

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

CRIMINAL REVISION APPLICATION NO. 387 OF 2019

Radhika Vijay Pawar	... Applicant
v/s.	
The State of Maharashtra and anr.	 Respondents

Mr. Abhishek Yende a/w. Mr. Rushikesh Dube for the Applicant.
Mr. A.R. Patil, APP for the State.
Mr. Pardhi, ASI, Pimpri Chinchwad Police Station, present.

CORAM: R.G. AVACHAT, J.

DATED : 21st FEBRUARY, 2023.

P. C. :-

1. The challenge in this Revision Application is to the order dated 28/06/2019 passed by the Court of Additional Sessions Judge, Pune in Sessions Case No.910/2017. It is the case for offence punishable under sections 498(A) and 306 r/w. 34 of the Indian Penal Code. The Applicant herein is one of the accused therein. She preferred an application (Exhibit – 37) for discharge. The learned Additional Sessions Judge vide order dated 28/06/2019 refused to grant the Applicant discharge. The Applicant is therefore before this Court.

2. Heard learned counsel for the respective parties.

3. The learned advocate for the Applicant would submit that the

Applicant was a married sister-in-law of the deceased – Namrata. The Applicant's matrimonial home is at Khargar while the incident took place in Pune. There are general allegations in the FIR against the Applicant, whereas the dying declaration made by the deceased and her noting in the diary do not attribute anything incriminating against the Applicant herein. According to the learned advocate for the Applicant, as such, there is no sufficient material to proceed against the Applicant. According to the learned advocate for the Applicant, the trial court did not take into consideration totality of the circumstances appearing in the police statements and the material relied on. He therefore urge for allowing the application.

4. Learned APP would on the other hand submit that the name of the Applicant figures in the FIR. There are also some statements of the relations of the deceased suggesting the Applicant to have harassed and ill-treated the deceased. According to the learned APP, there is sufficient material to prima facie indicate the Applicant's involvement in the crime in question. He, therefore, urge for rejection of the Application.

5. Considered the submissions advanced by the learned counsel for the respective parties. Perused the FIR and all the police papers.

6. 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 doing so. ”

7. The Apex Court in the case of ***Dilip s/o. Purushottamrao Pathak v/s. The State of Maharashtra and anr. reported in 2008 5 AIR (Bom) (R) 781***, this Court has observed in paragraph 14 of his judgment as under :-

“ 14. The Apex Court, in the case of Dilawar Babu Kurane v/s. State of Maharashtra, Maharashtra reported in AIR 2002 SC 564 observed thus :

"In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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, justified accused, he to and will be discharge in fully the exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (See Union of India v. Prafulla Kumar Samal and another (1979 (3) SCC 5). "

8. Let us therefore scrutinize the police papers. The FIR has been lodged by the father of the deceased on 07/12/2017. It has been averred therein that the husband, parents-in-law and even both the sisters-in-law would harass and ill-treat the deceased over petty issues such as ironing of clothes, putting on light, watching TV, cooking and heating water for bath. On these lines alone, there are statements of few relations of the deceased on her parental side. The learned APP therefore may have reason to contend that there is material to indicate the Applicant's involvement to harass and ill-treat the deceased.

9. The reading of the FIR indicate that no specific incident or any overt-act has been attributed to the Applicant herein. Admittedly, the Applicant got married before the marriage of the deceased. As such, the Applicant has been staying at her matrimonial home since the date of her marriage. There is nothing to indicate that the Applicant had been to her parental home the date on which deceased committed suicide. The deceased has made a dying declaration on 06/10/2017.

For ready reference, material portion of her dying declaration is as follows :-

कोल ता ०५/०५/२०१७ रोजी रात्री १०:३० वा
 ये हळुआन मी माझे सारंग सारंगसोपांना म्हणत की मी
 चांगली शिकलेली आहे. मला जेव्हा कदाचित् आहे असे म्हणते
 उमाता माझे सारंग सारंगसोपांनी जेव्हा नव्हते तेव्हा काही
 गोष्टी करायची नव्हत नाही. असे म्हणते त्यामुळे मला
 गुप मन्त्रमाप झाला. त्यामुळे मी सारंगसोपांना सारंगसोपांना
 उमाता पातळी दिलीली मी अशी झाली. त्यामुळे मला
 भास होऊ लागल्याने ते उमाता. होऊ लागल्याने मी माझा
 सारंग सारंगसोपांनी त्याचवेळी माझे सारंगसोपांना कोष्टी कोष्टी
 तो व नंतर मला माझे सारंगसोपांनी सारंगसोपांनी सारंगसोपांनी
 असे माझे सारंगसोपांनी माझा सारंगसोपांनी होईल तेव्हा तेव्हा
 १८० वाडी मध्ये उमाता केले. माता माझे सारंगसोपांनी
 माझावर माझावर सारंगसोपांनी सारंगसोपांनी सारंगसोपांनी
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10. In the aforesaid dying declaration, the deceased did not attribute the Applicant any overt-act or even slightest of allegations about harassment or ill-treatment. The deceased would write a daily diary. The relevant pages of her daily diary have also been part of the police papers. In one page of the daily diary, it has been mentioned that husband and the mother-in-law of the deceased made her life miserable. If anything strange happens with her, both of them shall be held liable. On another page of the diary, she names all other in laws except the present Applicant.

11. As such, it is a case wherein the dying declaration and the entries in the diary maintained by the deceased herself no way attribute the Applicant anything incriminating. As against this, there are averments in the FIR and statements of witnesses which are general in nature. Necessarily, the suicide note and entries made by the deceased in her daily diary would prevail. As such, there is no material on record to suggest that the Applicant to have even harassed or ill-treated the deceased and as a result thereof, she (deceased) was driven/compelled to end her life/commit suicide. As such, it is the case for grant of discharge. The trial court, in the facts and circumstances of the case, ought to have allowed the Applicant's application. Since the same has not been done, the Revision Application is allowed in terms of prayer clauses (c) and (d).

12. Revision Application stands disposed of in above terms.

PREETI
H JAYANI

(R.G. AVACHAT, J.)

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