

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.12 OF 2019

- 1) Rajesh s/o Ashok Patil,
Age-34 years, Occu:Agri.,
- 2) Ashok s/o Ramdas Patil,
Age-62 years, Occu:Agri.,
- 3) Mukesh s/o Ashok Patil,
Age-36 years, Occu:Agri.,
- 4) Pushpabai @ Preeti Mukesh Patil,
Age-32 years, Occu:Household,

All R/o-Kukade, Tq-Shahada,
Dist-Nandurbar.

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...

Ms. Sabahat Tarique Kazi Advocate for Applicants.
Mr. A.P. Basarkar, A.P.P. for Respondent.

...

CORAM: V.M. DESHPANDE, J.

DATE : 26TH MARCH, 2019

JUDGMENT :

1. At the out-set, learned counsel for the Applicants submits that she has instructions not to press this Revision Application for and on behalf of Applicant No.1 – Rajesh s/o Ashok Patil and Applicant No.2 – Ashok s/o Ramdas Patil.

2. Rule. Rule is made returnable forthwith by consent of the parties.

3. Heard learned counsel for the Applicants and the learned Additional Public Prosecutor for the State. This Revision is directed against the order passed below Exhibit-20 in Sessions Case No.8 of 2015. By the impugned order, the learned Additional Sessions Judge, Shahada has rejected the application for discharge.

4. One Sindhubai Dilip Patel lodged a report

with police station, Shahada on 4th September, 2014. The report was registered as First Information Report No.157 of 2014 for the offences punishable under Section 498-A, 306, 304-B read with Section 34 of the Indian Penal Code, against the Applicants and other co-accused.

5. The deceased is one Nital. Her marriage was performed with Rajesh Ashok Patil prior to four months of lodging the First Information Report. As per the First Information Report, after her performance of marriage, deceased Nital started residing with her husband in her matrimonial house at Shahada.

6. Applicant No.3 – Mukesh s/o Ashok Patil is brother-in-law of the deceased and Applicant No.4 – Pushpabai @ Preeti Mukesh Patil is wife of Mukesh Patil.

7. In the First Information Report there are no allegations against Applicant No.3 – Mukesh Patil and Applicant No.4 – Pushpabai Patil.

8. The Investigating Officer, after completion of the investigation, filed final report. Gist of the final report shows that, according to the prosecution, one message was received on the cell phone of Rajesh, husband of the deceased, from co-accused Hemant Jadhav. It states that on 4th July, 2014, Rajesh took money from him and the said was not returned by him to co-accused Hemant Jadhav, therefore, he sent message that, if he cannot repay the amount, he should send his wife in hotel. This message was communicated by the deceased to the complainant when she had been to her parental house. The gist of the charge-sheet shows that the deceased was not leading happy life and her husband was demanding money and the Applicants were supporting

the husband.

9. The charge-sheet shows the statements of various prosecution witnesses, who are the close relatives of the deceased. Their statements and supplementary statements would show that there are no direct allegations against Applicant No.3 Mukesh Patil and Applicant No.4 – Pushpabai @ Preeti Patil, by which it could be said that they have done any act which could attract the ingredients of Section 498-A or 304-B of the Indian Penal Code. There is no iota of evidence against these two Applicants to show that by their any act or omission to commit any act, they instigated the deceased to commit suicide.

10. The learned Judge of the Court below has rejected the application of the Applicants, mainly on the basis of the statutory presumption against them. For pressing into service the statutory

presumption, it is incumbent on the part of the prosecution to prove that the deceased was subjected to cruelty at the hands of the accused persons. No doubt, it is a matter of enquiry and the matter of evidence. However, even at this stage if the police statements does not reflect anything and/or there is no iota of evidence by which the Court could safely reach to the conclusion that there is no even prima facie case by which it could be said that the deceased was subjected to cruelty, then in that case even at this stage also prosecution cannot take shelter of the statutory presumption. In my view, the Court below has not considered this aspect.

11. If there is no evidence at all, then the person who is charge-sheeted, cannot be asked to go and suffer trauma of facing trial. Continuance of such proceedings will be an abuse of process of law.

12. Since there is no evidence to connect Applicant No.3 – Mukesh s/o Ashok Patil and Applicant No.4 Pushpabai @ Preeti Mukesh Patil to show that they have committed any ill-treatment or maltreatment and/or made demand, in my view, their application for discharge is required to be considered liberally. Consequently, I pass following order:-

O R D E R

(I) Application of Applicant No.1 – Rajesh s/o Ashok Patil and Applicant No.2 – Ashok s/o Ramdas Patil is disposed of as not pressed.

(II) The order dated 30th November, 2018, passed below Exhibit-20 in Sessions Case No.8 of 2015, by the Additional Sessions Judge, Shahada, thereby rejecting the application for discharge filed by Applicant No.3 – Mukesh s/o Ashok Patil

and Applicant No.4 Pushpabai @ Preeti Mukesh Patil, is hereby quashed and set aside.

(III) The Application Exhibit-20 in Sessions Case No.8 of 2015, qua Applicant No.3 – Mukesh s/o Ashok Patil and Applicant No.4 Pushpabai @ Preeti Mukesh Patil, is hereby allowed and they stand discharged from Sessions Case No.8 of 2015, for the offences punishable under Section 498-A, 306, 304-B read with Section 34 of the Indian Penal Code.

(IV) The Revision Application is partly allowed and the same stands disposed of, accordingly. Rule is made partly absolute in above terms.

[V.M. DESHPANDE, J.]