

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Revision Application No. 144 / 2019

Utsav Shivkaran Helambkar,
Age 32 years, Occu. Service,
R/o. Plot No.32, Pruthvinagar,
Gat No.103, Chate School Road,
Satara Parisar, Aurangabad.

...Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector
Satara Police Station,
Satara, Tq. & Dist. Aurangabad.
2. Rekha Dilip Mundhe,
Age : 41 years, Occu. : Household,
R/o. Gangakhed, Tq. Gangakhed,
District Parbhani.

...Respondents

WITH

Criminal Revision Application No. 173 / 2019

The State of Maharashtra,
Through Police Inspector
Satara Police Station,
Satara, Tq. & Dist. Aurangabad.

...Applicant

Versus

Rekha Dilip Mundhe,
Age : 41 years, Occu. : Household,
R/o. Gangakhed, Tq. Gangakhed,
District Parbhani.

...Respondent

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Mr. Chaitanya V. Dharurkar, Advocate for the Applicant

Mr. Kuldip S. Kahalekar h/f Mr. N. S. Ghanekar,
Advocate for Respondent No.2.

Mrs. G. L. Deshpande, APP for Respondent No.1/State

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CORAM : KISHORE C. SANT, J.
RESERVED ON : 27th SEPTEMBER, 2022.
PRONOUNCED ON : 10th NOVEMBER, 2022.

JUDGMENT :

. Heard by consent of the parties, the matter is taken for final disposal at the admission stage. Both the Revisions are against the same order and hence are heard and decided together.

1. The Criminal Revision Application No.144/2019 is filed by the Original Informant challenging an order

passed by the learned Sessions Court discharging Respondent No.2 from the offences punishable under Sections 306, 498-A read with 34 of the Indian Penal Code, 1860 ('IPC' for short).

2. The facts of the case in short are as below;

The Informant is brother of deceased Rasika, who was married to the brother of Respondent No.2 on 05.06.2008. It is alleged that since the marriage itself, all the in-laws started harassing the deceased. The husband used to say that the deceased is not liked by his sister i.e. present Respondent No.2 as she is short and is not matching to him. Her husband used to call the deceased as 'Karanti', i.e. one who has brought a bad luck. Three years prior to incident, an amount was demanded for purchasing a plot. Therefore, father of deceased had given Rs. 2,00,000/-. There was further demand of Rs.5,00,000/- for making construction on the said plot. On such count, husband always used to abuse and beat the deceased. After fourteen months of marriage, deceased delivered baby girl. On that count again, all in-laws

got disappointed. So far as Respondent No.2 is concerned, it is alleged that she used to tell husband of deceased that the deceased has brought a bad luck for the family. Whenever she used to come to house of deceased, she used to harass and taunt the deceased. Ultimately, deceased got fed up with her husband, who was acting at the instigation of Respondent No.2 and on 17.06.2016 at around 05:45 am., Deceased committed suicide by jumping into the well. She was found in a well near the house with her daughter Jigisha in the said well, Jigisha survived as could manage to hold a rope in the well. Deceased succumbed to the injuries and was declared dead at 08:00 in the morning by the doctor in Government Medical College and Hospital (GHATI), Aurangabad. Thereafter, late in the evening at 11:26 pm., FIR came to be lodged against the in-laws of deceased for the offences punishable under Sections 498A, 323, 504, 506, 306 read with 34 of IPC and Sections 2 and 4 of the Dowry Prohibition Act.

3. On the basis of FIR, police carried the

investigation. After completion of investigation, charge-sheet came to be filed on 12.08.2016. Police seized two suicide notes which were found in the house. Respondent No.2 (Rekha) preferred an application for discharge in Sessions Case No. 243/2016. Learned Additional Sessions Judge, Aurangabad by order dated 05.04.2019 allowed the application for discharge of Respondent No.2. By the said order, in short, it is held that the suicide note do not disclose any specific instances of cruelty at the hands of present Respondent No.2 and that it is not found that the husband of deceased acted at the instance of Respondent no.2. Respondent No.2 was residing with her matrimonial house and occasionally used to visit the house of deceased. This order is assailed in these Criminal Revision Applications, one by the Informant and other by the State.

