

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

CRIMINAL REVISION APPLICATION NO. 318 OF 2018

Sandeep Haridwar Bhegade	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.M.S. Mohite i/b. Mr.Kamlesh Mali for Applicant.
Mr.R.M. Pethe, APP for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 9th October 2019.

PC. :

1] The present Revision under Section 397 of the Criminal Procedure Code (for short, "Cr.P.C.") is directed against the Order dated 21st April 2018 passed below Exhibit-16 in Sessions Case No.667 of 2016 by the learned Additional Sessions Judge, Pune, thereby rejecting the application for discharge of the applicant preferred under Section 227 of the Cr.P.C. from the offence punishable under Section 306, 504 and 506 of the Indian Penal Code (for short, "I.P.C.").

2] Heard Mr.Mohite, learned counsel for the applicant and Mr.Pethe, learned APP for the State. Perused the charge-sheet.

3] The name of the deceased is Narayan Shivram Avhale. It is the prosecution case that, the deceased had taken hand-loan of Rs.5,00,000/- from

the applicant. That the applicant got executed "Agreement to Sale" dated 13th July 2015 in his favour towards security of the hand-loan given by him. That the applicant used to force the deceased for repayment of the loan and the deceased was unable to pay the said loan. The applicant threatened and abused the deceased in filthy language. Due to the constant harassment meted out by the applicant, it is alleged that the deceased consumed poison on 5th April 2016. That the deceased expired on 17th April 2016, while undergoing treatment. The First Information Report is lodged by son of the deceased, namely, Sandeep N. Avhale on 3rd May 2016. After completion of investigation, Police submitted charge-sheet under Section 306, 504 and 506 of the Indian Penal Code before the Court of Competent Jurisdiction.

4] The record further indicates that, the applicant thereafter filed an application below Exhibit-16 under Section 227 of the Cr.P.C. for his discharge from the present case. The Trial Court by its impugned Order dated 21st April 2018 has rejected the said application.

5] Mr.Mohite, learned counsel for the applicant submitted that, in his first statement recorded by the Police on 7th April 2016, the informant Sandeep Narayan Avhale has mentioned about an oral dying declaration given by the deceased to him, on the way to hospital at Pune, wherein the deceased has attributed role of threatening on mobile phone to a person from Dehu Road, however has not attributed any role to the applicant herein. He submitted that,

after the death of the deceased on 17th April 2016, the present first information report dated 3rd May 2016 is lodged by narrating a totally different case by the informant. He submitted that, as a matter of fact, the deceased had executed an agreement dated 13th July 2015 thereby agreeing to sale flat No.4 situated in Vishwamaya Complex at Dehu Road for a total consideration of Rs.8,00,000/- and out of that, the applicant had advanced Rs.5,00,000/- to the deceased. The applicant was insisting the deceased to execute a sale-deed by accepting the balance amount. However, the deceased did not do it. He further submitted that, after the death of the deceased when the applicant requested the family members of the deceased to comply with the said transaction or refund the amount of Rs.5,00,000/-, the present crime is registered as an after thought. He submitted that, there is no material available on record to frame charge under Section 306 of the I.P.C. against the applicant and therefore, the impugned Order dated 21st April 2018 passed by the Trial Court may be quashed and set-aside by allowing the present application.

6] Per contra, the learned A.P.P. vehemently opposed the application and pointed out the relevant material available on record in the form of statement of witnesses. Learned APP submitted that, there is sufficient material available on record to proceed to frame charge under Section 228 of the Cr.P.C. against the applicant and therefore, the present Revision may be dismissed.

7] 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 useful reliance can also 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.

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 Complainant/prosecution.

10] It is the prosecution case that, the deceased had taken hand-loan of Rs.5,00,000/- from the applicant and as the deceased failed to repay the said amount on demand, the applicant threatened the deceased and abused him in

filthy language. Due to the persistent harassment at the hands of the applicant, the deceased got fed up and on 5th April 2016 he consumed poison. That the deceased succumb to death on 17th April 2016.

11] A perusal of the charge-sheet would indicate that, the wife of the deceased, namely, Smt.Anjana Narayan Avhale in her statement given to the Police on 3rd May 2016, has categorically stated that, her husband (deceased) had taken a loan of Rs.5,00,000/- from the applicant. The applicant used to visit house of the deceased and demand the money back. That the applicant also threatened the deceased with dire consequences, if the deceased failed to repay the said amount. It is stated that, the applicant also used to give threat from mobile-phone to the deceased. She has further stated that, on 5th April 2016 i.e. on the date of incident the applicant had been to her house and had demanded Rs.5,00,000/- from the deceased and threatened that, if the deceased did not pay the amount on that day, he will kill the deceased. After administering of the said threat, applicant left the said premises. The deceased thereafter left the house at about 1.00 p.m. and at about 5.00 p.m. it was informed to her that her husband had consumed poison. Thus, *prima-facie*, there is sufficient material available on record to show the complicity of the applicant in the present crime.

12] After perusing the charge-sheet, this Court is of the view that, there is sufficient material available on record to proceed against the applicant to

frame charge under Section 228 of the Cr.P.C..

13] In view of the above, I find no merits in the Revision Application.
Application is accordingly rejected.

14] At this stage, learned counsel for the applicant submitted that, the applicant intends to challenge the present Order before the Hon'ble Supreme Court and therefore, the ad-interim relief granted by Order dated 4th July 2018 may be continued for a period of six week from today.

15] In view thereof, ad-interim relief granted by Order dated 4th July 2018 to remain in force for a period of six weeks from today.

[A.S. GADKARI, J.]