

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1276 OF 2016**

Samdarshi Raghvendra Singh Applicant

Vs.

The State of Maharashtra & Ors. Respondents

Mr. R.P. Ojha, Advocate for the Applicant.

Ms. Anamika Malhotra, A.P.P. for the respondent- State.

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

Date : 27th January, 2017

P.C.

1 This application challenges the concurrent findings of the courts below as regards sufficiency of the material on record to proceed against the respondents for the offence punishable under Section 306 read with Section 34 Indian Penal Code. By the order dtd. 7th April, 2015, the trial court i.e. the Additional Chief Metropolitan Magistrate, 26th Court, Andheri, Mumbai dismissed the applicant's complaint being CC No. 11/SW/2012 for want of sufficient evidence to proceed against the respondents. Being aggrieved by that order, the applicant had preferred Criminal Revision Application No. 768 of 2015 to the Sessions Court, Mumbai. By the order dtd. 4th August, 2016, the Sessions Court dismissed the revision application.

2 One Nidhi, the daughter of respondents no.1 and 2 was married to the applicant. The marriage was a love marriage, solemnized on 28th February, 2011 at Kanpur, Uttar Pradesh. It had taken place with participation of the parents and relatives of both the sides. Respondent no.3 is the brother of Nidhi and respondent no.4 is her sister-in-law i.e. wife of respondent no.3. Nidhi committed suicide at the matrimonial residence on 27th September, 2011 by hanging herself. On the next day i.e. on 28th September, 2011, respondent no.1 filed complaint with MIDC Police Station against the applicant and his parents vide CR. No.506 of 2011 alleging offences punishable under Sections 304(B) and 498-A read with Section 34 Indian Penal Code.

3 On 29th December, 2011 the applicant also lodged complaint against respondents no.2 to 5 with Senior Inspector of Police, MIDC Police Station alleging offences punishable under Section 306 read with Section 34 Indian Penal Code. The police, however, did not lodge FIR against the respondents. Therefore, on 9th January, 2012 the applicant moved an application under Section 156(3) Criminal Procedure Code ("Cr.P.C." for short) before the Metropolitan Magistrate, 22nd Court, Andheri, Mumbai being C.C. No. 11/SW/2012. The learned Magistrate, instead of referring the matter for investigation under Section 156(3) Cr.P.C. put it up for

verification. Accordingly, during the period 22nd October, 2013 to 17th June, 2014 the statement of the applicant and the statements of his witnesses were recorded by the learned Magistrate. On appreciation of the evidence on record, the learned Magistrate by his order dtd. 7th April, 2015 dismissed the applicant's complaint holding that the evidence led by him cannot be regarded as sufficient evidence to summon the accused for the offence punishable under Section 306 Indian Penal Code.

4 In the meantime, on 24th January, 2013 charge-sheet was filed against the applicant and his parents in C.R. No.506 of 2011. Subsequently, the parents of the applicant have been discharged and the order of discharge is confirmed by this Court.

5 The allegations of the applicant in the complaint filed by him, stated in brief are that, the parents of Nidhi were not willing to arrange her marriage with the applicant. They had expressed their inability to incur the expenses for the marriage. Therefore, the father of the applicant had agreed to bear the expenses of the marriage. The parents of Nidhi and her brother used to taunt her saying that, she had married the applicant against the wishes of her parents. They also allegedly demanded refund of the money spent on her education, and had taken away her jewellery. Nidhi felt harassed and depressed

with the conduct of her parents and her brother and committed suicide on 22nd September, 2011.

6 The learned Magistrate while appreciating the evidence adduced by the applicant and his two witnesses observed that their evidence was not direct and was hear-say evidence. As regards the deposition of the applicant, the trial Court noted that, his source of information was the information given to him by Nidhi. Similarly the evidence of P.W.2 was based on the information given to him by the applicant. P. W.3 deposed about the financial crisis of father of Nidhi. That evidence was also based on the information allegedly given by Nidhi to him. The trial Court, next noted that, though there were references made to the telephone and mobile calls from the respondents making demands for the educational expenses of Nidhi, there was no evidence to establish the same except the bare word of the applicant. There were neither any call details nor related evidence relied upon by the applicant. Next, there was unexplained delay in lodging complaint with the police by the applicant. The incident of suicide of Nidhi had occurred on 22nd September, 2011 and the complaint filed by the applicant was on 9th January, 2012.

7 The Sessions Court, has also while deciding the Revision from the order of the trial Court extensively considered the evidence of the applicant and his witnesses. It

has noted that, the applicant in his deposition has failed to state the necessary particulars of the allegations of harassment made by him and observed that the complaint, verification statement of the applicant and the statements of his witnesses contain vague allegations against respondents no.2 to 5 who are the parents, brother-in-law and sister-in-law of Nidhi that they were asking Nidhi for money spent on her education. In its opinion, the fact that the complaint has been filed by the applicant while facing charges for the offences punishable under Sections 498-A, 304-B and 306 Indian Penal Code for the death of Nidhi indicates that it is not a genuine complaint.

8 On careful consideration of the material on record and the orders impugned in the application, it is clear that the complaint filed by the applicant was nothing but an attempt to retaliate the complaint of respondent no.1 against him. As has been rightly observed by the Courts below, the statements of the applicant and two witnesses are nothing but hearsay evidence, which is not supported by any material whatsoever. Their statements are also devoid of any particulars as regards the demands allegedly made by the respondents upon deceased Nidhi. In the circumstance, I find no merit in the application. Therefore, the same is dismissed.

(Smt. R.P. SondurBaldota, J.)