

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Revision Application No. 73 / 2022

Vijay s/o Topa Rathod
Age 43 years, Occu. Teacher,
R/o. Shivnagari, Gokunda, Tq. Kinwat,
District Nandend.

...Applicant

Versus

1. The State of Maharashtra,
Through Officer In-charge,
Police Station, Kinwat,
Tq. Kinwat, Dist. Nanded.
Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.
2. Vilas s/o Damodar Jadhav,
Age : 37 years, Occu. : Teacher,
R/o.Naik Nagar, Gawandgaon,
Tq. Degloor, District Nanded.

...Respondents

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Mrs. Bodke Patil Poonam V., Advocate for the Applicant
Mr. S. P. Tiwari, APP for Respondent No.1/State.
Mrs. Dube Anjali (Bajpai), Advocate for Respondent No. 2

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CORAM : KISHORE C. SANT, J.

DATE : 23rd SEPTEMBER, 2022.

ORAL JUDGMENT :

With consent of the parties, heard finally at the admission stage.

1. This Revision Application is filed challenging an order dated 25.11.2021 passed by the learned Additional Sessions Judge in Sessions Case No.137/2018. Vide the impugned order, the learned Additional Sessions Judge-1 has rejected an application Exhibit-87 filed by the present Applicant seeking discharge from the Sessions Case. The Prosecution is launched for the offences punishable under Sections 302, 201, 506, 120-B read with 34 of the Indian Penal Code, 1860 (IPC for short).

2. Facts of the case in short are as under;

The present Applicant was married to deceased Surekha Rathod, sister of the Informant - Respondent No.2. Sixteen years ago, she was residing with her husband (present Applicant) at Gokunda Tq. Kinwat Dist.

Nanded and was working in Vasantrao Naik Secondary and Higher Secondary School. The Applicant developed illicit relations with another lady. On coming to know about this, the Informant, even his parents started requesting Applicant and tried to see that he does not involve in it. The Informant helped the Applicant and his sister to open and establish an English School namely Shanti Niketan English School, wherein deceased - Surekha was a Director and the Applicant was Secretary. However the Applicant again came in contact with Accused No.2 and he established illicit relations with her. As the deceased was an obstacle in the relations, the Applicant got annoyed. Family members of the Informant tried to pacify the Applicant and there were attempts to convince him to treat deceased properly. Getting further annoyed, he started threatening the deceased of dire consequences. On 23.08.2018 at around 1:00, Informant received an information from his maternal uncle - Ramesh Rathod that Surekha is murdered in the morning at around 09:30 am. and body was lying in the house. After coming back by completing funeral etc.,

the Informant lodged report with the Police. On the basis of information, a crime was registered against the Applicant; Vaishali Sheshrao Mane; Ajay @ Pramod s/o Sambhajirao Thorat @ Asolekar; Sheshrao s/o Subhash @ Subhashchandra Mane and Ashok Topa Rathod (brother of Applicant (presently not traceable)).

3. After completion of investigation, a charge-sheet came to be filed and the case is committed to the Sessions Court. Thereafter, the Accused No.2 and 3 are discharged from the offence by this Court. The Accused No.4 is also discharged by the Sessions Court. The present Applicant also filed an application, seeking discharge from the Sessions Case by way of an application Exhibit-87. The learned Sessions Judge vide order dated 25.11.2021 rejected his application. Therefore, the present Applicant has filed Revision Application before this Court with a prayer to quash and set aside the impugned order passed by the learned Sessions Judge-1, Nanded and consequently to discharge him from Sessions Case No. 173/2018.

4. Perused the report. Statement of the Informant clearly shows involvement of the Applicant in this case. A supplementary statement of the Informant came to be recorded on 05.11.2018, wherein he has given the time of the incident that occurred on a date of incident. He stated that the deceased had a talk with one teacher namely Prashant at around 09:20 in the morning. Thereafter she had a talk at 10:00 am. with another teacher namely Rahul. According to him, she was alive at 10:00 am. However, she did not come to school. At about 11:10 am., one teacher - Rahul tried calling deceased on the cell phone, but she did not attend his call. Thus he stated that the deceased is murdered during 10:08 to 11:00 am. From the other record, it is seen that the cause of the death is due to cut throat injury. The time as per the postmortem report is within 24 hours from the postmortem which was conducted at 9:40 am. on 24.08.2018. The injuries found on the person were due to sharp and cutting weapon. There were three stab injuries on the right side part of the body and mainly on the neck. Total ten injuries are recorded by

the Doctor, conducting postmortem examination. It is clearly seen from the postmortem report that the murder of deceased was due to cut throat injuries.

