

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.838 OF 2018

DEEPAK ANANDRAO SHINDE ... PETITIONER.

VERSUS

MAHESH SHIVAJI SABALE
AND ANOTHER ... RESPONDENTS.

Mr.Adwait Bhonde, Advocate for the Petitioner.

Mr.S.V.Gavand, Additional Public Prosecutor, for the State.

Mr.Pankaj P. Deokar a/w Mr. Swapnil Chopade, Advocate for
Respondent Nos.1, 3 to 5.

CORAM : A. M. BADAR, J.

DATE : 21ST FEBRUARY 2020.

ORAL JUDGEMENT:

1. Heard. Rule. Heard finally by consent of parties.

2. By this petition, the petitioner/first informant is

praying for quashing and setting aside order dated 12.10.2017 passed by the learned trial court on application below Exhibit 80. By the said application at Exhibit 80, the prosecuting agency i.e. the State of Maharashtra had applied to the learned trial court for framing additional Charge for the offences punishable under Section 302 of the Indian Penal Code against respondent No.1/accused. Learned trial court by impugned order dated 12.10.2017 was pleased to reject the said application with observation that on similar ground the first informant had preferred similar application at Exhibit 58 and the same was rejected on earlier occasion.

2. Heard learned counsel appearing for the petitioner/ first informant. He argued that during the course of the investigation, statement of Pradyumn Sabale was recorded by the Investigating Officer and the said statement was reflecting commission of murder of the deceased by the accused no.1/respondent no.1 herein. He further argued that even

statement of the said witness came to be recorded by the learned Judicial Magistrate First Class, Pune under Section 164 of the Criminal Procedure Code wherein same stand was continued by the said witness.

4 Learned Additional Public Prosecutor appearing for the respondent/State supported the petitioner.

5. Learned counsel appearing for respondent no.1/original accused argued that, on earlier occasion, similar application came to be filed by the first informant and it was rejected with detailed order by the learned trial court on 02.09.2016 and therefore, the impugned order is perfectly correct.

6. I have considered the submissions and also perused the Charge-sheet and other material placed on record.

7. The incident in question took place in the night hours of the night intervening 20th May 2014 and 21st May 2014. Rekha Sable (since deceased) was the wife of respondent/accused No.1 Mahesh Sable. She sustained burns during that night and while taking treatment at the hospital, she succumbed to burn injuries on 27.5.2014.

8. During the course of the investigation, Dying Declaration of Rekha Sable came to be recorded by the Police Head Constable of the Police Station, Yerwada. In that Dying Declaration, Rekha Sable stated that she had incinerated herself by pouring kerosene and set the fire by match stick. That is how the Charge-sheet came to be filed for the offences punishable under Section 498-A, 306, 323, 504 and 201 read with Section 34 of the Indian Penal Code against accused persons.

9. Dying Declaration of Rekha Sable shows that

she is having two sons named Pradyumn and Sais. Statement of elder son of the deceased came to be recorded during the course of investigation. He had pointed out accusing finger at his father i.e. accused No.1 Mahesh Sable by stating that his father had caused burns to his mother. Statement of Pradyumn Sable was also recorded by the learned 28th Judicial Magistrate, First Class, Pune. In that statement under Section 164 of the Criminal Procedure Code, this witness has stated that his father i.e. Mahesh Sable had poured kerosene on person of his mother Rekha Sable and set her ablaze.

10. During the course of recording evidence in the trial, said Pradyumn came to be examined as PW 2. While in the witness box, he maintained his stand by stating that his father poured kerosene on person of his mother and set her ablaze.

11. Initially on the basis of the statement of Pradyumn Sabale recorded under Section 164 of the Criminal Procedure Code, the first informant had preferred an application for framing additional Charge for the offence punishable under Section 302 of the Indian Penal Code. By order dated 02.09.2016, that application below Exhibit 58 came to be rejected with following observations by the learned trial court as found in paragraph 5 of the order.

5] Admittedly Pradyumn Sable is a minor. His statement recorded near about 2 and ½ months after the incident. The possibility of the tutoring can not be ruled out. The minor Pradyumn did not examine in the matter. His statement not corroborated by him. So mere on the statement of witness the charge under section 302 can not be framed. There is no any other direct, indirect or circumstantial evidence on record to add the charge under section 302 of Cr.P.C.

12. Thus, without having on record, evidence of said Pradyumn Sable, the learned trial court appreciated his statement recorded during the course of investigation and concluded that merely on the basis of the statement of Pradyumn Sable, Charge under Section 302 of the Indian Penal Code, can not be framed.

13. After examination of Pradyumn as PW 2, prosecution again filed an application for addition of Charge for the offences punishable under Section 302 of the Indian Penal Code and this application came to be rejected mechanically by the learned trial court by holding that on earlier occasion similar application came to be rejected.

14. During investigation, Pradyumn Sable who happens to be the son of the accused No.1 and as such a natural witness to the incident, which took place within the four walls of the house, had stated that, it is his father who had

committed murder of his mother. Even during the course of the trial, this witness has maintained the same stand. Statements recorded under Section 161 as well as Section 164 of the Criminal Procedure Code of this witness constitute sufficient material to frame charge for the offences punishable under Section 203 of the Indian Penal Code against respondent No.1/accused no.1. Learned trial court lost sight of the fact that statements of Pradyumn Sable constitute sufficient grounds for presuming that the accused no.1 Mahesh Sable has committed the offence punishable under Section 302 of the Indian Penal Code.

15. In this view of the matter, the impugned order can not be sustained. Learned counsel for the petitioner has rightly placed reliance on the judgment of the Apex Court in the matter of **Chitresh Kumar Chopra Versus The State (Government of NCT of Delhi), (2009)16 SCC 605**. Paragraphs 25 and 26 of the said Judgment reads thus;

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

26. In *Som Nath Thapa* a three-Judge Bench of this Court explained the meaning of the word “presume”. Referring to dictionary meanings of the said word, the Court observed thus; (SCC p.671, para 32)

“32. .. if on the basis of materials on record, a court could come to the

conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

8. In this view of the matter, the following order.

ORDER

- i) Petition is allowed in terms of prayer clauses (a) and (b).

(A. M. BADAR, J.)

