

rajshree

RAJSHREE
KISHOR
MORE
Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2023.10.07
17:30:12
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.324 OF 2022

Prijesh Arunkumar Kurani] .. Applicant
vs.
State of Maharashtra & Anr.] .. Respondents
WITH

CRIMINAL REVISION APPLICATION NO.325 OF 2022

Rekhaben Arunkumar Kurani] .. Applicant
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.A.H. Ponda, Senior Counsel i/b Ms.Alpa Javeri, for the Applicants in both the Revision Applications.

Mr.Y.M. Nakhwa, APP for the State.

Mr.Vinod Rane, for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 25th September, 2023.

P.C.

1] The deceased Chandani, whose marriage was solemnized with Accused No.2 on 19.01.2008, hanged herself to death on 27.08.2011. Her father Sureshchandra Malkan, resident of Junagadh, Gujarat, lodged a complaint with Juhu Police Station

alleging that his daughter was subjected to harassment at the hands of her mother-in-law Rekhaben, husband Bindesh and brother-in-law Prijesh. He alleged that six months prior, she had made a phone call to her father and apprised him about the harassment. On 27.08.2011, when he made a phone call at her house, her mother-in-law informed that she was not at home and around 14.20 hours he received a phone call from Juhu Police Station informing that his daughter had committed suicide and was taken to Kokilaben Dhirubhai Ambani Hospital, Andheri, Mumbai.

In the complaint, the father has referred to the narration of his son Ravi, who informed him that on 26.08.2011, when he was present in the flat alongwith Bindesh, his uncle Dholakia, brother of Bindesh, Prijesh, his wife and Aarav, he could hear Prijesh talking on phone in a raised tone and he could realise that he was talking to his sister Chandani. Thereafter, Bindesh took his mobile and switched it off.

On 27.08.2011 at about 7.30 a.m., his sister Chandani had made a phone call to Mr.Dholakia, who was staying alongwith him and when the call was answered, Chandani told him that she was calling him for the last time and she told Ravi to ask Bindesh to

call her. But when Ravi asked Bindesh 10-12 times, to call Chandani, he refused to speak to her. The deceased has also narrated the manner in which Prijesh had spoken to her on telephone in the evening of 26.08.2011 and she had told Ravi that she would not absolve him. However, her husband Bindesh told Ravi that this is normal.

2] On the version of the complainant, CR no. 333/2011 was registered with Juhu Police Station, which invoked Section 498A and 306 read with 34 of the IPC and it implicated three persons as accused. Accused Rekhaben Kurani is the Applicant in Criminal Revision Application No.325/2022 and her son Prijesh is the Applicant in Criminal Revision Application No.324/2022.

The investigating machinery was set rolling by the FIR and on completion of investigation, the charge-sheet was filed on 01.06.2013, which allege that all the three accused harassed the deceased Chandani and instigated her to commit suicide.

3] The charge-sheet compile the statements of various witnesses, and it include the Inquest Panchanama, Postmortem report etc. One relevant material is the recovery of a message/

note found in the mobile phone of Bindesh and it is a message forwarded by the deceased Chandani to him. The message written in English is actually in Gujarati language. The mobile phone was seized by the police.

4] The Applicants before me, being arraigned as Accused Nos.1 and 3 sought discharge by filing an application before the Sessions Court at Dindoshi, who rejected the Application on 07.04.2022, by recording that the material in the charge-sheet is sufficient enough to take the two applicants for trial. On 12.08.2022, this Court exempted the Applications from appearing before the trial Court, though there was no stay to the proceedings before the trial Court. The interim order continued to operate till date.

5] Heard the learned senior counsel Mr. A.H. Ponda i/b Ms.Alpa Javeri for the Applicants, Mr. Nakhwa the learned APP for the State and Advocate Mr.Vinod Rane, for Respondent No.2.

6] The prosecution alleged that the in-laws i.e. the three accused persons subjected her to harassment on account of trivial issues and though she informed about the harassment to her

father, she was advised to be tolerant. She also informed about the harassment to her brother Ravi and whenever she used to visit her paternal house, she was complaining about the behaviour of her in-laws. At times, her father was required to visit her house to pacify her and it is the case of the prosecution that being fed up with this harassment, she committed suicide by hanging herself to death in her residential house.

It is pertinent to note that the marriage of the deceased was solemnized with Bindesh on 19.01.2008 and she committed suicide on 27.08.2011. As per her father, after one year she started complaining about harassment.

The statement of Ravi is compiled in the charge-sheet and he specifically stated that since last three months he was residing in the premises belonging to Prijesh, from where he alongwith his brother Bindesh was carrying out the business of brokership and therefore the place was frequented by Prijesh and Bindesh very often. For last one and half month, Prijesh and his wife alongwith their children had come to reside at the said place.