5. From the statements of Teachers, Colleagues and other persons recorded by the Police and other material collected, it is alleged that the deceased was murdered in her house, when the Applicant and the deceased were present. There is a statement of one Balaji Kendre, who was supplying milk to the house of Applicant, recorded on 12.09.2018. He stated that on 23.08.2018, he had been to the house of Accused and deceased at 08:30 in the morning, whereupon the deceased opened the door and she brought a glass of water for him. She offered him a tea. The Applicant came from the room and made inquiry about the son of this witness. He assured that he will direct to issue T.C. to his son online. Thus he is the person, who has last seen the Accused with the deceased. There are statements of others, showing that after 11:00 am. there was no communication of deceased with anyone. There are statements of independent witnesses as well as

of the persons, working with the deceased in the School i.e. Vasantrao Naik School. There are also statements of teachers and staff of Shanti Niketan English School, where the deceased was a director. Almost all the witnesses have stated that this Applicant had illicit relations with Accused No.2 (now discharged) and due to that, there was a dispute between deceased and this Applicant. Thus, the Applicant had strong motive for committing murder of his wife, who was like an obstacle in his love affair with Accused No.2 and for said reason he was physically and mentally ill-treating his wife.

6. Main ground of the Applicant in his discharge application is that when the incident took place, he was not in the house. His case is that he had already left the house prior to the incident. First he went to the Shanti Niketan English School and thereafter from there, he went to the School at Wanola. He reached in the school at Wanola at around 11:00 am. It is his case that the distance between his house and Wanola is around 35 to 40 Kms. and considering time that would require to

reach the school at Wanola from his house it is highly improbable that he would have been in the house, when the incident took place. It is his case that looking at the statement of the Head-Master of the school at Wanola, who stated that the Applicant reached at school by 10:25 am. which means that the Accused must have left the house prior to 9:00 am and whereas from the statement, it appears that at least till 10:08 am. in the morning, the deceased was very much alive and she had a conversation with one of the teachers, namely Rahul.

7. It is further case of the Applicant that he is falsely implicated in the case by the Police Machinery to save real culprits. The Applicant has filed various applications before various authorities making allegations against investigating machinery for not conducting proper investigation. However, that need not be considered at this stage. It is further case of the Accused that there is no recovery of any weapon or any other material from the spot of the incident or from

this Applicant. After going through the material, it is seen from the order that the entire case of the Prosecution is based on circumstantial evidence, as there is no direct evidence. A strong circumstance against this Applicant is that he was lastly seen together with the deceased in the house. It is only this Applicant, who has to explain as to how deceased died as the things are within his personal knowledge and it is for the Accused to discharge this burden etc.

8. The learned APP has pointed out from the statement of one Sanjivni Jadhav, who clearly stated about the relations between Accused No.2 and this Applicant. She stated about the conspiracy that was hatched between the Accused persons. He has further shown statement of one witness namely Madhuri, who has also stated about the illicit relations and conspiracy hatched by the Accused persons. He prays for rejection of the Revision Application. He submitted that the order passed by the learned Sessions Judge, is well reasoned order and does not call for any interference.

9. Learned Advocate for the Respondent No.2 submitted that this Court, while considering the case for discharge cannot go into minute details of the evidence on record. Prosecution needs to get an opportunity to prove its case, which can be done only in the trial. There is overwhelming material on record to show illicit relations between Accused No.2 and the Applicant, which is sufficient to prove the motive. If the statements are proved in the Court, would be sufficient to prove guilt of the Applicant and therefore this material certainly needs to be tested in trial. Except the statements, the learned APP also pointed out that the blood group A was found on the shirt of the Accused, blood group of deceased is also 'A'. This circumstance in his submission is clear to connect the Applicant with the incident. Learned APP also pointed out the material such as Chemical Analyzer's Report and submitted that this is also a material that needs to be proved in the trial.

10. The learned Advocate for the Applicant placed reliance on the following judgments :

- (i) **Yusuf Siddique Syed and others Vs. State of Maharashtra**, 2021(3) AIR Bom.R (Cri) 103.
- (ii) **Nagendra Sah Vs. the State of Bihar** in Criminal Appeal No.1903/2019 decided by the Hon'ble Supreme Court.
- (iii) **State of NCT of Delhi Vs. Shiv Charan Bansal and Others** (2020)2 SCC 290.

