

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 41 OF 2019

Praniti Pandurang Hiwarkar .. Petitioner
Versus
The State of Maharashtra & Anr .. Respondents

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Mr. Debajyoti Talukdar for the petitioner.
Ms. Shivani Kondekar for respondent no.2.
Mrs. Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 5th APRIL, 2023

P.C:-

1 The petitioner, a woman aged 29 years, seek her discharge from Sessions Case No.280/2014, where she face charge under Section 498A, 306, 323, r/w 34 of IPC.

 The charge framed by the Addl. Sessions Judge, Pune on 24/8/2017, specify that the accused no.1 being the husband, accused no.2 being the sister-in-law, accused no.4 being the mother-in-law of deceased Amruta, along with accused no.3 (applicant) being the girlfriend of accused no.1, in furtherance of common intention subjected Amruta to cruelty by harassing her

by keeping love relation, by keeping her in starvation, and by demanding Rs.Two lakhs for purchase of the house, and on failure assaulting and abusing her and thus committed an offence punishable u/s.34 IPC.

The second charge faced by the accused persons is in furtherance of the common intention, all the accused persons abetted the commission of suicide by the deceased on 29/10/2013 in the house of the complainant, by abusing, assaulting and harassing her mentally and physically and by demanding money and not fetching her back to her matrimonial house and thereby committing an offence punishable u/s.306 r/w Section 34 IPC.

2 The applicant being charge-sheeted as accused no.3, sought her discharge by filing an application before the Sessions Judge, Pune u/s.227 of Cr.P.C, on the ground that no overt act is attributed to her and the provisions invoked in the subject C.R are not attracted. It was urged that the only allegations levelled against her, is about having a love affair with the husband of the deceased, but in the entire charge-sheet, there is no incriminating material, sufficient to frame charge u/s.306 of the IPC with the aid of Section 34.

The application preferred on 6/6/2014 came to be rejected by the Addl. Sessions Judge, Pune on 10/10/2014 on the ground that from the supplementary statement of the complainant, it is revealed that the applicant was having an affair

with the husband of the deceased and a specific incident of Holi is referred to, by recording that despite the objection of the deceased, the applicant continued to carry on relationship with her husband, is sufficient to frame charge.

Being aggrieved by the said order, a Revision Application was preferred before the Addl. Sessions Judge by invoking Section 397 of Cr.P.C and even this application met with the same fate when it came to be rejected on 20/8/2018.

3 The above orders have resulted in the applicant approaching this Court, seeking quashment of the impugned orders and praying for her discharge, in exercise of the inherent powers of this Court u/s.482 Cr.P.C r/w Article 227 of the Constitution of India.

Heard learned counsel Mr.Debajyoti Talukdar for the petitioner, Advocate Shivani Khandekar for respondent no.2 and learned APP Mrs.Anamika Malhotra for the State.

4 The applicant face charge u/s.498A, 306, 323 r/w section 34 of IPC along with the other co-accused, who are the husband and the in-laws of the deceased, who hanged herself to death on 4/1/2013. The deceased was married to accused no.1 Sunny @ Bablu on 24/6/2011, and she cohabited with her husband after marriage.

5 The charge against the accused persons is about demand of sum of Rs.Two lakhs, and it is also alleged that for

persuading her for indulging in sale of country liquor, she was starved, assaulted and abused.

As far as offence u/s.498A IPC is concerned, the learned Judge has erred in framing a charge against the applicant under the said provision, as a reading of the provision would indicate that whoever, being the husband or relative of the husband of a woman, subject her to cruelty, he shall be liable to be punished with Imprisonment for a term which may extend to three years and shall also be liable for fine.

The necessary ingredient of the said section being a woman being subjected to torture/cruelty at the hands of her husband or the relatives of the husband.

6 Needless to state that the term 'relative' would have to be assigned a meaning as related by blood and merely because the applicant is alleged to have carried an affair with the husband, by itself would not make her, his 'relative'. Hence, the charge u/s.498A would not sustain against the present applicant.

7 Coming to the accusations u/s.306, the charge-sheet attribute that since the accused no.1 Sunny was carrying relationship with the present applicant, she had left her matrimonial house and started residing in her parental house, but neither the husband nor his relatives came to fetch her and permitted her cohabitation in the matrimonial house. It is alleged that being unable to bear the harassment, she hanged herself in

her parental house on 29/10/2013, barely within a period of two years of the marriage.

It can be seen from the record placed before me in the FIR, when the complaint was lodged which resulted in registration of FIR, the applicant was not arraigned as an accused. However, based on the supplementary statement of the complainant as well as her sister Namrata recorded at the subsequent point of time, where it was revealed that the deceased had scribed 30 pages in a notebook along with the dates when the incident had occurred and after reading through the note, a supplementary statement was given to the effect that the accused no.1 Sunny had invited his friend Sonam and her family members on Christmas. Another incident which is referred to, is alleged to have taken place on Holi (Rang Panchami) when the deceased was restrained from playing colours, but her husband played Holi with his friend Praniti i.e. the applicant.

The above statement resulted in indiction of the applicant as an accused in the subject C.R.

8 The notebook which is seized and form part of the charge-sheet when carefully perused, refer to the friendship between the deceased and the applicant, apart from the other allegations of harassment faced by the other accused persons.

The note referred to the two incidents, of Christmas and Holi, but nonetheless, by themselves are not sufficient to

attract the ingredients of the offence of Section 306 against the present applicant. The noting in the diary pertain to 8/3/2012 as regards the incident of Holi, and in respect to the allegation of inviting the applicant and her family for Christmas, it is scribed on 24/12/2011. The deceased committed suicide on 29/10/2013 and it is the specific case of the complainant that being harassed by her in-laws, she came to reside in her parental home on 5/1/2013. Worth it to mention that she committed suicide at her parental house.

9 The offence u/s.306 IPC which provides punishment for abetment of suicide, necessarily contemplate an abetment as defined in Section 107 IPC. An abetment necessarily involve a mental process towards cruelty or deliberately assisting an individual in performing a specific act. In order to attract the provisions of Section 306, there must be a clear *mens rea* to commit the offence of abetment. The accused should encourage or provoke the deceased to commit suicide and there must be some instigation at the end of the accused which would stimulate, invoke or prompt him to commit suicide. It is also well settled position of law that there must be a close proximity between the alleged persons act and the deceased persons choice to commit suicide. It requires an active or a direct act which lead the deceased to commit suicide, finding no other option available and the act of the accused must be of such a nature which would reflect his intention to push the deceased to such a position. In

the case of *Arnab Goswami Vs. State of Maharashtra 2020 SCC OnLine SC 964*, the Hon'ble Apex Court in para 46, highlighted the ingredients of Section 107 as well as Section 306 and by relying upon its earlier decisions, recorded as under :-

“39. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of [Section 306](#) IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of *mens rea* on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while

taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased”.

10 Applying the aforesaid ratio to the case in hand, the charge-sheet fall short of any such material from which it could be inferred that the applicant has abetted the suicide by deceased or she had any intention to aid or instigate the commission of suicide.

Since for sustaining a conviction u/s.306 IPC, there should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, the accused cannot be convicted u/s.306 IPC. There must be a proof of direct or indirect act/s or incitement to the commission of suicide. Another consideration being the proximity of such an incitement, if any, and if the ultimate act of the deceased to commit suicide must also be established.

11 Both the aforesaid ingredients being conspicuously absent, this is a fit case where the applicant can be saved from going through the rigmarole of the trial, which, in the light of the material contained in the charge-sheet, would not result into her conviction. As a result of the above discussion, both the Courts have erred in rejecting the application of the applicant seeking her discharge and without considering whether the ingredients of framing charge u/s.498A and 306 IPC are made out against the

applicant, have perfunctorily rejected the application.

The impugned orders, therefore, deserve to be quashed and set aside and the applicant is held entitled for discharge in Sessions Case No.280/2014.

Writ Petition is allowed in above terms.

(SMT.BHARATI DANGRE, J)