IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 25 OF 2017

Mr.Shivkumar S/o. Devendradutt Mishra	]	
Aged about 51 years,	]	
Adult, Indian Inhabitant, Original resident	]	
of Room No. 85/2, Mohalla Bagavan,	]	
Dist. Bajaria, Mainpuri, Uttar Pradesh	]	… Applicant
Versus		
1. The State of Maharashtra, through	]	
Inspector Incharge, Dehuroad Police Station	]	
To be served through Public Prosecutor,	]	
High Court, Mumbai.	]	
	]	
2. Deepa Shrinivas Dwivedi,	]	
3. Pushpa Shrinivas Dwivedi	]	
4. Amit Shrinivas Dwivedi,	]	
	]	
All Adult, Indian Inhabitant, Original	]	...Respondents
resident at Bapdeva Nagar, Kivale,	]	Org. Accused
Tal. Haveli, Dist. Pune.	]	Nos. 2, 3 & 4

Mr.Priyatosh R. Tiwari for applicant.

Mrs.M.H. Mhatre, APP for respondent No.1-State.

Mr.Amit A. Karande for respondent Nos. 2 to 4.

CORAM : N.J. JAMADAR, J.

DATE : 6th DECEMBER, 2019.

ORAL JUDGMENT :

1. With the consent of the learned learned counsels for the parties, heard finally at the stage of admission.

2. The legality, propriety and correctness of an order dated 18th January 2016, passed by the learned Additional Sessions Judge, Pune on an application for discharge preferred by the respondent Nos. 2 to 4 herein, in Sessions No. 486 of 2013, whereby the respondent Nos.2 to 4 were discharged from the prosecution for the offences punishable under section 498A and 304(B) read with section 34 of the Indian Penal Code 1860 ('Penal Code') is assailed in this revision application by the applicant-the first informant.

3. The background facts leading to this application can be stated in brief, as under :-

(a) Gauri (hereinafter referred to as 'the deceased') was the daughter of the first informant. The marriage of the deceased was solemnized on 29th November 2008 with Sumit Shrinivas Dube, the son of Pushpa, the respondent No.3 and brother of the respondent No.2 Deepa and the respondent No.4-Amit. After marriage, the deceased joined the matrimonial home where, apart from Sumit and the respondent Nos.2 to 4, her father-in-law Shrinivas, used to reside.

(b) The gravamen of indictment against the respondent Nos.2 to 4 and the co-accused Sumit and Shrinivas was that they were not satiated with the offerings made and the treatment given to them at the time of marriage. They started to harass the deceased. The deceased was also restrained from visiting the parental home. The first informant and his brother-in-law Umesh Dube went to the matrimonial home of the deceased and persuaded the accused not to illtreat the deceased and explained their inability to meet their demands of dowry.

(c) Thereafter, the deceased and her husband Sumit shifted to Pune, where Sumit was serving in the Army. At Pune also, the accused No.1-Sumit used to harass the deceased, abuse and beat her, under the influence of liquor. The accused No. 4 Shrinivas also made a demand of an amount of Rs.30,000/-. As the ill-treatment escalated, the deceased informed the first informant on phone. Thereupon, the first informant approached the Commanding Officer of accused No.1 Sumit. With the intervention of the Senior Officers, the deceased was allowed to meet the first informant. At that time, the deceased had informed that the relatives of her husband, including respondent Nos.2 to 4 and Shrinivas, were instigating her husband to harass her in order to meet the unlawful demands.

(d) On 12th August 2012, the first informant was informed on phone that the deceased had suffered burn injuries on the night intervening 12th and 13th of August 2012. The deceased succumbed to the injuries on 14th August 2012. Thus, the first informant lodged the report against the accused for the offences punishable under section 498A and 304-B read with section 34 of Penal Code.

(e) The respondent Nos.2 to 4 preferred an application for discharge under section 227 of the Code of Criminal Procedure, 1973 ('the Code'). It was the case of the respondent Nos.2 to 4 that there was no *prima-facie* case against the respondent Nos.2 to 4 warranting their prosecution. The application was resisted by the prosecution.

(f) By the impugned order, the learned Additional Sessions Judge was persuaded to allow the application holding, *inter-alia,* that the charge against the respondent Nos.2 to 4 was groundless. To arrive at the said finding, the learned Additional Sessions Judge considered two aspects. One, there were no allegations against the respondent Nos.2 to 4 so as to bring their conduct within the dragnet of section 304(B) and 498A of Penal Code. Two, the deceased was residing separately with her husband Sumit since two years prior to the occurrence, at Pune, and there was no material to indicate that any of the respondent Nos.2 to 4 had shared the house with the deceased and Sumit.

4. Heard the learned counsel for the applicant and the learned counsel for the respondent Nos.2 to 4 and the learned APP for State.