11. The learned APP and the learned Advocate for Respondent No.2 placed reliance upon judgment in the case of **Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey and Others**, reported in 2022 SCC OnLine SC 913.

12. Firstly, in the case of Yusuf Siddique Sayed and Others (supra), this Court has held that while considering an application for discharge and addressing the question of framing of charge, the Sessions Court is within its right to sift and weigh the material placed before it. However, the scope of enquiry is to find out

whether or not a prima facie case has been made out against the Accused. The enquiry is not for the purpose of evaluating the material to judge as to whether it would entail conviction.

13. The other judgment i.e. in Criminal Appeal No.1903/2019, the learned Advocate for the Applicant relied upon Paragraph No.20 and 21, which are reproduced below :

20. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

21. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not

established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.

14. The Hon'ble Apex Court has considered the applicability of Section 106 of the Evidence Act. This was a case, where a trial was already over and the Applicant was convicted. It is thereafter the matter was carried to the Hon'ble Apex Court. In the case in hand, it is only at the initial stage, where charge-sheet is filed. The Prosecution has not yet led its evidence. It would not be safe to appreciate any material on record at this stage. This Court certainly is not expected to see probable defence, explanation of the Accused at this stage.

15. The learned Advocate for the Applicant relied on Paragraph No.32 of his third judgment in the case of State of NCT of Delhi (supra), wherein the Hon'ble Apex Court has observed as under:

32. The Court while considering the question of framing charges under Section 227 of the Cr.P.C., 1973 has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case.

If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceedings with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The Court is required to evaluate material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence.

At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted.

Reliance is placed on the Judgment of this Court in State of Bihar V. Ramesh Singh (1977) 4 SCC 39 where it has been held that at the stage of framing charges under Sections 227 or 228 of the Cr.P.C., 1973 if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused had committed the offence, then the Court should proceed with the trial.

16. Thus, at the stage of framing charges under Section 227 and Section 228 of Cr.P.C., the Court is required only to consider whether there is sufficient material on record to frame charges against the Accused or not? The Court has power to sift and weigh the evidence only for a limited purpose to find out whether prima facie case has been made out against the Accused?

17. Learned APP and learned Advocate for Respondent No.2 have relied upon the judgment in the case of Ghulam Hassan Beigh (supra); wherein it is held that the Prosecution must get an opportunity to prove its case. Considering Section 227 and 228 of Cr.P.C., the Hon'ble Apex Court has further discussed the purpose of framing of charge. It would be of some benefit to reproduce Paragraph No.29 of this judgment.

29. it is evident that the trial Court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which

is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution.

18. There is no doubt it is held that the trial Court has to sift and weigh the material, however it is clear that while evaluating the material, the Court is not supposed to go in minute details. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused.

19. After hearing parties and after going through record in this case, it is clear that there are statements of witnesses clearly pointing out the motive and further there is evidence that the deceased was lastly seen with the Accused in the house. Considering that this is a case of circumstantial evidence, it is not expected to get direct evidence. However, the material collected is certainly sufficient to frame charge against the Applicant. In this case, from the statements recorded by the Police, it is clear that there is sufficient material against the Accused to frame the charge for the offences punishable under Sections 302, 201, 506, 120-B of IPC. The case of the Applicant that he was not in the house at the time of the incident, cannot be considered at this stage. The case of Applicant is purely in the nature of defence, which he has to take in the trial.

20. The learned Sessions Judge has rightly considered the case in Paragraph No.12 of the order on the basis of statement of one Vinayak Agate, who was serving as a

teacher in the school. It is the Applicant, who was at Kinwat when this witness called him at about 09:00 am. The Applicant had asked him to wait for 10 to 15 minutes and he will come to S.T. stand and recorded that there is a possibility that the accused was at residence. This Court thus do not find that the learned Sessions Judge has committed any error or recorded any perverse finding. No case is made out to call for any interference at the hands of this Court.

21. This Court holds that certainly a case is made out for framing of the charges against the Applicant. No perversity and illegality is committed by the learned Sessions Judge, while rejecting the application of the Applicant. Since there is no merit in the application, the Revision Application is dismissed.

[KISHORE C. SANT, J.]

NAJEEB