

GRM

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

CRIMINAL REVISION APPLICATION NO. 615 OF 2018

Virendra A. Kshirsagar & Anr. ... Applicants

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Raviraj R. Paramane a/w Mr. Omkar Gharat, Adv. for the Applicants.

Mr. A. R. Patil, APP for the State/Respondent No. 1.

Mr. P. R. Kalantri, Adv. for Respondent no. 2.

Mr. Hemant Todkar, API, Adgaon, Nashik City.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 6, 2023

PC. :

1. Heard.

2. The challenge in this application is to the order dated 05/10/2018 passed by the Court of Additional Sessions Judge, Nashik rejecting application (Exhibit-19) for discharge in Sessions Case No. 267/2017.

3. It is the case based on the Police Report. First Information Report (for short "**FIR**") is lodged by mother of the deceased for the offence punishable under Sections 304-B, 498-A, 306, 406, 323, 504 & 506 read with 34 of the Indian Penal Code, 1860 (for short "**IPC**"). It is averred in the FIR that Ashwini (deceased) was a daughter of Smt. Kalpana Anil Jadhav (informant). Ashwini

married Dr. Manoj Ashok Kshirsagar (one of the accused) in March 2016. Ashwini's husband and in-laws were paid a sum of Rs. 15 lakhs for purchase of gold ornaments for marriage. The parents of deceased also gave other valuables in the marriage. The deceased started residing at her matrimonial home at Village-Mulher, Taluka-Satana, District-Nashik. The deceased along with husband and her parents-in-law would reside together. They were started asking the deceased to bring a sum of Rs. 40 lakhs for construction of a hospital, as her husband Manoj was a medical practitioner. It was falsely informed that he did M.S. The deceased was ill-treated physically and mentally as well, so as to coerce her to bring sum of Rs. 40 lakhs from her parents. The deceased was using a cell phone given by her parents. Her husband removed the cell phone from her with a view not to allow her to make use thereof.

4. It is further averred in the FIR that the deceased Ashwini was doing a Nursing Course when she got married. She would insist her in-laws to permit her to complete Nursing Course. The in-laws asked her to fetch the demanded amount, as a condition to permit her to pursue Nursing Course.

5. It is further averred in the FIR that on 07/01/2017, Ashwini was asked to go back to her parental home. She was asked to complete her education and then come back with a sum of Rs. 40 lakhs. Ashwini was relieved of her ornaments. She was left at Antapur Bus Stand. She came to her parental home, weeping. Her parents tried to reason with the in-laws. They however maintained their demand.

6. It is further averred in the FIR that Ashwini was residing along with her brother and sister in Nashik after she was turned out of her matrimonial home. On 26/02/2017, her husband Manoj called on her cell phone. He abused her and suspect her character as well. Manoj also asked her to stay at her parents' house permanently and even die there.

7. It is further averred in the FIR that Lokmudra, sister of the deceased returned to the room by 7.00 p.m. on 27/02/2017. The door was bolted from inside. Ashwini did not give any response from inside the room. Her sister therefore with the assistance of neighbours, secured entry in the room and found Ashwini to have committed suicide by hanging. The mother of deceased therefore lodged the FIR against husband, parents-in-law and even brother and sister-in-law.

8. The applicants before this Court are the brother and sister-in-law of the deceased Ashwini. It is their case that applicant no. 1 Virendra Ashok Kshirsagar practices medicine at Village-Ahwa, District-Dang in the State of Gujarat and applicant no. 2 Sanjeevani Amol Nandan is staying at her matrimonial home. She is blessed with 4 years old son. Both of them had no occasion to ill-treat the deceased with a view to drive her to commit suicide.

9. The learned Advocate for applicants would submit that the informant gave her supplementary statement, wherein the applicants have been alleged to have ill-treated the deceased. The said statement is afterthought. The deceased is said to have left

behind a note. The applicants have not been named therein. About 9 days after Ashwini committed suicide, the statements of some so-called independent witnesses came to be recorded. Their statements simply suggest that the deceased would relate them about the ill-treatment given to her by her husband and all the in-laws including the applicants herein. According to the learned Advocate for applicants, the police-papers in no way suggest even *prima-facie* involvement of the applicants herein for framing of the Charge against them. According to him, the Trial Court erred in refusing to grant them discharge.

10. The learned APP would on the other hand submit that at the stage of framing of Charge, it has to be seen “whether the police-papers *prima-facie* make out a case for framing of the Charge?”. According to the learned APP, mother of the deceased gave her statement on the day of the registration of FIR. In her supplementary statement, the applicants were alleged to have ill-treated the deceased. Moreover, there are statements of independent witnesses viz. Bebibai Damu Battise, Janardan Damu Battise & Subhash Damu Battise to suggest that the deceased would relate them her woes. Their statements *prima-facie* indicate the applicants to have ill-treated the deceased, as a result of which she committed suicide. The learned APP supports the order impugned herein.

11. Considered the submissions advanced. Perused the FIR and the papers of investigation.

12. For ready reference, Section 227 of the Code of Criminal Procedure, 1973 is reproduced, which 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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

13. The Hon’ble Apex Court in the cases of **Sajjan Kumar v/s. Central Bureau of Investigation** reported in (2010)9 Supreme Court Cases 368, **Union of India v/s. Prafulla Kumar Samal and Another** reported in (1979)3 SCC 4 and **P. Vijayan v/s. State of Kerala and Another** reported in (2010)2 SCC 398, has given the following seven guiding principles as regards the framing of charge :-

- i. The Judge while considering the question of framing the charges under Section 227 of Code of Criminal Procedure, 1973 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. The test to determine *prima-facie* case would depend upon the facts of each case.
- ii. 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.

- iii. The Court 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, any basic infirmities, etc. However at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence, as if he was conducting a trial.
- iv. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- v. At the time of framing of the charges, the probative value of the material on record cannot be gone into, but before framing a charge, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
- vi. At the stage of Sections 227 and 228 of Code of Criminal Procedure, 1973, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii. If two views are possible and one of them gives rise to suspicion 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.

14. True, the deceased Ashwini died within 1 & ½ years of her marriage. Her husband and parents-in-law are not before this Court. Admittedly, Ashwini committed suicide by hanging in a room at Nashik. A note allegedly left behind by the deceased was relied on. The note doesn't bear her signature. The contents of note need to be reproduced in verbatim herein below :-

“मी जाधव अश्विनी अनिल माझ्या सासरी मुल्हेर ला राहते तेथे माझ्या घरी माझे सासू सुंदुबाई, सासरे अशोक क्षिरसागर व नवरा मनोज क्षिरसागर व मी रहात असते. नेहमी मला माझ्या सासरी कोणत्या ना कोणत्या कारणाने मानसिक शारीरिक छळ होत असतो. तरी भविष्यात मला काही बरे वाईट झाल्यास त्याला पूर्णपणे माझ्या सासरेचे लोक जबाबदार राहतील खासकरून सासू, सासरे व नवरा हे आज मी पूर्ण शुद्धीत लिहीत आहे. त्यांनी केलेल्या छळाला व मानसिक त्रासाला कंटाळून”

15. Admittedly, applicant no. 1 Virendra Ashok Kshirsagar, the brother-in-law of deceased practices medicine at Samarth Hospital, Navapur Road, Ahwa, Taluka-Ahwa, District-Dang, Gujarat-394 710. While applicant no. 2, sister-in-law of the deceased is married. She stays at her matrimonial home in Nashik. The close reading of FIR would suggest that mother of the deceased has

grievances against the husband and parents-in-law of the deceased. It is only in the last para of FIR, the names of applicants have been mentioned. Admittedly from 07/01/2017, the deceased Ashwini was not residing at her matrimonial home. She committed suicide about 50 days after she was driven out of her matrimonial home. The same suggests that the applicants had not been in her company during any proximate time so as to infer them to have ill-treated her with a view to drive her to commit suicide. What has been alleged in the FIR, is a phone call made by the husband to the deceased on the day next, before she committed suicide. During the said telephonic conversation, her husband allegedly abused her suspecting her character. He also asked her permanently to stay at her parental home. It is only in supplementary statement of the informant recorded on the same day on which the FIR was lodged, mother of the deceased named the applicants. It is true that there are also statements of the aforesaid three persons. They said in their statements that about 1 & ½ months before the deceased committed suicide, she had related them to have been ill-treated by her husband and in-laws so as to coerce her to bring Rs. 40 lakhs.

16. Admittedly, the deceased did not leave behind any suicide note. She was said to have left behind some writing. The same has been reproduced in verbatim hereinabove. It doesn't bear her signature. Even if we take it to be in the handwriting of deceased, her grievance was against her husband and parents-in-law. She had not mentioned the names of the applicants herein. As such,

there is *prima-facie*, nothing to suggest the deceased to have committed suicide, as a result of alleged ill-treatment meted out by the applicants.

17. For ready reference, Section 306 of IPC is reproduced, which reads thus :-

“306. Abetment of suicide. — If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

18. For ready reference, Section 107 of IPC is reproduced, which reads thus :-

“107. Abetment of a thing. — A person abets the doing of a thing, who—

First. — Instigates any person to do that thing; or

Secondly. — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.”

19. It is reiterated that applicant no. 1 Virendra Ashok Kshirsagar has been staying in Gujarat and applicant no. 2 Sanjeevani Amol Nandan is residing at her matrimonial home. There is nothing to suggest that both these applicants to have an occasion to be around the deceased to ill-treat her during any proximate time, so as to infer the deceased to have committed suicide as a result of ill-

treatment. It is reiterated that the applicants have not been named in the FIR. They are not attributed with any overt act. The supplementary statement of informant makes general allegations against the applicants herein. It has only been stated that both these applicants would come on Saturday and Sunday to their paternal home and ill-treat the deceased.

20. As such, from the averments in FIR and the related police-papers, it can be said that the case even for framing of a Charge is not made out against the applicants herein. They therefore deserve to be discharged. The Trial Court on the basis of material on record ought to have allowed the Discharge Application. Since the same has not been done, interference with the order impugned herein is called for.

21. In the result, the revision succeeds. Hence, the following order is passed :-

ORDER

1. Criminal Revision Application No. 615 of 2018 is allowed.
2. The order dated 05/10/2018 passed by the Court of Additional Sessions Judge, Nashik below application (Exhibit-19) in Sessions Case No. 267 of 2017, is set aside. The said proceeding (application Exhibit-19 in Sessions Case No. 267 of 2017) therefore stands disposed of.

3. Applicant no. 1 Virendra Ashok Kshirsagar and applicant no. 2 Sanjeevani Amol Nandan stand discharged from the case registered by Adgaon Police Station for the offence punishable under Sections under Sections 304-B, 498-A, 306, 406, 323, 504 & 506 read with 34 of the Indian Penal Code, 1860 vide C. R. No. I-65/2016.

4. Criminal Revision Application No. 615 of 2018 stands disposed of accordingly.

(R. G. AVACHAT, J.)