

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 8 OF 2021

Nachiketa Alok Kumar and Another ..APPLICANTS

VERSUS

State of Maharashtra and Another ..RESPONDENTS

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Mr.Sudeep Pasbola, Mr.Ayus Pasbola, Mr.S.C. Mishra and Mr.Sandeep Singh,
Advocates for applicants

Mr. A.R. Patil, A.P.P. for respondent no.1 – State

Ms. K.R. Shah, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT, J.

DATE : 02nd MARCH, 2023

PER COURT :

1. The challenge in this revision application is to an order dated 01st February, 2020 passed by the Additional Sessions Judge, Thane refusing to grant the applicants discharge from Sessions Case No. 178 of 2019 arising out of the First Information Report ('F.I.R.') bearing C.R. No. I-473 of 2015 registered with Kashimira Police Station, Dist. Thane for the offences punishable under Sections 306 and 498-A read with Section 34 of the Indian Penal Code ('I.P.C.').

2. The F.I.R. was lodged by father of the deceased – Nilukumari on 29th August, 2015. It has been averred in the F.I.R. that the informant had

four children, two sons and two daughters. Deceased – Nilukumari was one of his children. She married Abhishek Anand (co-accused) on 11th December, 2013. The informant spent not less than Rs.7-8 lacs for her marriage. Nilukumari started residing at her matrimonial home at village Kartar Vajitpur, Dist. Vaishali, Bihar State. The husband of the deceased and other in-laws treated her well for about two months of marriage. After 7-8 months of marriage, the deceased and her husband – Abhishek shifted to Mumbai as Abhishek secured a job there. Both of them would reside in the premises taken on rent. The applicants herein are the married sisters-in-law of deceased – Nilukumari. Both have been married before the marriage of the deceased. The matrimonial homes of both the applicants are in Bangalore. The deceased alongwith parents-in-law visited the house of the applicants herein in Bangalore occasionally.

3. It has been alleged in the F.I.R. that in March 2015 the deceased – Nilukumari had come to her matrimonial home at Patna. Riteshkumar, younger son of the informant, had been to her matrimonial home to meet her. She related him that her husband – Abhishek would return home late. He got addicted to liquor. He would ask her to fetch money from her parents even for day-to-day expenditure. She had also related her brother that Abhishek would bring home his girlfriends. His unmarried friends (boys) would also frequently visit her house in Mumbai. The parents of Abhishek

were requested to reason with him. They picked up quarrel with the informant and took side of Abhishek. The ill-treatment continued.

4. It has further been alleged that about one month before lodging of the F.I.R., the deceased – Nilukumari had informed her sister – Nitukumari that she was pregnant. Her husband – Abhishek and Applicant No.2 – Pooja would insist her to undergo abortion. They even asked her if she wanted to have a baby then fetch money from her parents for child's up bringing.

5. On 27th August, 2015, the deceased – Nilukumari committed suicide by hanging from a ceiling fan at her residence in Mumbai. Applicant No.1 – Nachiketa had contacted the brother of the deceased – Riteshkumar and asked him not to lodge the police report lest he will have to suffer consequences.

6. Based on the F.I.R. lodged by father of the deceased, Crime No. I-473 of 2015 came to be registered. The same came to be investigated. Scene of offence panchanama was drawn. Inquest and postmortem were conducted. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the husband, parents-in-law and both the married sisters-in-law (applicants herein) came to be proceeded against by filing the charge-sheet.

7. The case came to be committed to the Court of Session for trial in accordance with law. The applicants preferred application for discharge. Learned Additional Sessions Judge rejected the application vide order impugned herein. According to the trial Court, the F.I.R. discloses material against the applicants to proceed against them.

8. Mr. Sudeep Pasbola, learned counsel for the applicants would submit that the applicants were married sisters-in-law of the deceased. Their marriages took place before marriage of the deceased. Both the applicants reside at their respective matrimonial homes in Bangalore. Both, the deceased and her husband were the only persons residing together in Mumbai for about a period of eight months next before the incident. The applicants had no occasion even to meet the deceased. A suicide note was found during the scene of offence panchanama. Same indicates the deceased was fed-up with her life. She was not keeping well. She, therefore, decided to end her life and thus committed suicide. According to learned counsel, the Court can very well sift the prosecution material to find whether there is prima facie case to proceed against the applicant. If two views are equally poised, the one beneficial to the accused need to be given. Learned counsel relied on the following judgments of the Apex Court to ultimately urge for allowing the application granting discharge to the applicants herein :-

- (i) *Dilawar Balu Kurane Vs. State of Maharashtra, 2002 SCC(Cri.)310*
- (ii) *Kewal Krishna Vs. Suraj Bhan, 1981 SCC (Cri.) 438*
- (iii) *Union of India Vs. Prafulla Kumar Samal, 1979 AIR 366*
- (iii) *State of Bihar Vs. Ramesh Singh, 1977 SCC (Cri.) 533*
- (iv) *P. Vijayan Vs. State of Kerala, (2010) 1 SCC (Cri.) 1488*
- (v) *Niranjan Singh K.S. Punjabi Vs. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76.*

9. Learned A.P.P. and learned counsel appointed to represent the informant would, on the other hand, submit that the prosecution case did not rest on the alleged suicide note. There are allegations in the F.I.R. and even the statements of the witnesses suggesting involvement of the applicants in the offence in question. Both of them submit that the deceased committed suicide within one and half year of her marriage. Presumption of abetment of suicide would come into play. The Court was taken through the allegations in the F.I.R. and statements of the relations of the deceased to ultimately urge for dismissal of the application.

