

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.246 OF 2021

PRAKASH PANDURANG NAGARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

....
Mr. Z.H. Farooqui, Advocate h/f Mr. N.V. Gaware, Advocate
for the Petitioners
Mr. G.O. Wattamwar, APP for Respondent No.1/State
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 17 OCTOBER 2022

PER COURT:-

. This matter is listed today in view of order passed by
this Court dated 13.10.2022.

2. Heard finally with consent of both the sides, at
admission stage.

3. The petitioners are seeking following substantial
relief.

“(B) Quash and set aside the impugned order dated
24.12.2020 passed by Ld. Asst. Sessions Judge,
Sangamner, Dist. Ahmednagar below Exh. 9 in
Sessions Case No.75/2015 and consequently
Application at Exh. 9 may kindly be allowed and for
that purpose issue necessary orders.”

4. The petitioners are the original accused in Sessions Case No.75 of 2015, now pending before the Assistant Sessions Judge, Sangamner. Jyoti (since deceased) was happened to be daughter of the first informant, who married to petitioner No.1 Prakash on 19.11.2009. She committed suicide on 20.03.2015. After five days of the incident, the first informant put the criminal law in motion and lodged F.I.R. against the petitioners and on that basis, Crime No. 12 of 2015 came to be registered at Ashwi Police Station, Tq. Sangmner, Dist. Ahmednagar for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. After completion of investigation, charge-sheet came to be filed against the present petitioners.

5. The petitioners by taking aid of Section 227 of the Code of Criminal Procedure moved an application before the Assistant Sessions Judge, Sangamner vide exhibit 9 for discharge from the accusation levelled against them. The learned Assistant Sessions Judge, Sangamner after considering the facts of the case, and evidence on record, and submissions made on behalf of both the sides, was pleased to

reject the application for discharge vide impugned order dated 24.12.2020.

6. Feeling dissatisfied by the impugned order of rejection of discharge application, the present petitioners have rushed to this Court, and challenged the impugned order on various grounds.

7. Heard Mr. Z.H. Farooqui, learned counsel for the petitioners and Mr. G.O. Wattamwar, learned APP for respondent No.1/State.

8. Mr. Farooqui, learned counsel for the petitioners submitted that there is a delay of five days in lodging of F.I.R.. It is, after thought, F.I.R. lodged by the mother of the deceased. Jyoti (since deceased) was never subjected to the ill-treatment at the hands of petitioners. There is no iota of evidence against the petitioners to frame charge under Section 306 read with Section 34 of the Indian Penal Code. The learned Assistant Sessions Judge has not considered all these aspects, and was pleased to turn down the application. He submitted that ingredients of Section 306 of the Indian Penal Code for abatement to commit suicide are completely absent in this Case. As such, there is no propriety to proceed

with the case by framing the charge. Jyoti (deceased) has committed suicide in her paternal house, and as such, role cannot be attributed to the present petitioners for abatement to commit suicide.

9. Mr. Farroqui, learned counsel for the petitioners invited my attention to the copy of A.D. report, and the statements recorded during A.D. inquiry. He submitted that there is no whisper against the petitioners in the said A.D. report, much less in the statements recorded by the police officer. This needs to be considered while framing of charge. When there is such a scenario coming out of two different versions about the alleged incident of suicide, the favourable view needs to be taken, which is beneficial to the defence.

10. Mr. Farroqui, learned counsel for the petitioners invited my attention to the copies of *Rojanama* sheet in the proceedings regarding holding *Maha Lok Adalat* and listing of matter for settlement. He pointed out that there was no such *Maha Lok Adalat* scheduled on 17.02.2015, and this fact has been falsified by producing the copy of *Rojnama* sheet.

11. Mr. Farooqui, learned counsel for the petitioner pointed out that the certified copy of *Rojnama* sheet is the part of the public record, which is annexed with the charge-sheet and not from the custody of the petitioner.

12. Mr. Farroqui, learned counsel for the petitioners has placed his reliance on following stock of citations.

- (i) ***M. Arjunan Vs. State represented by its Inspector of Police*** reported in ***(2019) 3 SCC 315***.
- (ii) ***S.S. Chheena Vs. vijay Kumar Mahajan and another*** reported in ***(2010) 12 SCC 190***.
- (iii) ***Mariano Anto Bruno and another Vs. The Inspector of Police*** reported in ***2022 LiveLaw (SC) 834***.

