

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.523 OF 2017

VAIBHAV BAJIRAO SATHE AND ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Tejas Hilage, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 5th DECEMBER 2017

P.C. :

1 Heard. Admit. Heard finally by consent of the parties.

2 The revision petitioners who are accused nos.1 to 4, by this petition, are challenging the order dated 29th August 2017 passed by the learned Additional Sessions Judge, Kolhapur, on applications at Exhibits 9 and 10 moved by the revision petitioners seeking their discharge from Sessions Case No.55 of 2017 for offences punishable under Sections 306, 498A, 323, 504 read with 34 of the Indian Penal Code (IPC).

3 Heard the learned advocate appearing for the revision petitioners/accused. He drew my attention to the report of Accidental Case Death titled as "वरदी जवाब" lodged on 22nd December 2016 by Sandeep Yashwant Lokhande – brother of the deceased and argued that in this report of Accidental Death, no averments are made by the brother of the deceased against any of the accused persons. This report is conspicuously silent about subjecting the deceased to cruelty by accused persons or instigating her to commit suicide. Therefore, in submission of the learned advocate for the revision petitioners/original accused, the subsequent First Information Report (FIR) as well as statement of witnesses recorded belatedly cannot be considered to infer commission of offences alleged against revision petitioners/accused thereby making them entitled for discharge. He further argued that so far as revision petitioner/accused no.4 Jaysingh Sathe is concerned, there is no iota of evidence against him, in order to frame charge.

4 I have also heard the learned APP, who argued that, the report referred to by the learned advocate for the revision petitioners/accused as report of the Accidental Death registered as per provisions of Section 174 of the Code of Criminal Procedure (Cr.PC.) and as the same is in respect of unnatural death, there is no necessity of giving other particulars in that report. The learned APP further argued that statement of witnesses as well as the FIR lodged by the brother of the deceased shows that there are sufficient grounds to proceed against the accused persons.

5 I have carefully considered the rival submissions and also perused the entire charge-sheet. In the case in hand, the revision petitioners/accused are claiming discharge by assailing the order passed by the learned Additional Sessions Judge, Kolhapur, rejecting their claim for discharge. Charge-sheet against the revision petitioners/accused persons is for commission of offences punishable under Sections 306, 498A, 323, 504, 506 read with 34 of the IPC.

6 Section 227 of the Cr.P.C. deals with discharge. Even upon consideration of the record of the case and documents submitted therewith and after hearing submissions of the accused as well as the prosecution, if it is found that there is no sufficient ground for proceeding against the accused, then the court can discharge accused persons. The law on this aspect is no more *res integra*. The Hon'ble Supreme Court in the matter of **State of Tamil Nadu vs. N. Suresh Rajan & Ors.**¹ has held thus :

“We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging

1 (2014) 11 Supreme Court Cases 709

therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of **Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171)**, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in **Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp)**

204 : 2008 AIR SCW 96):

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.” ” .

Keeping in mind the law enunciated by the Hon'ble Apex Court in this regard, let us examine the case in hand.

7 Deceased Jayshree Vaibhav Sathe married revision petitioner/accused Vaibhav Sathe in the year 2011. On 15th

December 2016, there was marriage ceremony of her brother Sandeep Lokhande at her parental house at Kaurwadi in District Kolhapur. She visited her parental house for the purpose of this marriage ceremony. Her dead body was found floating in the river bed of Kasari river at about 12.35 p.m. of 22nd December 2016. Her brother Sandeep Yashwant Lokhande lodged report of Accidental Death Case as envisaged by Section 174 of the Cr.P.C. which is titled as "वरदी जवाब" on 22nd December 2016 itself. He reported to police that on 22nd December 2016, his sister had called her husband Vaibhav Sathe telephonically from his cell phone. Then, she told her brother Sandeep that as she wants to go to her matrimonial house on the very next day, she is going to pay obeysance to Goddess Bhairadi. That is how she left the house. Her dead body was immediately found floating in the river bed of river Kasari. This is the gist of the report of the Accidental Death Case lodged by Sandeep Lokhande. What was reported by this report is occurrence of the event of accidental death of his sister by Sandeep Lokhande. This report can be considered, at the most, as a report under Section 174 of the Cr.P.C. There is no need to

give detail description of the events in the report of the Accidental Death Case.

