

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

CRIMINAL WRIT PETITION NO. 1175 OF 2022

1. Manohar Tulshiram Sonawane,
Age : 68 years, Occu. : Retired, .. (dismissed as withdrawn)
2. Sow. Devshala Manohar Sonawane,
Age : 64 years, Occu. : Household,
Both Petitioner Nos. 1 and 2
R/o. Laxminagar, Renapur,
Tq. Renapur, & Dist. Latur .. (dismissed as withdrawn)
3. Harshalata Balaji Dhaygude
Age : 36 years, Occu. : Household,
R/o. Gandhinagar, Latur,
Tq. & Dist. Latur
4. Uttam Tulshiram Ghodake
Age : 59 years, Occu. : Nil,
R/o. Boudhanagar, Renapur,
Tq. Renapur, Dist. Latur
5. Suresh Manohar Sonawane,
Age : 38 years, Occu. : Labour,
R/o : Laxminagar, Renapur,
Dist. Latur .. (dismissed as withdrawn)
6. Sonal Prashant Kamble
Age : 32 years, Occu. : Household,
R/o. Vishal Nagar, Latur,
Tq. & Dist. Latur .. Petitioners

Versus

1. State of Maharashtra
Through Police Station, Ahmedpur,
Tq. Ahmedpur, Dist. Latur
2. Suvarnashilpa Suresh Sonawane
Age : 33 years, Occu. : Household,
R/o. Laxminagar, Renapur, Dist. Latur.

At present R/o. :

C/o. Baburao Bhujangrao Bodhake,
At Valsangi, Post Hadolti, Tq. Ahmedpur,
Dist. Latur.

.. Respondents

The petitioner Nos. 1, 2 and 5 stands dismissed as withdrawn as per the order dated 27.09.2022.

Mr. Yuvraj Vijayrao Kakde, Advocate for the Petitioners.

Mr. Y. G. Gujarathi, APP for Respondent No. 1.

Mr. S. B. Madde, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 08th DECEMBER, 2022.

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of the parties, taken up for hearing.

2. The petitioners by way of this petition are challenging the order passed by the learned Additional Sessions Judge, Ahmedpur in Criminal Revision Application No. 7/2021 dated 28.06.2022 thereby dismissing the revision application filed by the petitioners. The petitioners are the original accused numbers 1 to 6 respectively. They had filed an application under Section 239 of the Code of Criminal Procedure (for short "Cr.PC.") in Criminal Case No. 65/2017 in the Court of learned J.M.F.C., Ahmedpur which came to be rejected. At the time of issuance of process itself, learned advocate for the petitioners had not pressed for any relief for petitioner Nos. 1, 2 and 5 that is original accused Nos. 1, 2 and 5 respectively. It is submission by the petitioners that

though case filed against them by respondent No. 2 for the offence punishable under Sections 498-A, 323, 504, 506 r/w Section 34 of the Indian Penal Code, there is no material against them available on record to proceed against these petitioners. In the complaint, there are no specific allegations made against these petitioners. The allegations are omnibus, vague and general in nature. He thus submits that both the Courts below have committed an error in not allowing the application for discharge.

3. Learned A.P.P. submits that the sufficient allegations are made against the petitioners. The specific role is attributed to petitioner No. 4 that he used to visit the house of husband of respondent No. 2 and used to tell other petitioners to beat respondent No. 2. Further is the allegation that there was payment of an amount of Rs. 1,00,000/- (Rs. One Lakh only) which was paid by the father of respondent No. 2. There is further allegation that respondent No. 2 and her father were beaten up by the in laws specifically petitioner Nos. 1, 2 and 3. Thus, at least against accused No. 3 there is material who happens to be sister in law.

4. Learned advocate Mr. Madde appearing for respondent No. 2 also submitted that there are allegations against all the accused persons. He submits that in the FIR names of petitioner Nos. 3 and 6 are specifically

mentioned. They used to taunt respondent No. 2 and used to keep her starved.

5. Learned advocate for the petitioners in his support placed reliance upon the judgments of the Hon'ble Apex Court in the cases of (i) Kanchan Kumar Vs. The State of Bihar reported in 2022 SCC OnLine SC 1222 (ii) Union of India Vs. Prafulla Kumar Samal and another reported in 2015 ALL SCR (O.C.C.) 119.