4. Learned Advocate for the Applicant submitted that there was sufficient material on record to clearly point out the guilt of the Respondent No.2. It is this

Respondent No.2, at whose instigation the husband of deceased used to harass the deceased. When voluminous material was available on record, learned Court below has committed error by discharging Respondent No.2. At the stage of framing of charge and considering the application for discharge, what needs to be seen is only as to whether there is sufficient material available on record to proceed against the Accused persons? When the role of Respondent No.2 is clearly spelled out in the suicide note and in the statement of witnesses especially minor girl who was also thrown in the well, it was proper to dismiss application for discharge.

5. Learned Advocate for Respondent No.2 supports the impugned order and submitted that the trial Court has rightly passed the order. He submits that there are no specific allegations against Respondent No.2. It is submitted by the Advocate for Respondent No.2 that there is no direct witness to any of the instances recorded in the suicide note. It is further submitted that the statement appears to be cyclo-styled. It is a submission

that there is no close proximity between the act of harassment and the suicide. It is submission that the Respondent No.2 was married in 1999 itself that is much prior to the marriage of deceased in 2008. The Respondent No.2 is residing at the distance place i.e. in Gangakhed, Dist. Parbhani. When the deceased committed suicide, three days prior to that, she was with her parents. As there is no material on record sufficient to proceed against Respondent No.2, the trial Court has rightly considered the case and discharged Respondent No.2. There is no ground to interfere with the order under limited jurisdiction available with this Court.

6. Both the parties relied upon the judgments delivered by the Hon'ble Apex Court and also by this Court. Learned Advocate for the Applicant relied upon the following judgments :

- (i) Soma Chakravarty Vs. State (through CBI)
(AIR 2007 SC 2149)
- (ii) State of Bihar Vs. Ramesh Singh
(AIR 1977 SC 2013)

- (iii) Chitresh Kumar Chopra Vs. State (Govt. of NCT Delhi) (AIR 2010 SC 1446)
- (iv) UDE Singh and Ors. Vs. State of Haryana (AIR 2020 SC (Criminal) 18)

7. Learned Advocate for Respondent No. 2 relied upon the following judgments:

- (i) Kalucharan Sudarshan Patra Vs. State of Maharashtra & Anr. in Criminal Revision Application No.580/2019 of this Court (Principal Seat at Bombay).
- (ii) Smt. Jamunabai Wd/o. Shalikram Zade Vs. State of Maharashtra & Anr. Criminal Revision Application No. 112/2015 of this Court (Bench at Nagpur).
- (iii) Anagha Hitesh Arya Vs. State of Maharashtra MANU/MH/3316/2018.
- (iv) Dilawar Babu Kurane Vs. State of Maharashtra (2002) 2 SCC 135.
- (v) M.Mohan Vs. State represented by the Deputy Superintendent of Police, AIR 2011 (SC)1238.
- (vi) Ramesh Vs. State of Tamil Nadu, AIR 2005 (SC) 1989.

(vii) Madan Mohan Singh Vs. State of Gujrat & Anr.
AIR 2010 (SC) 2933.

8. Before going to the facts and the material on record in this case, it would be proper to consider the judgments cited by the parties to appreciate the material on record in better manner and for understanding this case and the principles behind Sections 227 and 228 of the Cr.P.C.

9. The first judgment in the case of Soma Chakravarty (supra), is relied upon to show that it is settled legal position that if on the basis of material produced on record, the Court could form an opinion that the accused might have committed an offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

10. From Paragraph Nos. 4 to 6 of the next judgment in

the case of State of Bihar (supra), it is held that the Prosecution needs to describe the charge against the accused and state by what evidence it proposes to prove the guilt of the accused. It is thereafter a duty of the Court to consider the record of the case. It is held that if there is suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. For ready reference, Paragraph No.4 of the said judgment is reproduced below:

"4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S. 227 or S. 228 of the Code. If "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", as enjoined by S. 227. If, on the other hand, "the Judge is of opinion that there is

ground for presuming that the accused has committed an offence which.....

. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable.