13. By taking help of above said citations, Mr. Farooqui, learned counsel for the petitioners, urged to allow this petition and discharge the petitioners out of accusation levelled against the petitioners under Section 306 read with Section 34 of the Indian Penal Code.

14. Per contra, Mr. Wattamwar, learned APP for respondent No.1/State supported the impugned order passed by the learned Additional Sessions Judge, Sangamner. He submitted that the learned Additional Sessions Judge has taken into consideration the material produced with the charge-sheet, so also considered the stock of citations relied upon by the defence side, and rightly rejected the application for discharge. He submitted that there is sufficient material against the petitioners to frame the charge. It is not a fit case to discharge the petitioners in view of the nature of allegations levelled against them, and the evidence collected by the investigation agency. He further submitted that the defence of the accused cannot be considered while deciding the application for discharge under Section 227 of the Code of Criminal Procedure.

15. I have considered the submissions of both the sides. Perused the impugned order passed by the Assistant Sessions Judge, Sangamner in Sessions Case No. 75 of 2015 dated 24.12.2020.

16. While exercise of framing of charge, the trial Court is not supposed to conduct a mini trial. Section 227 of the Code of Criminal Procedure provides that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he may discharge the accused by recording reasons. While making that exercise, the Trial Judge is required to consider the material produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the Trial Court to discharge the accused. It is not open to the accused to rely on material by way of defence and persuade the Court to discharge him.

17. Having regard to the above legal position, let me examine the facts of the case, and the material on record. It is true that there is a delay of five days in lodging of the F.I.R.

However, in the given circumstances the delay of five days, is not at all fatal and not a ground to discharge the petitioners.

18. So far as the A.D. report, and the statement recorded by the police officer during the A.D. inquiry, true it is that there is no whisper about the allegations of harassment or cruelty allegedly caused by the petitioners to deceased Jyoti. It is also true that Jyoti (deceased) committed suicide at her paternal house. However, the allegations levelled in the F.I.R. dated 25.03.2015 cannot be overlooked. The A.D. report, and the statements recorded in the A.D. inquiry would be considered during the trial. At this stage, it would not be proper to accept the same without having exercise of cross-examination and extend benefit to the present petitioners.

19. So far as the date of *Maha Lok Adalat* mentioned in the F.I.R., that found to be apparently incorrect. It cannot be overlooked that there was matrimonial dispute between the parties, and an attempt was also made to settle the same irrespective of whether on a particular date *Lok Adalat* was scheduled or not. This cannot be a ground to discharge the petitioners on account of incorrect mentioning of date of *Maha Lok Adalat* in the F.I.R.. The state of mind of a mother

needs to be considered. The mother was required to face trauma due to sad demise of her daughter. The daughter met with unnatural death, and as such, incorrect mentioning of the date of *Maha Lok Adalat* does not give any advantage to the petitioners to claim for discharge.

20. While considering the discharge application filed under Section 227 of the Code of Criminal Procedure, a Trial Judge is expected to exercise its judicial mind to the facts of the case so as to determine whether the case for trial has been made out or not. On going through the impugned order, it is revealed that the Assistant Sessions Judge has applied his judicial mind to the facts of the case. The learned Assistant Sessions Judge has also considered the stock of citations relied upon by the defence side and rejected the application by recording sound reasons. I do not find any error on the part of the learned Assistant Sessions Judge while rejecting the application for discharge.

21. So far as the citations relied upon by Mr. Farooqui, learned counsel for the petitioners (*supra*), there cannot be any debate on the legal position. After all the facts of the case play important role. On careful study of the F.I.R., it is

difficult to accept the submissions of Mr. Farooqui, learned counsel for the petitioners that ingredients of Section 306 read with Section 34 of the Indian Penal Code do not attract. Admittedly, deceased Jyoti was residing with her parents due to matrimonial discord coupled with other allegations, which cannot be overlooked. At this stage, it may not be proper to make any comment on the allegations levelled against the petitioners in the F.I.R. coupled with other aspects. The prosecution has *prima facie* made out a case to frame charge.

22. Having regard to the above reasons and discussion, I do not find any merit in the petition. Hence, the following order is passed:

ORDER

- (i) The criminal writ petition stands dismissed.
- (ii) No order as to costs.

**[SHRIKANT D. KULKARNI]
JUDGE**

S.P. Rane