front of her quarter and the door of the house of accused no.2 Anisa found locked from inside. Deceased Seema further stated in the suicidal note that after some time, accused no.2 Anisa opened the door and deceased Seema found her husband in her quarter. She had questioned to her husband, however, he had given some evasive answers. Even on the next day, there was a quarrel

on that count between deceased Seema and her husband accused no.1 Manoj. Even on 17.03.2013, as stated by deceased Seema in her suicide note, she had attempted to commit suicide by consuming tablets. It appears that deceased Seema got annoyed and mentally disturbed on account of said incident. On the basis of these allegations, though for conviction, the conclusion is required to be proved beyond reasonable doubt, however, it can be observed *prima facie* that accused no.2 Anisa @ Annu Siddiqui might have committed an offence of abetting commission of suicide of deceased Seema. The allegation made by deceased Seema in her suicidal note against accused no.2 Anisa gives rise to grave suspicion about her involvement in the alleged offence of abetment to commit suicide. In view of this, accused no.2 Anisa is not entitled for discharge. Learned Assistant Sessions Judge-2, Jalna has rightly rejected the application Exh.21 filed by accused no.2 Anisa. Hence the following order :

ORDER

- I. Criminal Revision Application No. 06 of 2016 is hereby allowed.
- II. The order dated 05.12.2015 passed by learned Assistant Sessions Judge-2, Jalna below Exh.26 in Sessions Case No. 225 of 2014 is hereby quashed and set aside.

- III. The application Exh.26 for discharge under Section 227 of Cr.P.C. is hereby allowed. The revision applicant-original accused No.3 Mangal Gopinath Khade is hereby discharged for the offences punishable under Sections 306, 498-A and 506 r/w 34 of IPC in Sessions Case No. 225 of 2014 pending before learned Assistant Sessions Judge-2, Jalna.
- IV. Criminal Revision Application No. 07 of 2016 is hereby dismissed.
- V. The order dated 14.10.2015 passed by learned Assistant Sessions Judge-2, Jalna below Exh.21 in Sessions Case No. 225 of 2014, rejecting thereby the application Exh.21, stands confirmed.
- VI. Both the Criminal Revision Applications are accordingly disposed of.

(V. K. JADHAV, J.)

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