

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

CRIMINAL APPLICATION NO. 1076 OF 2018

Narinder Tarsem Singh

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mrs. Mallika Ajay Ingale for the Applicant.
Mrs. Rutuja Ambekar, APP for Respondent – State.
Mr. B.D. Chauhan for the Respondent No. 2.

CORAM : S.S. SHINDE, J.

DATE : 19th AUGUST 2019

P.C.:

1. This Application taken an exception to the order dated 04th September, 2018 passed by the Sessions Court for Greater Mumbai, Borivali Division, Dindoshi, Mumbai vide Exhibit 5 in Sessions Case no. 206 of 2013.

2. Heard learned counsel appearing for the Parties at length. Learned counsel appearing for the applicant submits that, the charge framed against applicant is not legally sustainable. It is submitted that, there is no material to proceed against the applicant for the offence punishable under Section 306 and 304-B of the I.P. Code since within

proximate date and time of the alleged suicide by the Harsha (deceased). There are no positive acts attributed qua the applicant. The alleged acts attributed to the applicants cannot be considered as demand of dowry. It is submitted that the ingredients of sections which are invoked while framing the charge are not attracted at all. If the entire charge-sheet and accompaniments of the said charge-sheet are considered in its entirety, there is no material to prove the charge under Section 304-B and 306 of the I.P. Code and even to prove charge under other sections which are invoked by the prosecution agency there is no material on record. Learned counsel further submits that, the Trial Court has erroneously framed charges under Section 406 of the I.P. Code on assumption of the amount lying in the bank account of the deceased to be her Streedhan and misappropriation thereof by the Applicant by withdrawing amount of Rs. 15,000/- on 04.06.2013 and 26.02.2012 amounts to criminal breach of trust. The statement of bank account of the deceased shows that the money which was withdrawn from ATM account was again deposited promptly. So even if the allegation of the Applicant having withdrawn the amount is presumed to be true there is no evidence to show that it was fraudulently misappropriated. There is no single whisper in the

entire complaint that the deceased was gifted with dowry at the time of marriage or thereafter and that the Streedhan was entrusted to the Applicant which were misappropriated by the Applicant with connivance of the other accused persons.

3. It is further submitted that, the learned Sessions Judge has erred in invoking the presumption under Section 113 of the Indian Evidence Act. It is submitted that, the presumption under the aforesaid section would be founded on the proof of cruelty or harassment of the women dead with or in connection with any demand for dowry by the person charged with the offence. It is submitted that, even if the alleged demand of Rs. 4 to 5 Lacs, if at all made by the applicant from the deceased, was for making cassettes of songs, one year after the marriage, was not in connection marriage and was not really a dowry demand within the meaning of Section 2 of the Dowry Prohibition Act, 1961 and hence the Applicant cannot be charged for offence of dowry death.

4. It is further submitted that, the allegations and material collected by the Investigating Officer during the course of investigation is not sufficient to frame charge against the applicant for alleged

offence under Section 304-B and 306 of the I.P. Code. There is no allegation of harassment within reasonable period prior to the death to show the live link so as to constitute offence under Section 304-B and 306 of the I.P. Code. Learned counsel also invites attention of this Court to the charge-sheet and accompaniments and, also the grounds taken in the applicant and submits that, the charge could not have been framed against the applicant, and applicant deserves to be discharged.

5. It is submitted that, framing of the charge is serious business and therefore the Trial Court is obliged to consider the case of the accused minutely and with all sincerity. In support of her aforesaid contentions, learned counsel appearing for the applicant placed reliance on the exposition of law in the following cases: **Madan Mohan Singh Vs. State of Gujrat and Anr reported in (2010) 8 SCC 628** and **CRIMINAL REVISION APPLICATION NO. 74 OF 2015** (Mr. Moreno Rebello and Ors Vs. State) decided on 02.02.2016.

6. On the other hand learned APP appearing for the Respondent - State relying upon the charge-sheet and the accompaniments and material collected during the course of

investigation so also the fact that Harsha (deceased) died in the house where the applicant and deceased were residing at the time of alleged incident submits that, there is a sufficient material collected during the course of investigation by the prosecution and trial can proceed against the applicant so as to sustain the charge framed by the Trial Court.

