

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.659 OF 2016

- 1) Mrs. Meena w/o Madhukar Mahale,
Age 51 years, Occu. Household,
R/o Room No.101, Shabemen Apartment,
First Floor, Near Jumma Masjid,
Kalwa, Tq. & Dist. Thane
- 2) Madhukar s/o Yeshwant Mahale,
Age 61 years, Occu. Service
R/o as above.
- 3) Pravin s/o Shivram Dahale,
Age 45 years, Occu. Agri.,
R/o Ranjangaon (Kh.),
Tq. Rahata, Dist. Ahmednagar.
- 4) Anita w/o Pravin Dahale,
Age 41 years, Occu. Teacher,
R/o as above.

... PETITIONERS

VERSUS

- 1) The State of Maharashtra
through Police Station, Shirdi,
Tq. Rahata, Dist. Ahmednagar
(Copy to be served on Public
Prosecutor, High Court of
Bombay, Bench at Aurangabad
- 2) Vishal s/o Bhikan Hugbandh,
R/o Naya Dongir, Tq. Nandgaon,
District Nasik.

... RESPONDENTS

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Shri A.S. Gandhi, Advocate for petitioners
Mrs. D.S. Jape, A.P.P. for respondent No.1.
Shri R.K. Temkar, Advocate for respondent No.2.
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CORAM : R. G. AVACHAT, J.

DATED : 17th MARCH, 2022

J U D G M E N T :

The challenge in this writ petition is to the order dated 23/2/2016, passed by Additional Sessions Judge, Kopergaon on application Exh.13 in Sessions Case No.89/2015. Vide impugned judgment and order, the application preferred by the petitioners herein for discharge came to be rejected.

2. The petitioners have been charge-sheeted for the offences punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code.

3. The petitioners No.1 and 2 are the parents-in-law of the deceased Yogita. The petitioner No.4 is sister-in-law of the deceased while petitioner No.3 is husband of petitioner No.4 (distant relatives of the deceased).

4. The First Information Report (F.I.R.) dated 8/5/2015 was lodged by one Vishal, a brother of the deceased Yogita. It has been averred in the F.I.R. that, Yogita married Nilesh in December 2010. She was treated well by Nilesh and

all her in-laws (petitioners) well for initial period of two years. Since 10/3/2013, all the petitioners and husband of the deceased started ill-treating her with a view to coerce her to bring Rs.2,00,000/- from her parents for goldsmith business/ shop. The ill-treatment was in the nature of beating, taunting and even starving her. Whenever Yogita used to visit her parental home, she used to relate the informant and others about her ill-treatment. On 25/3/2015, she had been to her parent's house. She told the informant to have been harassed and ill-treated with a view to compel her to fetch money from her parents. The informant had, therefore, paid Rs.50,000/- to her and accompanied to drop her at her marital home. The informant had requested Nilesh (husband of the deceased) not to ill-treat her. He promised him to fulfill the demand. In April 2015, there was marriage of sister-in-law of the deceased, at Shirdi. The informant and his family members had attended the said marriage. The deceased was seen disappointed. She, however, could not speak up her mind since her in-laws were with her.

5. The deceased committed suicide by hanging herself from a ceiling fan at her matrimonial home on 7/5/2015 by 10.00 p.m. One Raju Malve told the informant

that there was a petty quarrel between the deceased and her husband and, therefore, she committed suicide.

6. On the line of the averments in the F.I.R., there are statements of the persons from the parental side of the deceased. There is some addition in the statement of one of the sisters of the deceased that she had been to the matrimonial home of the deceased for assisting her for the marriage of her sister-in-law. The deceased had informed her at that time to have been harassed and ill-treated in connection with the demand of Rs.2,00,000/-.

7. On the other hand, there are statements of the persons residing in the vicinity of the matrimonial home of the deceased. It has been in their statements that the parents-in-law of the deceased (petitioners No.1 and 2) have been staying in Mumbai since the petitioner No.1 is in service there. It is in their statements to have never seen the petitioners have ever ill-treated the deceased.

8. The learned Additional Sessions Judge, while rejecting the application for discharge, observed that, it is specific allegation in the complaint that due to physical and mental harassment by the accused, Yogita committed suicide.

Names of all the accused have been mentioned in the F.I.R. and statements of the witnesses as well. What kind of ill-treatment it was could only be determined after trial.

