

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

CRIMINAL REVISION APPLICATION NO.324 OF 2017

Tarikh Aphak Khan & Anr.	...Applicants
Versus	
The State of Maharashtra	...Respondent

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Mr. Ganesh Gole with Mr. Ateet Shirodkar for the Applicants.
Mr. Shahajirao Shinde, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th AUGUST, 2017.

P.C.:-

The Applicants, who are accused Nos.3 and 5 in Sessions Case No.358 of 2015 @86 of 2016 have challenged the order dated 22nd March, 2017 whereby the learned Additional Sessions Judge Greater Mumbai, dismissed the application for discharge.

2. A few facts relevant to decide this application are as under:

The Applicant No.1 is the borthor and the Applicant No.2 is the sister-in-law of accused No.1-Sharikh Khan. Said Sharikh Khan was married to Kulsum, the sister of the first informant-Akhtar Khan on 27th May, 2013. She gave birth to a child on 9th March, 2014. After the delivery said Kulsum had stayed with her parents for some while. She

had returned to her matrimonial home on 24.11.2014. Said Kulsum consumed some tablets during early morning hours of 27.11.2014. She was initially taken to Diamond Nursing Home and subsequently admitted in Sabu Siddhiki Hospital. Since her condition was deteriorated, she was taken to Nair Hospital. Said Kulsum expired on 4.12.2014 at about 6. a.m.

3. There is thus no dispute that said Kulsum had expired within 7 years of her marriage. The post mortem report states that death of Kulsum was due to dapsone poisoning with evidence of liver failure and pneumonia. The report thus indicate that the death of Kulsum was unnatural.

4. On the same day i.e. on 4.12.2014 Shri Akhtar Khan, the brother of the deceased Kulsum, lodged a report that that the husband as well as the father-in-law, mother-in-law, brother-in-law and sister-in-law of Kulsum were harassing Kulsum over some domestic issues. Said Akhtar claimed that he suspected that the Sharikh Khan, the husband of Kulsum and his family members had administered poisonous substance to his sister-Kulsum.

5. The Police had not registered any crime on the basis of the said statement. Crime was registered on the basis of the report dated 6.12.2014 lodged by Akhtar Khan. In the said report he had alleged that Sharikh Khan and his family members had demanded dowry and subjected Kulsum to cruelty. The first informant Akhtar Khan also gave a supplementary statement alleging that the accused No.1 and his family members had refused to return and had misappropriated the motor cycle, cash, gold ornaments and other articles given to Kulsum at the time of marriage.

6. Upon investigating the crime, a charge sheet came to be filed against Sharikh Khan and his family members including the Applicants herein for offences under Sections 498 A, 304 B, 406 r/w. 34 of the IPC.

7. The Applicants had sought discharge on the ground that there was no sufficient ground to proceed against them. The learned Judge held that the report lodged by the first informant indicated that all the accused including the Applicants herein were harassing Kulsum for household reasons. The learned Judge further held that though the allegations against the Applicants are not specific, the material on record reveals that the Applicants were residing in the same house and

that on the day Kulsum attempted to commit suicide they had tried snatch away her son from Kulsum. The learned Judge therefore held that the said material was sufficient to proceed against the Applicants. Being aggrieved by the said order the Applicants have invoked the revisional powers of this Court.

8. Mr. Gole, the learned counsel for the Applicants has submitted that the First Information Report (for short 'FIR') as well as the statements of the parents of the deceased do not indicate that the Applicants were involved in demanding dowry or subjecting Kulsum to cruelty. He has submitted that apart from a vague allegation against the Applicants, there is prima facie no material to proceed against them for offences punishable under Sections 498 A, 304 B and 406 of the Indian Penal Code.

9. Mr. Shahajirao Shinde, the learned APP submits that the Applicants are the family members of Sharikh Khan, the husband of Kulsum and that they were residing in the same house. He has submitted that the statements of the first informant as well as the parents of the deceased prima facie reveal that the Applicants were involved in demanding dowry and subjecting the deceased to cruelty.

He has further submitted that the Applicants have refused to return the gold ornaments, cash and other items given to Kulsum at the time of her marriage. He therefore, claims that the learned Judge was perfectly justified in dismissing the application for discharge.

10. I have perused the records and considered the submissions advanced by the learned counsel for the Applicants and the learned APP for the Respondent State.

11. Before advertng to the facts of the case it would be advantageous to refer to the decision of the Apex Court in ***Sajjan Kumar vs C.B.I (2010) 9 SCC 368*** wherein the Apex Court while considering the scope of section 227 and 228 of Cr.P.C. has reiterated the following principles:-

“16) ... it is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:- (i) The Judge while considering the question of framing the charges under Section 227 of

the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case. ii) 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.

- iii) The Court cannot act merely as a Post Office or a mouthpiece 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
- iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
- v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and*

must be satisfied that the commission of offence by the accused was possible. vi) 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 discloses 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.

vii) 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.”

12. Now reverting to the facts of the present case, in the statement dated 4.12.2014, which was first in point of time, Akhtar Khan, the brother of the deceased had not alleged that these Applicants had demanded dowry or that they harassed Kulsum for not meeting the demand of dowry. The reference to demand of dowry was made for the first time in the statement dated 6.12.2014. In the said statement, the first informant Akhtar Bhikku Khan had stated that initially the in-laws of his sister Kulsum had not demanded any dowry.

However, after the engagement, the father-in-law of Kulsum had demanded one two wheeler and cash of Rs.1,50,000/-. He has stated that he had given a two wheeler and cash of Rs.1,50,000/- in addition to one Mangalsutra, ear rings, ring of 2.5 tolas and some silver ornaments of total 750 gms to his sister.

13. The FIR further states that after his sister had gone to her matrimonial house, her husband-Sharik Khan, father-in-law -Afak Khan, mother-in-law-Ashia Khan, brother-in-law Tarik Khan and sister-in-law- Tabsassum used to harass her over some domestic issues. He had further stated that some time in the month of October, 2013 the husband, father-in-law and mother-in-law of Kulsum as well as the Applicants had assaulted her and sent her to her parental house at Gowandi with instructions to get additional amount of Rs.20,000/-. The first informant had also alleged that in July-2014 he had given some steel utensils, sweets, etc. to his sister and her in-laws on the occasion of Eid. He has further stated that his sister had informed him that her family did not like the clothes given by him. The first informant had stated that he had talked with the father-in-law of the deceased and had convinced him that clothes given by him were of good quality.

14. As stated earlier, in the statement dated 4.12.2014, there was no reference to any demand of dowry. The said statement also does not indicate that the Applicants had harassed Kulsum for not meeting the demand of dowry or any other unlawful demand. The said statement indicates that the harassment was over domestic issues. It is further to be noted that the statement dated 6.12.2014, which is treated as FIR also does not specifically state that the Applicants herein had demanded dowry. The allegations of demand of dowry are basically against the father-in-law. The FIR also does not state that these Applicants had harassed Kulsum for not meeting the demand of dowry but merely states that the husband of Kulsum and his family members including these Applicants were harassing Kulsum over domestic issues.

15. The FIR indicates that on 26.11.2014 at about 23 hours the accused No.1 had phoned him and told him to speak to Kulsum and to convince her. He had stated that Kulsum had refused to speak to him. About 15 to 20 minutes later the accused No.1 had once again phoned him and told him to talk to his sister. The first informant has stated that his sister was crying and that she had told him that she was being

assaulted. She had stated that they were taking away her child and trying to throw her out of the house alongwith all the household articles given to her at the time of marriage. The first informant had stated that when he questioned his sister as to who were in the house, she had informed him that her father-in-law and "others" were in the house.

16. The statements of the mother and other family members of the deceased also do not indicate that these Applicants were involved in demanding dowry or subjecting Kulsum to cruelty.

17. The allegations made in the FIR as well as in the statements of the other witnesses do not indicate that the Applicants were involved in assaulting Kulsum or subjecting her to cruelty. The learned Judge has also noted this fact in the order. The learned Judge has however proceeded to frame the charge merely on the ground that the Applicants were in the house on the relevant date. Needless to state that charge under Section 498 A or 304 B cannot be ordered to be framed merely on the ground that the Applicants are the family members of the husband of the deceased or because they were staying under the same roof.

18. The allegations of misappropriation of cash of Rs.1,50,000/- and other valuable items given to Kulsum at the time of marriage were made for the first time in the supplementary statement dated 15.12.2014. Even in this statement there are no specific allegations that the cash and the other valuable items were entrusted to these Applicants and that they had misappropriated the same.

19. Under the circumstances, charge against the Applicants is groundless and consequently, they cannot be prosecuted for offences under Sections 498 A, 304 B and 406 of the IPC. Hence, the application is allowed. The impugned judgment and order dated 22nd March, 2017 is set aside. The Applicants are discharged of offences under sections 498 A, 304 B and 406 of the IPC. Their bail bonds stand discharged.

(ANUJA PRABHUDESSAI, J.)