5. The learned counsel for the applicant fairly submitted that the material on record does not make out a *prima facie* case against the respondent No.2-Deepa and, thus, the application is restricted to the complicity of the respondent Nos. 3 and 4.

6. As regards the respondent Nos.3 and 4, the learned counsel for the applicant would urge that the learned Additional Sessions Judge committed a manifest error in recording a finding that there was no material which would warrant framing of the charge against the respondent Nos.3 and 4 for the offences punishable under section 498A and 304(B) read with section 34 of Penal Code. The mere fact that the respondents were not residing with the deceased and Sumit, at the time of the alleged occurrence, was not of determinative significance and the learned Additional Sessions Judge erred in according an undue weight to the said fact. If the first information report lodged by the applicant is read in conjunction with the material on record, especially the communication which was addressed by the first informant to the Commanding Officer of the husband of the deceased on 26th April 2011, the complicity of all the relatives of the husband of the deceased, apart from Shrinivas, is *prima facie* made out. At the stage of the framing of the charge, the test to be applied is that of a strong suspicion and not that of sufficiency of material to entail conviction. The learned Additional Sessions Judge, according to the learned counsel for the applicant, has not applied the principles correctly and, thus, misdirected himself and discharged the respondent Nos. 3 and 4.

7. In opposition to this, the learned counsel for the respondent Nos.3 and 4 stoutly submitted that the learned Additional Sessions Judge has assigned justifiable reasons. The order passed by the learned Additional Sessions Judge cannot be said to be either perverse, or the view one, which is impossible to take. Hence, no interference is warranted in exercise of the revisional jurisdiction. It was further submitted that at the stage of framing of charge, the report under section 173 of the Code and the documents annexed with it are required to be considered. If the documents are evaluated, it becomes evident that there is no material against the respondent Nos. 3 and 4.

8. With the assistance of the learned counsels for the parties, I have perused the material on record especially the report under section 173 and the documents annexed thereto.

9. From the tenor of the F.I.R., the indictment is divisible in two parts. First, there are general allegations of dissatisfaction on the part of the accused as regards the articles given at the time of marriage and the way they were treated during the course of marriage ceremony. The second part constitutes the alleged ill-treatment meted out at the hands Sumit, after the deceased and Sumit started living separately at Pune. It is pertinent to note that from the own showing of the first informant, the deceased and Sumit started to reside separately at Pune, three months after he and his brother-in-law Umesh Dube had met the in-laws of the deceased and persuaded them not to harass her. There is a general consensus that this was somewhere in the year 2010. The incident occurred on 12th August

2012. During the intervening period, the allegations are principally against the accused No.1-Sumit, and against accused No.4 Shrinivas, particularly as regards the unlawful demands.

10. In the aforesaid backdrop, on perusal of the statements of the witnesses which have been recorded during the course of investigation, it becomes evident that the accused No.1 Sumit was allegedly given in to the vice of drinking liquor. It appears that the accused No.1 Sumit used to rake up quarrels with the deceased. The deceased and Sumit had shifted to the premises where the incident occurred, a fortnight ago. None of the witnesses have deposed to the fact that the relations of the husband Sumit used to visit the deceased and Sumit when they started to reside separately at Pune.

11. The allegations in the F.I.R. are required to be appreciated in the backdrop of the aforesaid unimpeachable position. From this standpoint, the only allegation, which is to be found against the respondent Nos.3 and 4, is that when the first informant met the deceased, with the intervention of the senior officers of the accused Sumit, the deceased had informed him that Sumit used to harass her in order to coerce her to meet the unlawful demands made at the instance of father, mother and elder brother. The allegations are omnibus in nature.

12. It is a common knowledge that in the wake of marital discord, the allegations are made thick and fast. There is a tendency to rope in as many persons from the side of the husband as possible so as to wreck vengeance. This tendency has been judicially noticed. The pronouncement of the Supreme Court in the case of ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*** [1] underscores the tendency to implicate the relations of the husband in a prosecution for the offence punishable under section 498A of the Penal Code. The following observations are instructive :

> *"32 It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*
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> *..........*
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> *35 The ultimate object of justice is to find out the*

1 (2010) 7 SCC 667

truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

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37 Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.”

13. On the aforesaid touchstone, reverting to the facts of the case, there are no allegations against the respondent Nos.3 and 4, which would justify an inference that there is a material to raise a strong suspicion against the respondent Nos. 3 and 4 of having committed the offences punishable under sections 304(B) and 498-A of Penal Code. The learned Additional Sessions Judge was thus justified in recording a finding that the charge against the respondent Nos.2 to 4 is groundless.

14. Hence, in exercise of revisional jurisdiction, in my opinion, no interference is warranted.

15. The revision application stands dismissed.

(N.J. JAMADAR, J.)