9. Learned counsel for the petitioners would submit that, the father-in-law of the deceased has been in service in Mumbai. He has, therefore, been residing at Mumbai along with his wife years together. Petitioner No.4 is married sister-in-law of the deceased, residing at her matrimonial home. Her husband (petitioner No.3) has also been roped in. The allegations in the F.I.R. and the statements of the witnesses are as vague as could be. The deceased did not leave behind suicide note. She might have committed suicide over a petty quarrel. The husband is not before this Court. According to learned counsel, there is no material to frame the charge against the petitioners herein. He, therefore, urged for allowing the petition.

10. The learned counsel for the complainant and the learned A.P.P. would, on the other hand, submit that, the deceased committed suicide within five years of her marriage. There are specific allegations in the F.I.R. and the statements as well. The deceased would relate her woes to her relations. It was in fact a dowry death. Section 113-B of the Evidence

Act mandates to draw a presumption as to dowry death. The trial Court has rightly rejected the application. No interference is, therefore, warranted with the impugned order.

11. Considered the submissions advanced. Perused the police papers relied on. Chapter XVIII of the Code of Criminal Procedure speaks about trial before a Court of Session. Offence punishable under Section 306 of the Indian Penal Code is exclusively triable by Sessions Court. Section 227 of the Code of Criminal Procedure speaks of discharge. It reads thus :

“227. Discharge :- 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 not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

12. Section 227 of the Code of Criminal Procedure had been subject of interpretation many a time. In case of **P. Vijayan Vs. State of Kerala & anr.** reported in **AIR 2010 SC 663**, it has been observed :-

“The words “not sufficient ground for proceeding against the accused” clearly show

that Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to fact of case in order to determine whether a case for trial has been made out by prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of S.227 the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

13. Let us appreciate the police papers to find whether there is sufficient ground for proceeding against the petitioners herein.

Admittedly, the deceased committed suicide within five years of her marriage. She was treated well for first two years of her marriage. Her husband – Nilesh is a goldsmith by profession. It is the case of the prosecution witnesses that the husband and the petitioners herein started ill-treating the deceased post 10/3/2013 with a view to compel her to fetch Rs.2,00,000/- for goldsmith business of Nilesh. The informant

had paid Nilesh sum of Rs.50,000/- and requested him to be kind enough with the deceased. He had also promised to pay him more money.

14. The deceased committed suicide by hanging at her matrimonial home on 7/5/2015. Admittedly, the petitioners No.1 and 2 (her parents-in-law) have been residing in Mumbai on account of service. True, they might have been visiting the village occasionally. There are, however, statements of the neighbours claiming to have never seen the deceased to have been ill-treated. The petitioners No.3 and 4 had also not been staying with the deceased. Even we accept the allegations in the F.I.R. and the statements of the witnesses as it is, it may be a case of offence punishable under Section 498-A of the Indian Penal Code. The deceased did not leave any suicide note nor it is the case of informant or any of the witnesses that she had ever confided in them to state to have been fed up with the ill-treatment and proposed to end her life. On the other hand, it has been alleged in the F.I.R. that the deceased had a petty quarrel with her husband and, therefore, she committed suicide. Husband is not before this Court. Whatever the deceased had told the informant and her sister about her ill-treatment in connection with the demand of

Rs.2,00,000/- would be hit by principle of hear-say since there is prima facie nothing to suggest the deceased to have committed suicide as a result of alleged ill-treatment. A gap between the alleged ill-treatment and factum of suicide is wide one. True, under Section 113-A of the evidence Act there is presumption as to abetment of suicide by a married woman. For drawing such a presumption, trial is required to be held and evidence appreciated. Since the cause of committing suicide stated in the F.I.R. is a quarrel with the husband Nilesh and the petitioners having been away from the matrimonial home of the deceased, connection between the alleged ill-treatment and factum of death even prima facie could not be said to have been established. The allegations in the F.I.R. and the police statement as regards ill-treatment are inadmissible since Section 32(1) of the Evidence Act could not be resorted to for want of there being a dying declaration of the deceased.

15. For the above reasons, this Court is of the view that there is no sufficient ground for proceeding against the petitioners. They, therefore, deserve to be discharged.

16. In the result, Criminal Writ Petition is allowed. The impugned order dated 23/2/2016, passed by Additional

Sessions Judge, Kopargaon on application Exh.13 in Sessions Case No.89/2015 is set aside. The petitioners are discharged from Sessions Case No.89/2015 pending before the Additional Sessions Judge, Kopargaon.

**(R. G. AVACHAT)
JUDGE**

fmp/-