

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

CRIMINAL REVISION APPLICATION NO.553 OF 2016

Ganesh Jaywant Kumbhar .. Applicant.

Vs.

State of Maharashtra & Anr. .. Respondents.

Mr.Shailendra Kumar with Mr.C.S. Singh for the Applicant.

Mr.S.V. Gavand APP for the Respondent-State.

CORAM : A. K. MENON, J.

DATED : 3RD JULY, 2017

P.C. :

1. By this criminal revision application, the applicant seeks to challenge the order dated 24th August, 2016 rejecting his application for discharge in a case pertaining to abetment of suicide under Section 306 of the Indian Penal Code.

2. The impugned order while dealing with discharge application recorded a fact that on 17th November, 2013 a suicide note was found in the house. The deposition of mother, sister and father of the deceased stated that the applicant used to harass the deceased and she would convey those instances on phone. The various statements of other witnesses are also seen to be recorded including that of one Subhash Solse at whose residence the applicant had stayed. Solse deposed that he had heard frequent quarrels between the

applicant and the deceased. The suicide note recorded that she was tired of the life and reveals ill treatment at the hands of the applicant husband including allegations that the applicant often threatened to bring another woman into the matrimonial home. The trial Judge has found that behavior of the applicant was such that it could amount to abetment of suicide and this can be decided only by evidence. Having come to this finding, the learned Judge has also recorded that the material available on record thus far cannot be discarded and therefore found that this is not a case for discharge.

3. The learned counsel for the applicant submitted that no case under Section 306 of IPC is made out and there is no iota of evidence to support the case of the prosecution. He relied upon a decision of the Supreme Court in *Mahendra Singh and Anr. vs. State of M.P.* 1995 Supp (3) SCC 731 and *Ramesh Kumar vs. State of Chattisgarh* 2001 Supp (4) SCR 247. The learned counsel submitted that the facts in the case of Mahendra Singh (supra) were almost identical. The husband was abusing and beating his wife and had also threatened to marry a second time.

4. The learned APP has opposed the application on the ground that there is enough material to proceed with the trial. There was no case for discharge. He inter alia referred to the statement of one Pramod Raje, who is the brother of deceased, a copy of which is annexed to this application to which no reference was made by the learned Judge. The said statement is indicative

of physical abuse in addition to the mental abuse complained of and which is referred in the statements of witnesses and alluded to by the learned Judge.

5. In the facts of the case learned APP also relied upon a decision of *State of Tamil Nadu vs. N.Suresh Rajan and Others AIR 2014 SC (Supp) 1982* where scope of the discharge of the applicant was considered by the Supreme Court. The Supreme Court has observed that at the time of discharge whether a charge could or could not be framed by the Court depended on the material before it and not whether grounds for conviction were made out. A mini trial is not warranted at this stage. The fact situation there and in the case of Ramesh Kumar (*supra*) reveals that in those cases the trial had concluded. The parties were before the Supreme Court challenging the decisions of the Lower Court. Prima facie there is nothing to show that the impugned order is perverse or that the application of discharge was rejected without giving reasons. In my view there is no merit in the present application. I therefore pass the following order :

- (i) Revision Application is rejected.
- (ii) The trial Court shall proceed without being influenced by any observations in this order.

(A.K. MENON, J.)