8 On the very next day, the FIR came to be lodged by Arun Lokhande – another brother of deceased Jayshree Sathe. This has resulted in registration of Crime No.51 of 2016, which ultimately culminated in filing of the charge-sheet and registration of the subject sessions case. Perusal of the FIR lodged by Arun Lokhande shows that revision petitioner/husband Vaibhav was assaulting and abusing Jayshree as she was unable to conceive. It is averred that revision petitioner no.2 Akkatai, who is mother-in-law of the deceased, used to subject her to cruelty by giving taunts to her that she is an infertile lady. It is averred in the FIR that as there was miscarriage, husband as well as father-in-law and mother-in-law of deceased Jayshree subjected her to physical as well as mental cruelty. The FIR further reveals that then parental relatives of Jayshree undertook the task of medical treatment of deceased Jayshree, who was diagnosed as a patient having 1st Degree Infertility with PCOD. First Informant Arun Lokhande

further reported that on 22nd December 2016 itself, after making a telephonic call to her husband, his sister Jayshree informed him that her husband informed her that tomorrow he is coming to her parental house for giving divorce to her. That is how, as per the version of the First Informant, Jayshree left the house on the pretext of taking darshan of Goddess Bharadi and subsequently, her dead body was found. There are statements of witnesses named Anjana Lokhande, Sanjay Khavale, Sanjay Dabhade and Hanmant Dabhade to the effect that husband and in-laws of deceased Jayshree were subjecting her to cruelty. She married revision petitioner/accused no.1 Vaibhav Sathe in the year 2011 and died within seven years of her marriage. Her death is, obviously, unnatural. At the time of the trial, it will have to be examined whether such unnatural death caused within seven years of her marriage with the revision petitioner/accused no.1 as well as the fact that the cruelty reflected from the statements of witnesses would be sufficient to draw presumption regarding abetment for commission of suicide. Suffice to state that statements of witnesses as well as the First Informant does not

allow me to hold that there are no sufficient grounds to proceed against the husband as well as father-in-law and mother-in-law of deceased Jayshree for alleged offences.

9 Revision petitioner/accused no.4 Jaysingh Sathe, is arraigned as accused no.4 in the charge-sheet. He is reported to be cousin father-in-law of deceased Jayshree Sathe. It is seen from the record of investigation that he was residing separately and was not a member of the joint family of in-laws and husband of deceased Jayshree Sathe. Witnesses are not naming him as a person who was subjecting deceased Jayshree to cruel treatment as envisaged by explanation to Section 498A of the IPC. Similarly, statements of witnesses do not reflect any act of instigation, incitement or encouragement by revision petitioner/accused no.4 Jaysingh Sathe to the deceased to commit an act of self-effacement. Name of revision petitioner/accused no.4 Jaysingh Sathe is reflected in the statement of only one witness namely Nitin Patil. He was owner of the medical shop at Village Bazaarbhogav. His statement reflects that one year prior to

recording of his statement, he had seen revision petitioner/accused no.4 conversing with First Informant Arun Lokhande in front of his medical shop. This witness – Nitin Patil – does not claim to have heard their conversation. He claims to have heard from Jaysingh Sathe that because of infertility of his sister Jayshree, there is constant quarrel in the house of the First Informant and lot of money is spent on medical treatment of Jayshree. Except this, there is nothing against revision petitioner/accused no.4 Jaysingh Sathe. In other words, if averments made in the entire charge-sheet are accepted as it is, then also, there are no ingredients of alleged offences available to infer complicity of revision petitioner/accused no.4 Jaysingh Sathe in the crime in question. Hence, I hold that there are no sufficient grounds to proceed against revision petitioner/accused no.4 Jaysingh Sathe in the subject Sessions Case No.55 of 2017. This aspect of the matter is not considered by the learned Additional Sessions Judge, Kolhapur, in the impugned order dated 29th August 2017, and to that extent, perversity creeps in the impugned order passed by the learned Additional Sessions Judge,

Kolhapur, warranting interference at the hands of this court.

Therefore, the order :

ORDER

- i) The revision petition is partly allowed.
- ii) Revision petition/accused no.4 Jaysingh Sathe is discharged from Sessions Case No.55 of 2017 between the parties. His bail bonds stand cancelled.
- iii) The revision petition by rest of the revision petitioners/accused persons is rejected.

(A. M. BADAR, J.)