11. In the third judgment in the case of Chitresh Kumar Chopra (supra), it is held by the Hon'ble Apex Court in Paragraph Nos. 17 and 18, which are reproduced below:

"17. In the present case, the charge against the appellant is that he along with other two accused "in

furtherance of common intention", mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and, therefore, clause firstly of Section 107 of the IPC was attracted. [Emphasis Supplied]

Briefly dealing with the material available on record, in the order directing framing of charge against the appellant, the learned trial court has observed as under:

"In the present case the evidence shows threatening given to the deceased. One witness called Kartar Singh says that CK Chopra was heard saying to the deceased that the deceased had become dishonest because he was refusing to sign a paper in which the share in some joint property was shown to be 10%. On another occasion Chopra was heard by this witness to say that Chopra would ruin the deceased if he did not give up his claim for 25% and did not agree to accept 10%. Witness Padam Bahadur has stated inter alia that he overheard Jahoor and Mahavir telling the deceased that Chopra had asked them to say that this was the last opportunity to sign the document and that if he wanted to live in the society he should sign the agreement or should die by taking poison. Soon thereafter the deceased committed suicide. Thus the evidence is not of a mere quarrel in which one person told the other go and die without actually suggesting that the opponent should commit

suicide. In the present case the evidence collected by the investigation suggest that the deceased had been actually pushed to the wall and the escape by committing suicide was suggested by the accused persons."

"18. In the light of the material on record, in our judgment, it cannot be said that the trial court was in error in drawing an inference that the appellant had "instigated" the deceased to commit suicide and, therefore, there was ground for presuming that the appellant has committed an offence punishable under Section 306 read with Section 34 IPC. 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. (See: Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors5)."

12. The fourth judgment is in the case of UDE Singh (supra), in its Paragraph Nos. 21 and 23, it is held as under:

"21. In the given set up and the respective position of the parties, if the accused No. 1 continuously addressed or called the deceased girl as his "wife", in our view, the utterance was not merely of teasing but of demeaning and destroying the self-esteem of the young girl whose engagement had broken and whose uncle was mocking her to

join him in matrimony. It was the act of humiliation of highest order for the girl, who had personally suffered the set-back of broken engagement, apart that she was unable to clear even 10th standard examination. Obviously, she was being ridiculed and taunted for her broken engagement. The other accused persons chose to join the accused No. 1 and aggravated the humiliation of the girl by addressing her as younger brother's wife or aunt. There remains nothing to doubt that the accused persons were working with the common intention to harass and humiliate the girl with reference to her broken engagement. The significant part of the matter is that such taunting and humiliation of the deceased at the hands of the accused persons had not been a singular event or one-off affair but had been a continuous feature, as amply established by the prosecution witnesses. The incident of 05.05.1996 drew the final straw when the hapless girl received the same taunts from the accused persons and she even rebuked them. We find no reason to disbelieve the statement of PW-2 Jai Narain as regards the incident of 05.05.1996. Equally, there is no reason to disbelieve the statement of PW-11 Smt. Krishna that her daughter wept the whole night after the said incident; and on being frustrated and exasperated with such humiliations, expressed her intention to end her life. The fact of the matter remains that the victim girl ended her life in the early morning very next day."

"23. The contention of the appellants that their intention had never been to make her commit suicide is required to be rejected because, as noticed above, the hapless girl was intentionally chosen for humiliation by the accused, who were otherwise involved in several litigations with her parents. The accused persons also knew it that the father of the girl was posted in his duty outside the village. As noticed, the intention of the accused had only been to drive the deceased to the brink of helplessness and intolerance; they in fact succeeded in doing so on 05.05.1996, when the girl rebuked them for their utterances. However, the victim girl found no way out because the humiliation at the

hands of accused had been everyday affair; and, in the given set up of the society she belonged to, any action against the accused by her family was being avoided for the sake of her honour."

13. Thus, from these judgments, it is clear that what is required to be seen is that whether there is sufficient materiel to proceed against the accused and if it is placed before the Court then Court has to proceed to frame the charge.

14. Considering the judgment in the case of Kalucharan Sudarshan Patra (supra), cited by the Respondent No.2, it is seen that the allegations made by the first informant in supplementary statement were found unworthy of credence. At the stage of framing of charge, the material on record is required to be scrutinized so as to ascertain whether there is a prima-facie case which raises a strong suspicion against the accused of having committed offences. It is also discussed that when the report under Section 173 and the documents annexed with it and the material on record leads to an inference that there is a ground for presuming that the accused has

committed an offence, the Court would be justified in framing the charge. It was a case of abetment to commit suicide it on the allegation was that the accused was in habit of drinking liquor and gambling. The Hon'ble Apex Court held that it would not constitute abetment within the meaning of Section 107 of IPC and it is on that count, order of discharge passed by the learned Sessions Court was upheld.

