

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

**CRIMINAL REVISION APPLICATION NO.208 OF 2023
WITH
CRIMINAL APPLICATION NO.3008 OF 2023**

1. Pappu @ Niranjan s/o Balasaheb Dalvi
Age: 31 Yrs., Occu: Service

2. Megha w/o Pappu @ Niranjan Dalvi
Age: 25 years, Occu: Service

Both R/o: Flat No.103, Chintamani Niwas,
Badhe – Park, Mudhwa, Pune

... Applicants
[Orig. Accused Nos.4 & 5]

Versus

1. State of Maharashtra
Through the Police Inspector
Nagar Taluka Police Station,
Ahmednagar, Tq. & Dist. Ahmednagar

... Respondents

...

Mr. Rahul R. Karpe, Advocate for the Applicants
Mr. S. B. Narwade, APP for the Respondent / State
Mr. S. R. Zambare, Advocate for Applicant in Criminal Application
No.3008/2023

...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 11.09.2023

FINAL ORDER :

1. The applicants impugn the order dated 14/06/2023, passed below Exhibit-64, in Sessions Case No.58/2022, pending before the Sessions Judge, Ahmednagar, thereby rejecting the prayer for discharge of the applicants in exercise of powers under Section 227 of the Criminal Procedure Code [hereinafter referred to as 'Cr.PC' for short.]

2. The applicants are charge-sheeted in Crime No.561/2021 for the offences punishable under Sections 304(B), 306, 498(A), 323, 504, 506 r/w Section 34 of the Indian Penal Code [hereinafter referred to as 'IPC' for short] along with other accused persons.
3. On a report given by one Sagar Devram Gavane, Crime No.561/2021 was registered for the offences punishable under Sections 304(B), 302, 34, 504, 506 of IPC. It is alleged that Yogita i.e. daughter of the informant had married to Nilesh Dalvi / accused no.1 just three months prior to the date of report. Since the date of marriage, the accused persons were ill-treating her on account of demand of dowry of Rs.5,00,000/-. On 10/08/2021, Yogita had told informant that her in-laws are ill-treating her in pursuance of their demand of dowry. On 12/10/2021, the informant received a message that accused no.1 - Nilesh has killed the Yogita by throttling.
4. The investigation progressed. The statements of witnesses were recorded and finally, charge-sheet came to be filed for the offences punishable under Sections 304(B), 306, 498(A), 323, 504, 506 r/w Section 34 of the Indian Penal Code against in all five accused persons, including the present applicants, who are arraigned as accused nos.4 and 5. The applicants filed an application [Exhibit-64] in Sessions Case No.58/2022 under Section 227 of Cr.PC contending that, they are residing at Pune in pursuance of employment of applicant no.1 in a private company. A copy of lease agreement and his appointment letter is relied to show their residence at Pune. It is contended that they have been falsely

implicated in the crime. No specific role is attributed against them. The vague and general allegations are leveled against them regarding ill-treatment to the deceased. It is further contended that, after marriage of the deceased with accused no.1, they were residing at village Arangaon, whereas, the applicants are residing at Pune. Therefore, unfounded allegations against the applicants cannot constitute sufficient material to frame charge against them and put them on trial for alleged offences. The learned Sessions Judge, after hearing the parties, rejected the application vide order dated 14/06/2023. Hence, the present criminal revision application.

5. Mr. Karpe, learned Advocate appearing for the applicants would submit that the general allegations are incorporated in the FIR against all accused persons that the deceased was ill-treated on account of demand of dowry of Rs.5,00,000/-. No specific attributions are made against the applicants in the FIR. He would further submit that; no instance is stated in the FIR that would show participation of the applicants in the alleged demand of dowry or ill-treatment to deceased. He relies upon the observations of this Court in the order dated 28/01/2022 passed on Anticipatory Bail Application No.1419/2021 filed by the applicants. He would submit that this Court has specifically observed that there are omnibus allegations against applicants that along with the co-accused they were also demanding the amount. The statements of witnesses also do not state about any specific role. He would further submit that the learned Sessions Judge ought to have discharged the applicants in exercise of power under Section 227 of Cr.PC.

