

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

WRIT PETITION NO. 5074 OF 2015

Bhimrao Baban Rathod

... **Petitioner.**

Versus

The State of Maharashtra & Ors.

... **Respondents.**

Mr.P.R.Rathod for Petitioner.

Mr.A.R.Patil, APP for Respondent No.1-State

Mr.Vishal Patil for Respondent Nos.2 and 3.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 14TH JULY, 2016.

P.C. :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner is aggrieved by the order dated 19.10.2015 delivered by the learned Assistant Sessions Judge thereby rejecting the application Exhibit 3 filed by the petitioner seeking discharge under Section 227 of the Code of Criminal Procedure.

3] Learned Advocate for the petitioner has strenuously criticized the impugned order. Contention is that the grounds on which the prosecution has been launched are baseless and

unsustainable. The deceased was not driven to commit suicide by the petitioner and therefore no offence under Section 306 of the Indian Penal Code is made out against the petitioner.

4] It is further submitted that the First Information Report is registered against Vilas Rathod and not against petitioner Bhimrao Rathod. It is further submitted that father of the deceased has sworn an affidavit on 12.12.2014 that his deceased daughter Lalita Rajendra Rathod was of an unstable mind. She was a special child right from her birth and as such the accused Bhimrao @ Vilas Baban Rathod should not be punished for an offence which he has not committed.

5] Learned Advocate therefore strenuously submitted that in the light of the affidavit tendered by the father of the deceased before the same Court in the proceedings, needs to be considered as being a clinching piece of evidence. He further prays for quashing of the impugned order and for discharge from the pending proceedings.

6] Learned Asst. Public Prosecutor and learned Advocate for respondent No.2 have supported the impugned order.

7] I have considered the submissions of the learned Advocates.

8] The deceased Lalita is said to have committed suicide on the ground of the purported refusal of the petitioner to marry her despite promises and assurances given. The material before the learned Sessions Court is found to be sufficient by the Court for proceedings with the prosecution. It has concluded that if there is some material on record, which could make out an offence against accused, the power under Section 227 of the Code of Criminal Procedure ought not to be exercised casually.

9] The material available indicates that the petitioner had a love affair with the deceased person. It is in this backdrop that on account of the refusal to marry the deceased, she has committed suicide. Whether the affidavit tendered by the father of the deceased was under duress or coercion is a matter of evidence.

10] In my view the learned Magistrate has rightly not placed reliance on the said affidavit at this stage considering the material available before him, thereby justifying the prosecution of the petitioner. So also, whether Vilas Baban Rathod is a different person than Bhimrao Baban Rathod is also matter of investigation, since the record indicates that the petitioner/accused is known as Vilas @

Bhimrao Baban Rathod.

11] Considering the above, I do not find any merit in the petition and the same is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)