

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3629 OF 2014

Arun Yadav

... Petitioner

vs.

The State of Maharashtra and anr.

... Respondents

Mr. Milan Desai i/by Ashish Dubey, Advocate for the petitioner.
Ms. Poonam Bhosale, Additional Public Prosecutor for the State.
Mr. Rajas Yadav, Advocate for respondent No.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 4th January, 2016.

P.C. :

1. This petition filed under Article 227 of the Constitution of India has been pending for admission since the month of September-2014. Hence, by consent of the parties the same is taken up for final hearing at the stage of admission. Heard the counsel and perused the record.

2. The petitioner is the accused in Sessions Case No.747 of 2013 arising out of C.R. No.190 of 2013 dated 6th June, 2013. The petitioner was arrested on the same day and has subsequently been released on bail. He has filed this petition to challenge the order dated 14th August, 2014 passed by the Sessions Court on his application for discharge at Exh.11.

3. The allegations of the prosecution against the petitioner stated in brief as follows :

The deceased was married to the petitioner on 21st April, 2011 at his native place in Uttar Pradesh. At the time of marriage the parents of the deceased had given Rs.3,00,000/- in cash to the petitioner, and several household articles along with ornaments to the deceased. In the month of October-2012, the petitioner and the deceased came to Mumbai and started residing at Navjivan Welfare Society, Ashok Nagar, Ghatkopar (West), Mumbai. On 2nd June, 2013 at about 5 pm., when the petitioner returned to his residence, he found that the house was locked from inside. He opened the latch from outside by making use of the gap in the door and found that the deceased was hanging from the ceiling. The petitioner, then with the help of the neighbours brought the deceased down and took her to the hospital where she was declared dead. On the same day the police had recorded the statement of the petitioner as well as the maternal uncle of the deceased, a resident of Mumbai, who had on the receiving the information rushed to the hospital. In his statement the maternal uncle had clearly stated that the relations between the petitioner and the deceased were good and he had not received any complaint from the deceased about the petitioner at any point of time.

4. The parents of the deceased came to Mumbai on 4th June, 2013. Two days thereafter i.e. on 6th June, 2013 offence vide C. R. No.1039 of 2013 for the offences punishable under Section 498-A and 306 I.P.C. came to be registered against the petitioner at the instance of the father of the deceased. He alleged in his statement to the police that after the deceased came to Mumbai, she had told her mother over telephone that the petitioner was demanding a sum of Rs.1,00,000/- to set up a business. He was assaulting and harassing the deceased for that purpose. Thereafter, whenever the parents talked with the deceased over telephone she would implore them to bring money. The statement contained no particulars, whatsoever, of any of the incidents. The statement of the mother of the deceased is similar to the statement of the father. During the course of investigation the police recorded statements of other relatives of the deceased and also of the neighbours. The statements of all the relatives are identical in contents. Each relative states that he was informed by the mother of the deceased about the demands of the petitioner and the harassment of the deceased. This would mean that none of the relatives have personal knowledge of the allegations. Consequently, their statements cannot further the case of the prosecution. The statements of the neighbours show that on the day of the incident,

around 12 noon, there was some quarrel between the couple over eating food. The deceased had refused to take her meals. Then the petitioner got angry and he also refused to eat meals and left the house. He returned at 5 pm. only to see that the deceased had committed suicide. Thus the statements of the neighbours which would reflect upon the relations between the petitioner and the deceased do not support the prosecution case. The postmortem report shows that there was no injury on the body of the deceased except for the ligature mark found on the neck of the deceased. In the circumstances, the only incriminating material on record is the statements of the parents of the deceased.

5. The statements of the parents when read carefully show that the allegations made therein of the demand of Rs.1,00,000/- and harassment to the deceased by assault for non-fulfillment of the demand, are vague and without particulars. The demands are said to have been made some days after the couple came to Mumbai in October-2012. The parents do not disclose the number of telephone calls made to the deceased, the approximate date or month of the calls, the telephone number on which the calls were made etc. The parents do not state the details of the nature of the business proposed to be started by the petitioner. The details of the assault by the petitioner have not been stated. It is not known

whether there were more than one incidents of assault and more than one incident of communication by the deceased to her mother. It is not the prosecution's case that at any time prior to the couple coming to Mumbai, there was any demand for money by the petitioner or any harassment subjected to the deceased.

6. Next relevant fact is the statement of the maternal uncle of the deceased recorded immediately after the incident. As per that statement the relations between the couple was good. Had the relationship been so bad as to drive the deceased to commit suicide, the natural conduct on the part of the deceased would have been to seek help from the maternal uncle in the matter. It is disclosed by the maternal uncle that he used to periodically visit the couple at their residence. The second statement of the maternal uncle was recorded on 7th June, 2013. This statement is verbatim same as the statements of the other relatives. Thus, there is no incriminating material on record at all to involve the petitioner and even if the Sessions Court is to proceed with the trial, it is bound to result into acquittal of the petitioner.

7. Mr. Yadav, the learned advocate appearing for respondent No.2, however, submits that the Sessions Court has rightly dismissed the application for discharge for the reasons stated therein. Perusal of the impugned order, however, shows

that there are virtually no reasons stated therein. The order is a short order consisting of five paragraphs. Paras 1 and 2 consist of one line each. Para 3 notes the briefest gist of the chargesheet. Para 5 merely lists the citations referred to on behalf of the petitioner. Para 4 of the order stating reasons for dismissal of the application reads as under :

“Though investigation is completed it cannot be said that as beside the statement of the relatives of the deceased no other evidence is available against the accused and the accused can be discharged on its basis. As per the statement the demand was made in October, 2012 and thereafter, continuously and she was telling about it. Therefore, the dispute prior to the suicide of victim and the statements of demand of money are sufficient to frame the charge against the accused. The statements of the relatives cannot be considered as false at this stage so as to discharge the accused persons on the basis of the statements of the neighbours that they did not notice any quarrel between the accused and the victim.”

The order does not indicate what is the other evidence available with the prosecution. Mr. Yadav, the learned advocate appearing for the respondent No.2 has not been able to point out any other evidence. In any case, there cannot be any evidence beyond the chargesheet. The order erroneously states that the demand was made in October-2012 and thereafter continuously and the deceased was telling about it. The prosecution case is that the couple came to Mumbai in October-2012 and some days thereafter

the deceased talked with her mother over telephone. Further, the order unfortunately does not take note of the fact that none of the relatives can be said to be witness of any circumstance supporting the prosecution. The order, therefore, cannot be sustained.

8. It is abundantly clear that the material on record is not sufficient to frame charge against the petitioner. Even, if the charge is framed and the trial is conducted, it is bound to result into acquittal of the petitioner. In the circumstance, the Sessions Court ought to have allowed the application for discharge and discharged the petitioner. Hence, the petition is allowed in terms of prayer Clause (a). The order dated 14th August, 2014 passed by the Sessions Court on Exh.11 is set aside. The application at “Exh.11” is allowed. The petitioner is discharged in Sessions Case No.747 of 2013.

[Smt. R. P. SondurBaldota, J.]