6. Per contra, learned APP vehemently opposes the application. He would submit that the applicants are specifically named in the FIR. The statement of the witnesses recorded during the course of investigation specifically records the name of the applicants along with other accused persons to indicate that all the accused persons have commonly raised the demand of dowry and ill-treated the deceased during her short duration of matrimonial life. Learned APP would further submit that the observations made while deciding the anticipatory bail application are on prima facie consideration of material in charge-sheet. Whether the material in charge-sheet is sufficient to bring home guilt against the applicants cannot be prejudged at the stage. He would further submit that there is sufficient triable material. No case is made out for discharge under Section 227 of Cr.PC. The Sessions Court has rightly rejected the application below Exhibit-64 by recording the sufficient reasons.
7. Having considered the submissions advanced, it would be appropriate to refer Section 227 of Cr.PC, which states as under:

“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.”
8. The Supreme Court of India, in the matter of **Union of India Vs. Prafulla Kumar Samal & Anr.** reported in **(1979) 3 SCC 4** has laid down the principles for consideration of the parameters of jurisdiction under Section 227 of Cr.PC, which reads as under:

“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 material 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 of determine a prime 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-Officer or a mouthpiece of the prosecution, but has to consider the broad prohibition 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.”

9. Applying the aforesaid principles of the law, it will have to be prima facie considered as to whether there is triable material against the applicants. This Court can weigh the evidence for limited purpose of finding whether prima facie case is made out in the charge-sheet, which needs trial or on face of it, the material included in charge-sheet without going into roving enquiry regarding pros and cons of the case is bereft for framing charge.

10. Perusal of the FIR would show that there are allegations regarding demand of dowry of Rs.5,00,000/- at the time of marriage. Secondly, there are allegations regarding ill-treatment at the hands of all the accused persons in pursuance of demand of dowry. The aforesaid narration appears to have been repeated by all the witnesses cited in the charge-sheet. The perusal of the FIR and the statements of Sagar Gavhane and Sangita Gavhane as well as the statement of the first informant recorded under Section 164 of Cr.PC would show three line narration of allegation that there was demand of Rs.500,000/-. The in-laws of deceased – Yogita were ill-treating her in pursuance of their demand. She told about such ill-treatment to the parents during her visit dated 10/08/2021. Pertinently, in none of the 161 statement refers to particulars of such ill-treatment and individual role played by the accused persons. No specific allegations are incorporated against the applicants. If the material in charge-sheet is taken into account as a whole, it leads to a situation wherein one fails to ascertain the role played by each of the accused in furtherance of the offence. The allegations are unspecific, vague and omnibus. Nothing can be gathered from such material in the charge-sheet.

11. At this stage, it would be appropriate to refer certain observations of the Supreme Court of India in the matter of **Preeti Gupta Vs. State of Jharkhand** reported in **(2010) 7 SCC 667**, particularly, Paragraph No.35 of the judgment, which read thus:

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the

conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.”

12. Similarly, in the case of **K. Subba Rao Vs. the State of Telangana** reported in **(2018) 14 SCC 452**, the Supreme Court of India has observed as under:

“6. The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

13. Recently, in the case of **Kahkashan Kausar Alias Sonam & Ors. Vs. State of Bihar & Ors.** reported in **(2022) 6 SCC 599**, the Supreme Court of India has also observed as under:

“17. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

14. Keeping in mind the aforesaid legal principles, if material in charge-sheet as a whole is taken into account, no triable case can be made out against the applicants. Pertinently, from the documents placed on record before this Court, it can be gathered that, applicant no.1 holds the qualification of MBA [Information Technology Management] and serving at Pune with companies. He is residing at Pune since before his marriage i.e. 12/07/2020. A copy of registered lease agreement of flat showing the residence of the applicants at Pune is placed on record. Although this Court would not look into such material in the proceedings for discharge, however, to just check veracity of contentions on behalf of the applicants that they are residing at Pune, whereas the deceased along with accused nos.1 to 3 were residing at Arangaon, the reference is made to the aforesaid documents. Even without considering such defence looking to the evidence in charge-sheet, no charge can be framed against the applicants.
15. The learned Sessions Court observed in the impugned order that since there are allegations against all the accused persons, it would not proper to enter into rambling enquiry or pros and cons of the matter and weigh the evidence. Apparently, the observations of the Sessions Court is reiteration of legal principles for considering the application for discharge under Section 227 of Cr.PC. However, as observed by the Supreme Court of India, the courts cannot ignore the rising tendency of making allegations against husband's close relatives living in different cities. Further, the implications and consequences upon the accused persons in the criminal case leading to insurmountable, harassment, agony and pain suffered by the accused cannot be ignored. In that view of the matter, hence the

following order:

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned order dated 14/06/2023 passed on the application below Exhibit-64 in Sessions Case No.58/2022 by the Additional Sessions Judge, Ahmednagar, is hereby quashed and set aside.
- (iii) The application below (Exhibit-64) is allowed.
- (iv) The applicants (accused nos.4 and 5) stands discharged in Sessions Case No.58/2022 under Section 227 of Cr.PC for offences punishable under Sections 304(B), 306, 498(A), 323, 504, 506 read with Section 34 of IPC.
- (v) The Criminal Revision Application is disposed of accordingly.
- (vi) In view of disposal of criminal revision application, criminal application is also disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer