

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

CRIMINAL REVISION APPLICATION NO. 580 OF 2018

Mr.Kalucharan Sudarshan Patra
Aged about 53 years, Occ : Job,
Having address at jai Jagganath Chaal,
TATA Nagar, Behnd Vikas Hotel,
Govandi (West), Mumbai – 400 043

....Applicant
(First Informant)

V/S

1. The State Of Maharashtra
(At the instance of Sr.PI, Chembur
Police Station)

2. Mr. Kanucharan Shivram Panigrahy
Aged about 27 years,
Occ. : Home Business,
Keshav Patil Building, Room No.1,
Near Fish Market, Behind Ram Mandir,
Ghansoli Village, Navi Mumbai.

... Respondents

Mr. Kushal Mor for applicant.

Shri N.B. Patil, APP for respondent No.1-State.

Mr. M.G. Shukla i/b Shri Vikas K. Singh for respondent No.2.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 29th NOVEMBER 2019

PRONOUNCED ON : 11th DECEMBER 2019

JUDGMENT :

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

2. The legality, propriety and correctness of an order, dated 26th July 2018, passed by the learned Additional Sessions Judge, Greater Bombay, on an application for discharge (Exh. 6) in Sessions Case No.353 of 2016, whereby, the said application came to be allowed and the accused, the respondent No.2-herein, was discharged from the prosecution for the offences punishable under sections 498A and 306 of the Indian Penal Code, 1860 ('Penal Code'), is assailed in this revision by the applicant-first informant.

3. The background facts can be summarized as under :-

[a] Mr.Kalucharan Sudarshan Patra, the first informant, had a daughter, Shilpa (hereinafter referred to as 'the deceased'). The marriage of the deceased was solemnized with the respondent No.2-Kanucharan Shivram Panigrahy, on 14th February 2013, at Hanumanpoli, Kolidaspur, Puroshottampur, Ganjaam, Orrissa. A daughter, namely Shruti was born on 3rd April 2014. Thereafter, the deceased used to narrate to the first informant and his family members that the accused used to return home late in the night, was given in to the vice of drinking liquor and gambling,

and used to rake up quarrels with the deceased and also beat her. The first informant and his family members tried to reason with the respondent No.2. However, there was no improvement in the behaviour of the respondent No.2.

(b) On the night intervening 16th and 17th December 2015, at about 2:40 a.m., the first informant was informed on phone that the deceased had died. The first informant, his wife and son reached in Inlak Hospital, Mumbai. On being enquired, the respondent No.2 informed that at about 1:15 a.m., when he returned home, the deceased was found hanging by nylon rope. The first informant lodged report leading to registration of C.R.No.374/2015 for the offences punishable under sections 306, 498A against the respondent No.2. After completion of the investigation, charge-sheet came to be lodged against the accused for the said offences.

[c] On committal of the case to the Court of

Sessions, the respondent No.2 filed an application (Exh.6) under section 227 of the Code of Criminal Procedure ('Code'). It was resisted by the prosecution.

(d) The learned Additional Sessions Judge, after perusal of the material on record, including report under section 173 of the Code, was persuaded to allow the application holding, *inter-alia*, that there was no material to attract the provisions of section 498A of the Penal Code, as neither there was allegations of unlawful demand nor such conduct attributed to the respondent No.2, which would drive the deceased to commit suicide. The learned Additional Sessions Judge was also of the view that the material on record even did not warrant framing of charge under section 306 of the Penal Code as there were nothing to show that the respondent No.2 abetted the commission of suicide by the deceased. Thus, finding the charge on both the counts, against the respondent No.2, groundless, the learned Sessions Judge discharged the respondent No.2.

4. Being aggrieved by and dissatisfied with the aforesaid finding and the impugned order, the first informant has invoked the revisional jurisdiction of this Court.

5. Heard Shri Kushal Mor, the learned counsel for the applicant, Shri M.G. Shukla, the learned counsel for the respondent No.2. and Shri N.B. Patil, the learned APP for State. With the assistance of the learned counsels for the parties, I have also perused the material on record, especially the report under section 173 of the Code and the documents annexed with it.

6. The learned counsel for the applicant submitted that the impugned order suffers from perfunctory and casual consideration of the material on record. The learned Additional Sessions Judge was enjoined to look into the entire material on record and thereafter arrive at a finding as to whether there was a ground to presume that the respondent No.2 has committed the offences. The learned Additional Sessions Judge, on the other hand, on a cursory examination of the material recorded a finding that the charge was groundless. The facts that, by order dated 17th July 2017, the learned Additional Sessions Judge had directed the investigating agency to

carry out further investigation and record the statements of the witnesses and the supplementary statements of the first informant contained the allegations of unlawful demand and harassment not only at the hands of the respondent No.2 but also his relatives, were completely ignored by the learned Additional Sessions Judge, urged the learned counsel for the applicant. In substance, according to the learned counsel for the applicant, there was adequate material to warrant framing of the charge against the respondent No.2 for the offences punishable under sections 498A and 306 of the Penal Code as the presumption contained under section 113A of the Evidence Act, 1872 was clearly attracted.