10. Considered the submissions advanced. Perused the F.I.R. and the papers relied on. Also perused the authorities placed into service.

11. Section 227 of the Code of Criminal Procedure reads thus :-

“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.”

12. In the case laws relied on by learned counsel for the applicants, referred to hereinabove, the Hon’ble Supreme Court has held as under :-

(I) Dilawar Balu Kurane (supra) - The Court has to consider the broad probabilities of the case, the total effect of the evidence, and the documents produced before the Court.

(ii) Kewal Krishna (supra) - Section 227 was a beneficent provision to save the Accused from prolonged harassment which is a necessary concomitant of a protracted trial.

(iii) Prafulla Kumar Samal, (supra) - “10. Thus, on consideration of the authorities mentioned above, the following principles emerge :

(3) The test of 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 give rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.”

(iv) Ramesh Singh, (supra) - If the evidence which the prosecution 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 grounds for proceeding with the trial.

(v) P. Vijayan (*supra*) - If two views are possible and one of them gives rise to suspension 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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts.

(vi) Niranjan Singh K.S. Punjabi (*supra*) – Court has to sift evidence on record and other documents only for the limited purpose of ascertaining whether *prima facie* case is made out against the accused. If so it should frame charges under Section 228, and if not, discharge the accused under Section 227.

13. The applicants are the married sisters-in-law of the deceased. Their marriage took place before the deceased got married in the year 2013.

Both the applicants have been residing at their respective matrimonial homes in Bangalore. After initial stay with the in-laws, the deceased and her husband had shifted to Mumbai. Husband of the deceased secured a job. He took a premise on rent. As such, for about eight months next before the deceased committed suicide, the applicants had no occasion to be in the company of the deceased. Perusal of the F.I.R. would indicate that the allegations of ill-treatment have mainly been attributed to the husband of the deceased. He is not before this Court. Applicant No.1 – Nachiketa is alleged to have contacted brother of the deceased post incident and threatened him not to lodge a police report. The said threats are said to have been given on telephone. Investigating officer appears to have not secured C.D.R. of the alleged call. Applicant No.2 – Pooja is alleged to have asked the deceased to undergo abortion and if the deceased wanted to have a child, she shall fetch money from her parents for up bringing the child to be born.

14. A suicide note was found during the scene of offence panchanama. Same is part of police papers. It is informed that the suicide note alongwith the specimen handwriting of the deceased were sent to the handwriting expert for examination and report. The report is said to have not yet been received. Little over seven years have passed. Same suggests handwriting expert's report might not have been favourable to the prosecution. The suicide note reads thus :-

“eS vius vki ls ijs”kku gksdj suicide dj jgh gwa- blesa esjs ifr ;k llqjky okyksa dk dksbZa gkFk ugha g-S dqN cuuk pkgrh Fkh ij ugha dj ikbZ- gj fnu chekj jgrh gwWa- ijs”kku gks xbZ gWaw eS vius vki ls- bl rjg thus ls rks vPNk gS fd eSa ej tkma- uQjr gks xbZ gS eq>s viuh life ls] nqljksa dks Hkh ijs”kku djrh gwa] cks> cu xbZ gwa lcds fy,-”

15. The suicide note outweighs the allegations made against the applicants in the F.I.R. Admittedly, the applicants were not around when the deceased committed suicide. Even both of them had no occasion to meet her during 7-8 months next before the deceased committed suicide. For the offence of abetment of suicide, there has to be a proximate nexus between the alleged ill-treatment and commission of suicide. The allegations that Applicant No.2 – Pooja had asked the deceased to undergo abortion and if she wanted to have a child, bring money from her parents for up bringing of the child to be born, would in no way be a material for proceeding against her for the offence punishable under Sections 498-A and 306 of I.P.C. So far as Applicant No.1 – Nachiketa is concerned, she is alleged to have threatened the brother of the deceased to prevent him from lodging report to police. This is a post suicide incident. The said threat was given on telephone. The C.D.R. is not on record. The said allegations are also insufficient for proceeding against her for the offence punishable under Sections 498-A and 306 of the I.P.C.

16. It is true that it is an unfortunate incident. The deceased

committed suicide within one and half years of her marriage. Presumption as to abetment by a married woman (Section 113-A of the Evidence Act) can be raised during trial of the case, i.e. when it is proved that the suicide has been committed within seven years of marriage and the husband or relatives of her husband subjected her to cruelty within the meaning of Section 498-A of I.P.C.

17. After having gone through the police papers including the suicide note, this Court finds that there is no sufficient ground to proceed against the applicants herein. The trial Court, in the facts and circumstances of the case ought to have granted the applicants discharge. Interference with the order impugned herein is, therefore, warranted.

18. In the result, application is allowed in terms of prayer clause (b), which reads as under :-

“b) This Hon’ble Court be pleased to quash and set aside the order dated 01.02.2020 below Exhibit 7 (Exhibit B) passed by the Hon’ble Additional Sessions Judge at Thane and further be pleased to discharge the applicants in Sessions Case No. 178 of 2019 arising out of C.R. No.I-473 of 2015 registered with Kashimira Police Station.”

19. Fees of Ms. K.R. Shah, learned counsel appointed to represent Respondent No.2, is quantified to Rs.10,000/- (Rupees Ten Thousand) to be paid by High Court Legal Services Sub-Committee, Mumbai.

SSD

(R.G. AVACHAT, J.)