7. Learned counsel appearing for the second Respondent relying upon the written notes of arguments which are place on record submits that, charge is already framed by the Trial Court and the applicant has opportunity to prove his innocence during the Trial. It is submitted that, the applicant ought to have preferred Revision however, directly approached the High Court by invoking Section 482 of the Cr.P.C. The applicant has indulged in serious and heinous crime and there is a sufficient material on record and, on the basis of said material Sessions court has already framed the charge and therefore, this Court may not consider the prayer of the Applicant for quashing the proceedings. In support of the aforesaid contentions learned counsel place reliance on the unreported judgment of the Division Bench (CORAM : RANJIT MORE & SMT. BHARATI H. DANGRE, JJ.) decided on 24th June, 2019 of the Bombay High Court, at Principal Seat, in Criminal Application No. 305 of 2018 and also

reported judgment of the Supreme Court in the case of **Prashant Jhunjhunwala s/o. Late Shri. Rajkumar Jhunjhunwala Vs. Union Territory of Daman and Diu, through its Secretary and Ors. reported in 2009 ALL MR (Cri) 1964.**

8. I have given careful consideration to the submissions of the learned counsel appearing for the applicant, learned APP appearing for the Respondent - State and learned counsel appearing for the Second Respondent. Admittedly, the dead body of Harsha (deceased) was found in the house wherein applicant and deceased were residing, this fact is stated by one Chandrakant Narayan Chavan, whose statement is recorded by the Investigating Officer. Secondly, there is overwhelming evidence collected by the investigating officer by recording statements of father, mother and sister of Harsha (deceased) and other relatives which *prima facie* discloses the involvement of the applicant in the harassment and giving cruel treatment to the Harsha (deceased), who alleged to have committed suicide. Admittedly, the death of Harsha (deceased) occurred within 7 years from the marriage, therefore, presumption under Section 113-B of the Indian Evidence Act would arise. The said presumption is rebuttable and the applicant will get opportunity during the Trial to rebut the said presumption. There are

few acts including withdrawal of the amount from the account of Harsha (deceased) by misusing her ATM from her account attributed to the applicant. Apart from it appears prima facie from the reading of the statement of the witnesses that applicant "soon" before the death was indulged in persistent harassment, giving cruel treatment to the Harsha (deceased). Though it is contended by the learned counsel appearing for the applicant that, the call records of conversation on the day of alleged death with the father or relatives of Harsha (deceased) is not collected by the investigating officer, it is the contention of the learned APP that said record is collected. Be that as it may, the case in hand is not the case. wherein the charge framed against the applicant under the various Sections is without any basis. The material collected by the Investigating Officer during the course of investigation is sufficient to proceed with trial against the applicant. it is not desirable to elaborate the reasons since the applicant will have to face the trial. Suffice it to say that, the prosecution agency has collected sufficient material and trial can proceed against the applicant on the basis of said material.

9. As already observed the investigating officer has recorded the statements of various witnesses to sustain the charge for the

offence punishable under Section 498-A and other sections. The provisions of Section 498-A of I.P. Code, in its sweep would include mental harassment as well as physical harassment apart from the harassment or cruelty on account of demand of dowry. The Supreme Court in the case of **Jivendra Kumar Vs. Jaidrath Singh and Ors**¹ while interpreting and explaining the scope and purport of Section 304-B of the I.P. Code relying upon the earlier judgment of the Supreme Court in the case of **Sher Singh Vs. State of Haryana, 2015 (1) SCALE 250** and also in the case of **Kans Raj Vs. State of Punjab reported in (2000) 5 SCC 207** held that, the expression "soon" as appearing in Section 304-B of the I.P. Code, what must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that had led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B".

1 Criminal Appeal No. 2321 of 2009 decided on 26.02.2015

10. In the light of the observation in foregoing paragraph there is no merit in the Application hence, same stands rejected.

11. The observations made herein above are *prima facie* in nature and confined to the adjudication of the present application only. The Trial Court shall not get influenced by the aforesaid observations during the course of trial, and shall proceed with the trial keeping in view the material on record and in accordance with the law and relevant procedure.

(S.S. SHINDE, J.)