According to Ravi, on 25.08.2011, his sister in the company of her mother in law visited the said place, at that time, Bindesh, her husband did not speak to her and rather asked both of them

to leave the place. After some time, Bindesh's sister Sonal arrived at the spot and she accompanied Chandani and her mother in law to the fourth floor office. Some conversation was established with Bindesh and thereafter all of them left. According to Ravi, on the said date, Bindesh did not return to his house, but he reported to the office on 26.08.2011 and he did not return home even on that night and stayed in the office. When Ravi enquired as to why he has not returned home, he said that he did not feel like going home and he did not even answer phone calls from Chandani, who even attempted to call Ravi, so that she could speak to her husband Bindesh, but he refused to take phone calls.

As per Ravi, on 27.08.2011, Chandani continued to make phone calls to Mr.Dholakia on his mobile phone, who was residing with Ravi, but he did not answer the calls. Prijesh, thereafter, informed Bindesh that Chandani has committed suicide and she was taken to the hospital.

In this background, Ravi called for an enquiry about the death of his sister.

7] The statement of one Vishal Mandvia is also recorded, who

also stated of some harassment being meted out to the deceased in the year 2009. He talk of the narration of Chandani to Ravi, her brother, who was residing with him in the house of Bindesh for last 3 years as he was prosecuting his education. Surprisingly Ravi did not speak of any such harassment and in fact, he was staying in the premises belonging to her in-laws since last 3 years.

Another statement of Hitesh Malkan, uncle of Chandani is also compiled in the charge sheet and he refer to some incident of January, 2010 when they have visited the matrimonial house of Chandani and they had spoken to Bindesh and redressed the grievance.

8] The statement of one Manish Talati is also on the similar lines where he refer to an incident of February, 2011 when a third person Mitulbhai Malkan had visited him and he was informed that the daughter of his uncle Suresh Malkan by name Chandani was subjected to mental harassment by the accused persons and it was necessary to visit their house. Accordingly, he accompanied Mitulbhai to the matrimonial house of Chandani in presence of all accused persons. Bindesh, at that time, is alleged

to have told Mitulbhai that he should not interfere , as it was their family matter.

9] The statement of one Jayant Dholakia, the uncle of Bindesh and Prijesh is also compiled in the charge-sheet when he state that for last two weeks Prijesh alongwith his family had shifted to the flat in which he was residing, but he is unaware of the reason why by leaving their original flat, they had come to reside in the said flat. But he realized that something was wrong.

Jayant Dholakia corroborate Ravi as regards the visit of Chandani, her son Akshat and his sister Rekhaben in the office. He also corroborate Ravi on the version of receiving the phone call of Chandani who intended to talk to her husband, but he refused to talk to her and rather avoided any conversation with her. She repeatedly called Bindesh, but he refused to answer the phone calls and rather he disconnected the same. Bindesh, thereafter, told Ravi, to place the phone on silent mode as he was not desirous of talking to Chandani.

10] The entire material in the charge sheet prima facie reveal that all was not well between the husband and wife and as per

Ravi, Chandani's husband stayed in the office premises for two nights and refused to talk to her. This probably disturbed her emotionally and she took the extreme step, feeling humiliated and insulted, as her husband was refusing to talk to her.

The note/message recovered from the phone of accused No.2 Bindesh also clearly indicate that the message is addressed to her husband and she makes grievance about their relationship. There is no reference of any ill-treatment or harassment by the two Applicants i.e. her brother in law Prijesh and her mother-in-law Rekhaben. In the note she take the name of Prijesh and request him not to let her husband come close to him. The note which is included in the charge-sheet being in Gujarathi language, but Mr. Ponda the learned counsel has placed on record a translation of the same which is obtained from the official translator.

Except in the last sentence, when there is reference to Prijesh, there is no reference of any instigation or incitement at the instance of the two Applicants, which could be proximately related to her act of commission of suicide.

11] The accusations faced are general in nature and which come

from the father of the deceased in his complaint, but Ravi who was actually staying in the house of Prijesh, do not speak of any ill-treatment or harassment, but he narrate the incident of 26.08.2011 and 27.08.2011, from which it appears that her husband Bindesh was avoiding to speak to her on mobile, though she repeatedly attempted to establish contact with him. She had visited the office premises alongwith her mother in law, probably with an intention to have conversation with her husband.

From the material in the charge sheet, it is evident that some quibble had occurred between the husband and wife and being irked, she took the extreme step but there is no role specifically attributed to the present Applicants as it is not the case of the prosecution that for the act of commission of suicide there was any instigation at their end. The alleged harassment relate back and has no immediate proximity with the act of commission of suicide. The accusations of harassment against the two Applicants are also vague and omnibus in nature.

Continuation of the trial against the two Applicants would amount to abuse of process of law and the material in the charge sheet is not sufficient to establish the case against them for harassment under Section 498A of the IPC as well as for

abatement to suicide under Section 306 of the IPC.

12] In the wake of above, by setting aside the impugned order passed by the Sessions Court, Dindoshi, which refused to discharge the Applicants, the two Revision Applications are allowed by discharging the Applicants from the offences with which they are charged.

Cr. Revision Applications are allowed in the aforesaid terms.

[BHARATI DANGRE, J]