15. In the case of Jamunabai Wd/o. Shalikram Zade (supra), this Court, on facts, came to the conclusion that there was nothing on record to show as to on what date the husband had asked deceased to give divorce and to take the amount of Rs. Two Lakhs.

16. In the case of Anagha Hitesh Arya (supra), this Court on facts formed an opinion that the conclusion that there is no abetment to commit suicide. Based upon the judgment in another case, it was held that behind every suicide there is a cause. However, all the causes cannot be labeled as abetment.

17. In the case of Dilawar Balu Kurane (supra), it was held that mere suspicion is not sufficient to frame the charges, but there has to be a grave suspicion against the accused.

18. In the case of Ramesh (supra), it is again a case wherein the Hon'ble Apex Court came to a conclusion that there was no sufficient material to frame the charges.

19. The last judgment i.e. Madan Mohan Singh (supra). In the said case, the facts were like that the Appellant therein, was working as D.E.T. in telephone Dept. and the deceased was working as Driver under the accused/Appellant. In spite of his transfer, the D.E.T. kept on continuously taking services from the deceased driver. At one instance, since the driver did not listen to the order of Accused, Accused became angry, threatened driver of consequences and suspended him. By this act of Officer, driver got depressed and committed suicide. The High Court had refused to quash the

proceedings for the offence under Section 306 of IPC. The Hon'ble Supreme Court set aside the order passed by the High Court and discharged the accused. In the facts of that case, it was held that the act of accused can not be taken as an abetment to commit suicide.

20. Thus, considering the above judgments what becomes clear is that while considering the discharge application what needs to be seen is as to whether there is sufficient material available on record to frame charges against the accused persons or not?

21. In this case, it is not only the FIR which makes allegations against Respondent No.2 but there is more material available on record to frame charges against Respondent No.2 as per submissions of the Advocate for the Applicant. It is seen that there are two suicide notes on record, there are also statements of various witnesses. Then, there are two statements of daughter Jigisha recorded under Section 164 of Cr.P.C. one before

the Judicial Magistrate and another before President of Child Welfare Committee, Aurangabad.

22. The first suicide note starts with expression that the deceased has suffered eight years of marriage with great difficulties. She was always humiliated by the husband on the count of her height, her looks, her face etc. There was also threat like she will be beaten. Her husband used to abuse her. He further used to say that he is not getting any pleasure from her. Her father-in-law in front of her used to tell her husband to give divorce. A specific reference is made to the present Applicant that she always used to say that unless deceased dies her husband will not get real pleasure in the life. These notes show that she wanted to commit suicide that time itself, but because of her daughter, she did not commit suicide. However, she even expressed her last desire stating that not to perform any rituals after her death and Accused be not allowed to come near her body. She doesn't want even shadow of accused persons near her body. The following are exact

words used by her in vernacular, which expressed her anguish :

"एक शेवटची इच्छा माझे कोणतेच विधी करू नका आणि नवरा, सासू, सासरे, नणंद यांची सावली सुध्दा आमच्या प्रेतावर पडू देऊ नका."

. The word 'आमच्या' shows that she did not want even her daughter to be with the in-laws. It is further clear from the fact that she had thrown her daughter first in the well. Then, she jumped into the well. Not only that she wanted to finish her own life but further did not want even her daughter to live after her. No mother would want even her child to die. But in this unfortunate case the mother wanted that her child also should not live with in-laws. Thus she had taken such an extreme step.

23. There is another suicide note, which runs in fourteen pages. There are allegations against the husband and in-laws. It is specifically mentioned that Respondent No.2 had taken all gold ornaments of the deceased in the marriage of her daughter, which she has

not returned. Her husband does not take any decision without asking to Respondent No.2. Further allegation against Respondent No.2 is that she and her mother-in-law pressurized the deceased to deliver a baby boy, saying that it is only son who take the family tradition further. Two months before the suicide, Respondent No.2 had been to the house of deceased and started insisting the husband of the deceased stating that unless deceased dies, her husband will not get real pleasure in the life. She has alleged that all the harassment is only at the instance of Respondent No.2.