7. In opposition to this, the learned counsel for the respondent No.2 submitted that the impugned order is wholly justified and no interference is warranted in exercise of the revisional jurisdiction. From the tenor of the first information report as well as the statements of the witnesses, recorded immediately after the registration of the first information report, it becomes evident that there is no whisper about any unlawful demand nor of any conduct attributable to the respondent No.2 which drove the deceased to commit suicide. In fact, the investigating agency, in its report, dated

28th August 2018, submitted to the Sessions Court, post direction for further investigation, has arrived at the conclusion that the omnibus allegations made by the first informant in supplementary statement were unworthy of credence. Thus, the learned Additional Sessions Judge has correctly exercised the jurisdiction to discharge the respondent No.2, urged the learned counsel for the respondent No.2.

8. To begin with, it is trite that at the stage of the framing of the charge, the material on record is required to be scrutinized so as to ascertain whether there is a *prima-facie* case which raises a strong suspicion against the accused of having committed the offences arraigned against him. The examination of the material is not for the purpose of finding out as to whether it is sufficient to entail the conviction. If the report under section 173 and the documents annexed with it and the material on record leads to an inference that there is a ground for presuming that the accused has committed an offence, the Court would be justified in framing the charge. Conversely, if the material indicates that the charge is wholly groundless, an order for discharge under section 227 of the Code can be passed.

9. On the aforesaid touchstone, if the material on record is

considered, it becomes evident that the F.I.R. is conspicuously silent about the alleged unlawful demand and the conduct of the accused which would drive the deceased to commit suicide. The report, on the contrary, indicates that the deceased was distressed on account of the fact that the accused returned home late, consumed liquor and used to rake up quarrels with the deceased. It was further alleged that the accused was also given in to the vice of gambling. Apart from these vices, nothing was attributed to the accused so as to bring his conduct within clauses (a) and (b) of the Explanation to section 498A of the Code. Evidently, there was no reference to any demand emanating from the accused, much less an unlawful demand for any property, and the consequent harassment in order to coerce the deceased to meet such demand.

10. Two factors have significant bearing on the potency of the indictment against the accused. One, the visit of Simanchal Patra, the brother of the deceased, to the house of the deceased on the night of occurrence 16th December 2015. Two, the telephonic conversation which both the deceased and accused had with the wife of the first informant at about 11:00 p.m. Simanchal Patra, the brother of the deceased, did not notice anything unusual or untoward during the

course of his visit to the deceased few hours prior to the occurrence. Nor the first informant and his wife sensed anything amiss when the deceased and accused spoke with them at about 11:00 p.m. on 16th December 2015, a couple of hours before the alleged occurrence. It is not the case of the first informant or any of the prosecution witnesses that even on the date preceding the night of occurrence, the deceased had made any grievance which would fall within the mischief of either section 498A or section 306 of Penal Code.

11. The fact that the accused was given in to the vice of drinking liquor and gambling, even if taken at par, would not constitute abetment within the meaning of section 107 of the Penal Code. The learned Additional Sessions Judge was, thus, justified in recording a finding that there was no material to demonstrate that a *prima-facie* case for the offence of cruelty or abetment to commit suicide was made out.

12. The reliance placed by the learned counsel for the applicant on the supplementary statement of the first informant recorded on 23rd August 2017, post the direction for further investigation, does not advance the cause of prosecution. The

supplementary statement which came to be recorded after about one and half years of the occurrence, by its very nature, is of inherently weak character. In the said statement, omnibus allegations were made against the accused including that of unlawful demand.

13. Whether the first informant had an opportunity to make statements after lodging the FIR? Evidently, the supplementary statements of the first informant were recorded on 5th April 2016 and 19th June 2016. In the said statements also no allegations of unlawful demand were made against the accused. The allegations to bring the conduct of the accused within the tentacles of the offences punishable under sections 498A and 306 of the Penal Code were made, for the first time, in the statement which was recorded on 24th June 2017, after about one and half years of the occurrence. There was no plausible reason not to make such allegations at the first possible opportunity when the first informant had visited the hospital where the deceased was shifted to on the very night of the occurrence and the first information report came to be registered on 17th December 2015, itself.

14. In the aforesaid backdrop, the learned Additional Sessions

Judge was within his rights in evaluating the entire material on record and then arriving at the conclusion that the charge against the accused appeared to be groundless. Thus, in exercise of the revisional jurisdiction, I am not impelled to interfere with the order passed by the learned Additional Sessions Judge. Resultantly, the revision application deserves to be dismissed. Hence, the following order :

ORDER

The revision application stands dismissed.

[N.J. JAMADAR, J.]