

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 254 of 2020

Mr. Suraj S/o. Vinayak Dakhare
Age About 32 Years, Occupation :
Agriculturist, R/o. Mangrul, Mandal
Bela, District : Adilabad.

.... Petitioner

.... Versus

- (1) State of Maharashtra Through
Police Station Officer, Police Station
Gadchandur, District Chandrapur
- (2) Balwan S/o Jagannath Darekar,
Age about 28 years, Occupation :
Agriculturist.
- (3) Jagannath S/o. Arjun Darekar,
Age about 58 years, Occupation :
Agriculturist.
- (4) Sindhubai W/o. Jagannath Darekar,
Age about 52 years, Occupation :
Agriculturist.
- (5) Nilesh S/o Jagannath Darekar,
Age about 22 years, Occupation :
Agriculturist.
Respondent No. 2 to 5 All R/o :
Kadoli, Taluka : Korpana,
District : Chandrapur.

.... Respondents

Shri R. R. Vyas, Advocate for the petitioner
Shri S. S. Doifode, APP for respondent no. 1
Shri S. O. Ahmed, Advocate for respondent nos. 2 to 5

CORAM : ROHIT B. DEO, J.

DATED : 18-01-2021

Heard.

2. With consent the petition is finally heard at the admission stage.

3. The petitioner is aggrieved by the order dated 29-2-2020 rendered by the Additional Sessions Judge, Chandrapur in Sessions Case No. 59 of 2013, which reads thus :

“Complainant and their counsel are absent. Though called repeatedly. On going through the charge at Exh. 46 it seems that it is comprehensive and therefore there is no substance in application. Hence rejected.”

4. The backdrop of the order is that the sister of the petitioner - Mrs. Sukeshna allegedly died unnatural death within period of seven years from the marriage. The petitioner and the parents of the deceased instituted private complaint under Sections 302, 304-B, 498-A, 354, 506, 504 read with Section 34 of the Indian Penal Code (IPC) in which respondents 2 to 5 are arraigned as accused. The learned Chief Judicial Magistrate committed the complaint case to the Sessions Court and vide order dated 16-8-2019 below Exhibit 46, the learned Additional Sessions Judge framed charge under Sections 302, 498-A, 354-A(ii), 506 and 504 read with Section 34 of the IPC.

5. The petitioner preferred an application seeking addition of charge under Section 304-B of the IPC and Sections 3 and 4 of the Dowry Prohibition Act.

6. This application is rejected by the order impugned which is reproduced supra.

7. The only reason recorded is that the charge at Exhibit 46 is comprehensive. It is true that the applicant and their counsel were absent and to that extent, the learned Sessions Judge was not assisted effectively. However, the submission that additional charge is required to be framed cannot be brushed under the carpet in the manner done.

8. The death is allegedly unnatural and within seven years from the date of marriage. The cruelty or harassment which is envisaged under Section 304-B is held by the Supreme Court to be the cruelty envisaged under Section 498-A and the learned Sessions Judge has already framed charge under Section 498-A. Evidence before charge is recorded. It was expected of the learned Sessions Judge to consider the evidence and then decide whether there is a case for proceeding against the accused under Section 304-B. Whether there is material to indicate that soon before the death, the deceased was subjected to cruelty or harassment for, or in connection with any demand for dowry, shall have to be looked into for the limited purpose of framing charge. In this view of the matter, the order dated 29-2-2020 is quashed and the matter is remitted to the learned Additional Sessions Judge, Chandrapur for passing fresh order after hearing the parties.

9. It is made clear that the learned Additional Sessions Judge shall not be influenced by any observation in this order.
10. The petition is allowed in aforesaid terms.

JUDGE

wasnik

**Avinash
Wasnik**

Digitally signed
by Avinash
Wasnik
Date:
2021.01.18
17:47:30 +0530