

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

CRIMINAL APPLICATION NO. 1048 OF 2018

Vijay Babulal Lingayat	]	
Age : - 33 years, Occ :- Service	]	
Resident of : - Room No.4	]	
Narayan Apartment, Vasundari Road	]	
Manda, Titwala.	]	 Applicant.

VERSUS

1. The Senior Inspector of Police	]	
Naupada Police Station, Thane	]	
C.R.No. I – 52 of 2014	]	
2. The State of Maharashtra	]	 Respondents.

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Mr. Swapnil Wagh, Advocate for Applicant.
Mr. A.R. Patil, APP for Respondents – State.

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CORAM : S. S. SHINDE J.
DATE : 12th JULY, 2019.

PC.

1. This application is filed with following prayers :

“(1) That this Hon'ble Court be pleased to issue notice to the respondents to show cause why the impugned order of rejection of discharge to the applicant in Sessions Case No.306 of 2014, CR.No. I 52 of 2014 Naupada Police Station, Thane should not be quash and set aside by this Hon'ble Court and why the accused should not be discharged by the Hon'ble Court in Sessions Case No. 306 of 2014, CR.No. I 52 of 2014 of Naupada Police Station.

(2) That during the pendency of this application this Hon'ble Court be pleased to order dated 23/07/2018 stay on the proceedings of Sessions Case No. 306 of 2014, CR. No. I 52 of 2014 of Naupada Police Station, Thane before the Sessions Court Thane.

(3) That this Hon'ble Court be pleased to quash and set aside the impugned order of rejection of discharge to the applicant in connection with Sessions Case No. 306 of 2014, CR.No. I 52 of 2014 of Naupada Police Station, Thane and further be pleased to order discharge of the Applicant in connection with Sessions Case No. 306 of 2014 pending before the Sessions Court Thane in CR. No. I 52 of 2014 Naupada Police Station, Thane.”

2. The applicant is accused in C.R. No. I 52 of 2014 registered at Naupada Police Station, Thane. The application for discharge has been rejected before the learned Additional Sessions Judge – 5, Thane in Sessions Case No. 306 of 2014. Hence, he has filed present application.

3. Brief facts as disclosed in the application are as under :

It is the case of the applicant that, in 2013 the complainant's daughter (now deceased) informed him about her love affair with the applicant and her intentions to get married to him. It is further alleged that on 20/09/2013 the complainant went to police station to meet Vaishali (deceased) where he met the applicant, who revealed the fact of him being married earlier and having a son.

4. It is the case of the complainant that, the accused also married the daughter of the complainant. Accused told that his first wife has consented to their marriage. After learning the said fact about the marriage, complainant expressed his refusal to their marriage and further allegedly got into an altercation with the applicant. Two days after the said altercation's with the accused, his daughter (deceased) intimated him about her marriage with the applicant over a telephonic conversation. The complainant then resigned from his job on 31.12.2013 and shifted to his village, Belhe on 16.01.2014. After the marriage, the complainant was constantly in contact with his deceased daughter and frequently met her.

5. It is the case of the complainant that, from December, 2013 his deceased daughter kept telling him about their intentions to buy a flat and requested for money from him for the same. The complainant refused to give her money due to lack of funds. According to the complainant, the deceased used to tell him about ill-treatment given by the accused on several occasions demanding money from her parents to buy house.

6. It is the case of the applicant that, on 18.01.2014 he got his post retirement benefits in terms of money, which were deposited in Kalyan Sahakari Bank, Ghatkopar. On 27.01.2014 (Monday) after receiving a call from Vaishali, he met her at the Kalyan ST stand and gave her a cheque of Kalyan Sahakari bank

worth Rs. 1,25,000/- (Rupees one lac twenty five thousand only). Thereafter, according to the complainant he still received calls from Vaishali complaining about abuses given by the accused. It is further alleged by the complainant that, on 02.02.2014 he received a call from his nephew Shankar Baban Uchale informing him about his daughter's suicide, and that the news was displayed on the television. He immediately called Vaishali but the call was unanswered. After receiving many calls from his relatives, he switched on the television and learnt about the news. He left at 13.00 hours in the afternoon to go to Thane. After his relatives informed him about her dead body being taken to J.J. Hospital, he directly went to the hospital in Mumbai, and confirmed that the dead body is of his daughter.

