

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.227 OF 2018

1. Nirmal Arvind Tanna, Age 36 years,
2. Archana Arvind Tanna, Age 65 years,
3. Arvind Jivram Tanna, Age 66 years,
all r/o.2nd Floor, B/21, Shreeram Apartment,
J.N.Road, Mulund (West), Mumbai.

Applicants

versus

1. The State of Maharashtra.
2. Vaishali Kinjal Chothani,
A/11, Anand Dham, Sector-1,
Shrinagar, Thane (West)

Respondents

Mr.P.S.Gole I/by Sagar Ruparel for applicans.

Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th June 2018

PC :

1. The applicants are facing the prosecution for the offences u/s498-A, 306, 406 read with Section 34 of Indian Penal Code. The application preferred by the applicants before the Trial Court seeking discharge has been rejected vide order dated 22nd December 2017. Hence, the applicants have invoked revisional jurisdiction of this Court challenging the said order.

2. The first information report was lodged by the sister of the deceased on 11th June 2015. The case of prosecution is that the deceased had married to applicant no.1 on 19th January 2014. She was being ill-treated by the applicants from to time. The instances of

ill-treatment are reflected in the FIR and other statements of witnesses. During the course of investigation the statements of father of the deceased and other persons were recorded by police. On completing investigation charge sheet was filed. The deceased had committed suicide on 11th June 2015.

3. The applicants preferred an application for discharge before the Sessions Court. Learned Sessions Judge rejected the said application. It was contended before the Sessions Court that there is no evidence to constitute offence u/s 306 of Indian Penal Code. Several other contentions were raised before the Court. Learned Sessions Judge while rejecting the said application had observed that there is direct allegation of cruelty suffered by deceased which is supported by evidence of other witnesses. The victim was meted with cruelty and the death is caused within seven years of marriage and in view of the presumption u/s 113-A of Evidence Act, no case is made out for discharge. It is further observed that the evidence on record is sufficient to prima facie establish that there is abetment on the part of accused which compelled the deceased to commit suicide.

4. Mr.Gole, learned counsel for applicants submitted that taking the case of prosecution as it is, there is no iota of evidence to establish the charge u/s 306 of Indian Penal Code. It is submitted that the allegations are after thought. There is variation in the statement of father of victim. In the initial statement dated 1st June 2015, the father of deceased has not attributed any allegations against the accused, whereas, in subsequent version recorded of 14th June 2015 and 19th June 2015, he had improvised and attributed role to the applicants about harassing and causing cruelty to the

deceased. It is submitted that accepting version of the witnesses as it is, it cannot be said that there was instigation which would amount to abetment to suicide within the purview of Section 306 of Indian Penal Code. The disputes referred to in the statements are usual quarrels which are not sufficient to invoke Section 306 of Indian Penal Code. There was no abetment and instigation and there was nothing to suggest that the acts attributed to the applicants were sufficient for the victim or to compel her to commit suicide. It is also submitted that the deceased was suffering from serious ailment which is apparent from the statement of doctor and probably that may be the reason for her to commit suicide. It is further submitted that there is nothing on record to indicate that the victim was subjected to harassment on account of birth of girl child and on the contrary, after birth of the child, applicant no.1 had invested money in the name of child. Mr.Gole relied upon following decisions in support of his submissions:-

- (i) M.Mohan Vs. State – LAWS(SC)-2011-3-16;
- (ii) State of Maharashtra Vs. Navnath Eknath Jaigude
LAWS(BOM)-2008-6-205;
- (iii) Heera Lal and another Vs. State of Rajasthan
LAWS(SC)-2017-4-109;
- (iv) Tukaram Changdeo Kanade Vs. State of Maharashtra
LAWS(BOM)-2018-1-87.

5. Learned APP submitted that at the stage of discharge prima facie case is required to be made out. The submissions advanced by learned advocate for the applicants cannot be appreciated at this stage. The Trial Court is not expected to indulge in a roving inquiry.

The Court cannot appreciate the evidence at the stage of framing of charge. The FIR and the statements of witnesses attribute overt act to the accused which prima facie makes out a case to proceed against the applicants. It is, therefore, submitted that the application is devoid of merits and the same may be rejected.

6. The marriage between the victim and applicant no.1 was solemnized on 19th January 2014. The deceased committed suicide on 11th June 2015 which is within a short span of time. The complainant in FIR has stated that the deceased was being ill-treated on various counts by applicants-accused. While conducting investigation police had recorded statements of various persons including relatives of applicants as well as deceased. It is true that in the initial statement, the father of the victim had not given details or attributed any motive to the applicants, however, in the subsequent statements recorded by the police, he has furnished details of harassment and cruelty meted out by the applicants to the accused. It is not possible to appreciate at this stage the alleged contradictory version of the witnesses reflected in the initial statement and the subsequent statement. The statements of other relative viz brother-in-law of the deceased also refers to the cruelty meted out to the deceased. From the statement of doctor, it indeed appears that the deceased was suffering from Thalassemia, however, it cannot be presumed at this stage that it was the reason for her to commit suicide. Learned Sessions Judge has rejected the application for discharge by assigning reasons. Learned Judge has also referred to presumption of Section 113-A of Evidence Act as the incident had occurred within a short span of time after marriage. The marriage was solemnized on 19th January 2014 and the deceased committed

suicide on 11th June 2015. While considering an application for discharge, the Court is required to see whether prima facie case is made out against the accused. It is not possible to arrive at a conclusion at this stage that there was no instigation or abetment to commit suicide or that the deceased had committed suicide for any other reason. The decisions referred to by the counsel for applicants are delivered in the context of factual aspects involved in the said cases and after appreciation of evidence by Court. The stage of appreciation of evidence is yet to come.

7. Taking into consideration all the aforesaid aspects, no case is made out to grant reliefs prayed in this application and this application deserves to be rejected. Accordingly, Criminal Revision Application No.227 of 2018 is rejected. It is clarified that the observations made in this order are only for dealing with present application and the Trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)

MST