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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 268 OF 2019

Ganesh Hiranman Pokale & Ors.

..Applicants.

Vs

The State of Maharashtra & Ors.

..Respondents

Ms. Manjiri Parasnis for the Applicant.

Mr. R.M. Pethe, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 30th July 2019.

P.C.:

1] By the present Revision Application under section 397 of Cr. P.C., the applicants have questioned correctness of the Order dated 12.2.2019 passed by the Ad-Hoc District Judge-8 and Assistant Sessions Judge, Pune below Exh.22 in Sessions Case No.564 of 2017, rejecting the Application preferred by the applicants under 227 of Cr. P.C. for their discharge from the prosecution.

2] Heard the learned counsel for the Applicants and the learned APP for State. Perused the record.

3] The record indicates that, Amit Rasal committed suicide at his shop in the intervening night of 11th October 2016 and 12th October 2016. An A.D.R.No.65 of 2016 under section 174 of Cr.P.C. dated 12th October 2016 was registered by the Police. A suicide note written by Amit was found on the table of the said shop. During the course of enquiry of the said ADR No.65 of 2016, it was revealed that, the applicants along with other accused persons abated death of Amit Rasal and therefore a crime bearing No.458 of 2016 was registered with Swargate Police Station, Pune for the offences punishable under section 306 read with 34 of the Indian Penal Code and under section 33 of Maharashtra Money-Lending (Regulation) Act, 2014. After completion of investigation, the Police submitted chargesheet before the Court of competent jurisdiction which has now culminated into Sessions Case No.564 of 2017.

4] The record further indicates that, the applicants thereafter preferred an Application (below Exh.22) for their discharge, as contemplated under section 227 of Cr. P.C. before the Trial Court. The Trial Court by its impugned Order dated 12.2.2019 has rejected the said Application.

5] Learned Counsel for the applicants submitted that, there is no material on record to indicate that in fact the applicants abated Amit Rasal to commit suicide. She further submitted that, Amit Rasal was suffering from various difficulties in his personal life including dispute with his wife and therefore he was in depression and that it is reason for his committing suicide. The applicants were demanding their money back which they had advanced to Amit Rasal as hand-loan. She contended that, there is no cogent and sufficient evidence available on record against the applicants to allege that the applicants caused abetment of suicide of Amit Rasal to frame charge under 306 of the Indian Penal Code. She submitted that, the Trial Court has committed an error in rejecting the Application of the applicants for their discharge from the prosecution and prayed that, the impugned Order dated 12.2.2019 be set aside by allowing the present Revision.

6] The record clearly indicates that, there is a suicide note left behind by Amit Rasal on the table of his shop dated 11.10.2016 before committing suicide in the intervening night of 11.10.2016 and 12.10.2016. Amit Rasal has categorically stated that, he was left with no other

alternative, but to commit suicide, due to the unbearable mental torture meted to him by the applicants and other accused persons. He has further stated therein that, he was even unable to consume food and spending sleepless nights due to constant harassment meted to him. The suicide note is a document which will come within the purview of Section 32 of the Indian Evidence Act, as the said document is within the very close proximity of death of Amit Rasal and is having its own evidential value in the eyes of law. The decisions of the Supreme Court relied upon by the learned counsel for the applicants in support of her contentions are of no avail to her, as the facts mentioned therein are different, than the facts involved in the present case.

7] A useful reference can be made to the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Prafulla Kumar Samal*, reported in AIR 1979 SC 366. It is necessary and useful to refer to paragraph 10 of the said judgment which reads as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) *Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.*

(3) *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

(4) *That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.*

The Supreme Court in the case of *R.S. Nayak vs. A.R. Antulay and Anr.* Reported in AIR 1986 SC 2045, while dealing with the provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in Para 44 has held as under:-

“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section

245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction...." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

8] A further reliance can also usefully be placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Soma Nath Thapa* reported in (1996) 4 SCC 659 wherein, the Supreme Court has held that, if there is ground for presuming that

the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

9] The Supreme Court in the case of *Palvinder Singh Vs. Balwinder Singh and others* reported in (2008) 14 SCC 504 while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

10] Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the *prima facie* case as made out by the prosecution. Even if the Court feels that the accused might have committed crime, benefit needs to be given to the prosecution at this stage and charge has to be framed under Section 228 of Cr.P.C.

11] Perusal of the chargesheet would indicate that, apart from suicide note left behind by Amit, the statement of the first informant Smt. Sulochana Rasal, mother of Amit Rasal and other witnesses would prima facie indicate that, the applicants have role to play in abating death of Amit Rasal and therefore the prosecution has rightly applied Section 306 of Cr. P.C. to the present crime. After perusing the impugned Order, this Court is of the view that, interference by this Court in it is not necessary as the same is without any infirmity of law.

This Court finds no merit in the present Revision Application and it is accordingly dismissed.

(A.S.GADKARI, J.)