7. It is the case of the applicant that, the deceased was on duty in police station, and was deputed as assistant to the duty officer and accordingly, she got in possession of the weapon and in isolation, she shot herself and committed suicide while on duty.

8. Learned counsel appearing for the applicant submits that, the prosecution has not placed on record alleged suicide note. The said suicide note has been suppressed by the prosecution since there is nothing adverse appears against the present applicant in the said note. It is submitted that, the entire prosecution case rest upon the evidence of the father of the deceased. However,

perusal of his statement would make it clear that, his evidence is hearsay and no conviction can be ordered on the basis of statement of the complainant for the offences punishable under Section 498-A of the Indian Penal Code. The prosecution has not collected the sufficient material to substantiate the allegations in the FIR, and therefore, the charge against the applicant cannot be sustained. The alleged cheque along with other documents have been seized from house at the instance of the brother of the applicant. The said cheque is in the name of deceased, no date is mentioned on it. Though cheque is seized under the panchnama, no signatures of panchas appeared on panchnama. There are no allegations of demand of dowry for purchase of house is mentioned in the alleged suicide note written by the Vaishali (deceased).

9. Police Constable who discovered the deceased at police station room, and found her in dead condition on plain cloths and not on police uniform. The said Police Constable Jagdish Akhade has not stated anything about demand of dowry or harassment to the Vaishali (deceased) at the hands of present applicant. It is submitted that, the marriage of the present applicant with Vaishali (deceased) was solemnized with the consent of parents of the deceased and other family members. There was neither demand of dowry was made nor physical or mental harassment caused by the applicant to Vaishali (deceased). It is submitted that, if the evidence collected by the prosecution read in its entirety, no conviction can be ordered against the applicant. The evidence of Ashlesha Anil

Masavkar, Sana Jalil Shaikh and Manisha Tukaram More is not supporting to the case of the prosecution at all. It is further submitted that, the applicant has been falsely implicated in the alleged crime.

10. The impugned order dated 23.07.2018 of rejection of discharge of the applicant from the case is perverse and deserves to set aside by this Hon'ble Court. The learned Sessions Judge erred in law and facts in holding casually and mechanically that an opportunity need to be given to the complainant to establish the case without appreciating the material which was on record. It is a matter of record that, during the course of investigation the allegations contained in the FIR are not substantiated and turned out to be false, and further there was no cogent and legally admissible evidence found and brought on record, therefore interference of this Hon'ble Court in the facts, and the circumstances of the case justified in the interest of justice.

11. On the other hand, learned APP appearing for the State relying upon the evidence collected by the prosecution and also the findings recorded by the Sessions Court submits that there is a sufficient evidence to convict the applicant. There is a statement of the complainant, and also cheque has been recovered during the course of investigation. Therefore, he prays that application may be rejected.

12. Heard the learned counsel appearing for the applicant, and the

learned APP appearing for the State at length. With their able assistance perused grounds takes in the application, annexure thereto, charge-sheet and accompaniments of the charge-sheet and other documents placed on record. Admittedly, Vaishali (now deceased) was second wife of the applicant / accused. There is a statement of the complainant wherein detail allegations are made against the applicant of alleged ill-treatment, harassment and unlawful demand by the applicant to the daughter of the complainant. Apart from it appears that, to fulfill the alleged demand of money by the applicant, the complainant had issued the cheque of Rs.1,25,000/- (Rupees one lac twenty five thousand only) in the name of victim which is seized during the course of investigation. Therefore, there is a sufficient material collected by the investigating officer and trial can proceed on the basis of said material. The material collected by the prosecution is sufficient for trial. The Sessions Court, Thane has given sufficient reasons for rejecting the application filed by the applicant for discharge under Section 227 of the Code of Criminal Procedure. This Court is in agreement with the reasons assigned by the Additional Sessions Judge, Thane in para 7 and 8 of the impugned judgment. No case is made out to entertain this application. Hence, application stands rejected.

[S.S. SHINDE, J.]