6. Learned A.P.P. placed his reliance upon the judgments of the Hon'ble Apex Court in the cases of (i) State of Gujarat Vs. Mansukhbhai Kanjibhai Shah reported in (2020) AIR (SC) 2203 (ii) Tarun Jit Tejpal Vs. State of Goa and another reported in 2020 (17) SCC 556.

7. In the case of Kanchan Kumar (supra), the Hon'ble Apex Court has held in paragraph No. 13 that the threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record. For the benefit paragraph No. 13 is reproduced as below :

“13. The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal (supra), it was noted that :

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.”

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.” (emphasis supplied)

8. In paragraph No. 14 of the said judgment the Hon’ble Apex Court has considered the judgment in a case of Sajjan Kumar Vs. Central Bureau of Investigation reported in 10 (2010) 9 SCC 368.

9. Thus, reading of the above judgments and paragraphs, it is seen that at the stage of trial, the suspicion cannot be the subjective satisfaction based on the moral notions of the Judge that here is a case

where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the Court as sufficient to entertain the prima facie view that the accused has committed the offence. For the benefit paragraph No. 15 is reproduced as below :

“15. Summarising the principles on discharge under Section 227 of the Cr.PC, in *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, 11 this Court recapitulated:

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at 11 (2019) 16 SCC 547 at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”(emphasis supplied)

10. In a case of **Tarun Jit Tejpal** (supra) in paragraph No. 7 the Hon'ble Apex Court has considered the case of **Sajjan Kumar Vs. CBI**,

(2010) 3 SCC (Cri) 1371. Paragraph No. 7 which reads as under :

“7. In Sajjan Kumar v.CBI [Sajjan Kumar v. CBI, (2010)9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 37677, para 21)

“(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed 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.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record

with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to commonsense or the broad probabilities of the case.(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.””

11. The Hon’ble Apex Court further in paragraph No. 12 recorded that Section 228 required the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence.

12. In the case of State of Gujrat (supra), in paragraph No. 54 it is held that, the jurisdiction of this Court, as regards to Section 227 of the Cr.P.C., is limited and should not be exercised by conducting roving enquiries on the aspect of factual inferences. The case of Sajjan Kumar is also considered and in that case considering the material, the application under Section 227 for discharge was rejected.

13. Learned advocate for respondent No. 2 has relied upon two judgments of the Hon’ble Apex Court in the cases of (i) P. Vijayan Vs. State of Kerala and another reported in (2010) 2 Supreme Court Cases 398 (ii) Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and

another reported in (2019) 16 Supreme Court Cases 547.

14. Considering the case of P. Vijayan (supra) in paragraph Nos. 10 and 11 the Hon'ble Apex Court has considered the Section 227 of the Cr.P.C. In paragraph No. 11 it is held that, 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.

15. In the case of Depakbhai Jagdishchandra Patel (supra), the Hon'ble Apex Court has considered the law relating to framing of charge and discharge. In paragraph No. 23 it is held that, at the stage of framing the charge, the Court is expected not to act as a mere post office, but it must indeed sift the material before it.

16. Keeping in mind above legal position, it needs to be considered the material that is placed on record in this case. As already discussed, in the FIR the allegations are vague. No sufficient particulars of any of the incident are given so as to form an opinion that the offence is made out. Taking the FIR as it is, it cannot be said that, the allegations are

sufficient, even if proved as it is to consider it as evidence sufficient to bring home the guilt. In statements of father Baburao, mother Ushatai of the respondent No. 2 also there are no specific allegations as against the petitioner Nos. 3, 4 and 6 are concerned. There are statements of other witnesses who are related to respondent No. 2 namely Anil Bodke and Laxmibai Bodke who happens to be paternal uncle and his wife also does not show that there are specific allegations made. Their statements show that they do not have any personal knowledge about any of the incidents, but their statements are only on the basis of some information they have got. Thus, it certainly cannot be said to be evidence even if are proved in the Court. Even other statements are as vague as possible and not making out any case.

17. Thus, considering the material in the nature of statements, it is seen that there is no sufficient material on record so as to frame charge against the petitioner Nos. 3, 4 and 6 are concerned. The application for discharge to their extent needs to be allowed and the same is allowed.

18. Rule is made partly absolute in the above terms.

(KISHORE C. SANT, J.)

P.S.B.