24. There is a statement of Jigisha. In her first statement under Section 164 of Cr.P.C. before the Judicial Magistrate First Class, initially she has stated that the husband of deceased used to beat her. After some questions and answers, learned J.M.F.C. recorded that though Jigisha understood the questions, however she could not give proper answers and therefore no further statement is taken. At the time of giving statement, daughter was of seven years of age. It needs

to be considered that even in answers to first few questions, Jigisha has stated that her father used to beat and abuse the deceased even in her presence, this statement was recorded on 27.06.2016. Thereafter, her statement was again recorded by the President of Child Welfare Committee, Aurangabad, wherein, she has stated in detail, harassment given to the deceased. Where she has attributed role to Respondent No.2. She stated that she was thrown in the well by the deceased and immediately deceased also jumped into the well.

25. Learned Advocate for Respondent No.2 has objected to this statement, stating that this statement is recorded before the President of Child Welfare Committee (President alone), who has no power or authority to record the statement of anyone under 164. The powers of Magistrate are given to the Committee and a statement recorded by President alone cannot be considered to be a statement under Section 164. Only Magistrate can record the statement under 164. However this aspect needs to be gone into at the stage of trial.

26. Thereafter what needs to be considered are the statements of neighbours and the persons who know the deceased. A statement of one Komal, shows that she was knowing the deceased as she was working as domestic servant in the house of the deceased, who used to tell her that the deceased was harassed at the hands of Respondent No.2 and other in-laws.

. The next statement is of domestic servant - Ranjana Kale, who was working in the house of deceased. She stated that she was knowing the deceased as she was working for fifteen years in the house of parents of deceased and she was also working in the house of deceased. She stated that deceased used to tell her about harassment at the hands of in-laws and Respondent No.2.

. The next statement is a of Rashmi Mahajan, who also stays in the locality of deceased. She also stated that there was harassment at the hands of in-laws and Respondent No.2. There are also some other statements.

27. Thus, there is evidence in the nature of suicide

notes clearly attributing a role to Respondent No.2. There are statements of other persons, who were knowing the deceased showing that deceased used to tell them about the harassment at the hands of in-laws and Respondent No.2. About the statement of Jigisha recorded by the President of the Child Welfare Committee, it is pointed out that this statement does not form a part of a charge-sheet. However, even if this statement is discarded, there is still sufficient material available in the form of suicide note and in the form of statements of other witnesses, who were knowing that there was harassment at the hands of in-laws and also at the hands of Respondent No.2.

28. It needs to be considered that suicide note does not show that the deceased committed suicide only because of one incident but has shown that it is because of continuous harassment even on earlier occasions she wanted to commit suicide. So the cause is not only one incident so as to see close proximity. There is nothing except a statement that Respondent always gives taunt to

deceased etc. In the FIR, a specific role is attributed to Respondent No.2.

29. Considering all the submissions, again the basic question, that needs to be answered as to whether this is a stage to appreciate the defence of the Respondent No.2 ? The answer is 'No'. The learned trial Court in the judgment has observed that since in the suicide note, no specific instances of cruelty are mentioned, there is no sufficient material to proceed against Respondent No.2. Further the Court in Paragraph No.9 of order, observed that daughter of deceased was residing with her maternal grand-parents when her statement came to be recorded. These observations clearly show that the learned Sessions Judge has tried to appreciate the evidence or has tried to consider defence of the accused at the stage of framing of charge itself. This Court comes to conclusion that this was not a stage for the learned Sessions Court to make these observations and to record these findings. Learned Sessions Court has clearly committed illegality in appreciating the

evidence at this stage. Therefore the impugned order deserves to be quashed and set aside. Hence the following order.

O R D E R

I. The impugned order dated 05.04.2019 passed by the learned Additional Sessions Judge, Aurangabad is quashed and set aside.

II. The Court shall proceed to frame charge/charges against Respondent No.2 for the offences punishable under Sections 306, 498-A read with Section 34 of IPC as framed against other accused persons.

30. With this, both Criminal Revision Applications are disposed off.

[KISHORE C. SANT, J.]