

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 451 OF 2022

PETITIONER : Smt. Chanda w/o Ajay Jaiswal, Aged about 30 yrs., Occ. Household, R/o. Jalgaon Jamod, Tq: Jalgaon, Dist. Buldana.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through Police Station Officer, Police Station Shegaon Railway, Distt. Buldana.

Deleted as per Hon'ble
Court's Order dated
10/11/22

2. ~~Sandip S/o. Ganeshlal Jaiswal, Aged about 22 yrs., Occ. Auto Driver, R/o. Khadad Gaon, Post: Malegaon, Tah: Nandura, Dist. Buldana.~~

Mr. S.V. Sirpurkar, Advocate for the Petitioner.
Mr. A.R. Chutke, APP for Respondent No.1/State.

CORAM : G. A. SANAP, J.
DATED : 17th JANUARY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this criminal writ petition, filed under Section 227 of the Constitution of India, the petitioner, who is accused No.3 in

Sessions Case No.58/2014 pending on the file of the learned Additional Sessions Judge, Khamgaon, has challenged the order dated 5th December, 2017, whereby the application made by the petitioner for her discharge from the said case came to be rejected.

03] The facts leading to the filing of the petition can be summarized as follows:

Deceased Jyoti committed suicide on 29th August, 2013 by jumping on the railway track. The informant is the brother of the deceased. It is stated that the deceased was residing at the house of the brother of the petitioner. The brother of the petitioner, who is also accused No.1 in this case, was making force to the deceased to marry with him. He established physical relations with the deceased. The deceased was at the mercy of the accused persons. The deceased was ill-treated and tortured. She was forced to have relations with the accused No.1.

04] It is the case of the prosecution that after sexually exploiting the deceased, the accused No.1 refused to marry with the deceased. The petitioner/accused No.3 played a major role in the crime. She was instrumental in breaking the relations between her brother and the deceased. The deceased was cheated. She was

tortured and ill-treated. She was forced to leave the house of the accused. The deceased could not tolerate the shock. She, therefore, took the extreme decision to end her life and committed suicide.

05] On the report of the informant (brother) of the deceased, a Crime bearing No.27/2013 came to be registered on 7th September, 2013. The investigation carried out in the crime culminated into filing of charge-sheet. During the course of investigation, the suicide note left by the deceased was recovered. In the suicide note, the deceased in detail narrated the ill-treatment and torture meted out to her. The deceased also stated in the suicide note about sexual exploitation by the accused No.1. She also stated about the torture meted out to her on that count. She further stated that she was driven out of the house by the accused, proclaiming that they do not want her to be the wife of the accused No.1.

06] The accused No.1 filed an application for his discharge at Exh.14. The accused Nos.2 and 3 filed an application for their discharge at Exh.15. According to them, the case filed against them is false and frivolous. There is no material in the charge-sheet to frame the charge against them. The material placed on record clearly indicates that they have not played any role in the

commission of suicide by the deceased.

07] Learned Additional Sessions Judge after considering the relevant facts and the material on record came to the conclusion that there is sufficient material to frame the charge against the accused. Learned Additional Sessions Judge, therefore, rejected their applications for discharge.

08] It is to be noted at this stage that the accused No.2 had filed a Criminal Writ Petition No.96/2018 and challenged the order passed below Exh.15, rejecting his application for discharge. The Co-ordinate Bench of this Court *vide* order dated 12th October, 2018 was pleased to allow the writ petition and ultimately accused No.2 Ramakant s/o Laxminarayan Jaiswal was discharged from this case.

09] Learned advocate for the petitioner submitted that there is no iota of material to frame the charge against the petitioner/accused No.3. The accused No.3 is the married daughter of accused No.2. It is submitted that accused No.3 has been residing with her husband at Nagpur. The accused Nos.1 and 2 were residing together. Learned advocate submitted that in the First Information Report (for short "FIR"), there is no whisper

about ill-treatment or torture at the hands of the petitioner/accused No.3 to the deceased. Learned advocate took me to the suicide note and pointed out that no allegation of ill-treatment or torture has been made against the accused No.3. Learned advocate submitted that the material compiled in the charge-sheet is not at all sufficient to frame the charge against the petitioner/accused No.3. Learned advocate further submitted that no serious role was attributed to accused No.2 Ramakant Laxminarayan Jaiswal. His application for discharge has been allowed by this Court. Learned advocate submitted that the case of the petitioner/accused No.3 is on a better footing than the case of discharged accused No.2 Ramakant Laxminarayan Jaiswal.

10] Learned Additional Public Prosecutor submitted that at this stage, the Court is required to see whether the evidence compiled in the charge-sheet is sufficient to frame the charge against the accused or not. Learned Additional Public Prosecutor submitted that the said evidence cannot be tested on merits. Learned Additional Public Prosecutor submitted that there is ample material on record to establish the involvement of the accused No.3 in the commission of crime. Learned Additional Public Prosecutor took me to the FIR, the statements of the

witnesses and the suicide note, to substantiate his contention that there is sufficient material on record to pinpoint the involvement of the accused No.3 in the commission of crime.

11] In order to appreciate the rival submissions, I have gone through the record and proceedings. It is to be noted that at the stage of framing of charge or at the state of deciding the application for discharge, threadbare analysis and appreciation of material on record is not warranted. The Court can *prima facie* consider the said material and form an opinion for the purpose of framing of charge. It needs to be stated that for the purpose of framing of charge, the entire material compiled in the charge-sheet is required to be considered. The said material in totality must be sufficient for the Judge to form an opinion that there is a ground for presuming that the accused has committed an offence. This is the only consideration at the stage of framing of charge. It further needs to be stated that at the stage of framing of charge, the undue emphasis cannot be laid on the fact that the FIR is bereft of certain facts vis-a-vis the crime. In this context, I may usefully refer the decision in the case of *Superintendent of Police, CBI and Others Vs. Tapan Kumar Singh [(2003) 6 SCC 175]*, wherein the Hon'ble Apex Court has observed that the law does not require the

mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency. In this case, the Hon'ble Apex Court has further observed that an FIR is not an encyclopedia, which must disclose all the facts and details relating to the offence reported. Such details can be unravelled and seen from the material collected during the investigation. In my view, therefore, the submission made by the learned advocate for the petitioner pointing out certain deficiencies in the FIR cannot be accepted.

12] I have gone through the FIR, the statements of the witnesses and the suicide note. Perusal of the material on record would indicate that a specific role has been attributed to the accused Nos.1 and 3 by the deceased. The deceased was residing at the house of the accused Nos.1 and 2. It is stated in the FIR that the accused No.1, on the assurance of marrying with deceased, established sexual relations with her. The accused No.1 and the discharged accused No.2, as per the case of the prosecution, took the advantage of helpless position of the deceased and forced her to establish physical relations with the accused No.1. It is stated that

deceased was tortured and beaten. It is further stated that the deceased stayed at the house of the accused No.1 for some time. It is stated that when the deceased became ready to marry with the accused No.1, the accused persons declined to accept the deceased as the wife of the accused No.1. She was driven out of the house.

13] Learned Additional Sessions Judge took the material on record into consideration and came to the conclusion that the material was sufficient to frame the charge against the accused. On perusal of the FIR, the suicide note and the statements of the witnesses, it is seen that a specific role has been attributed to the accused No.3. The witnesses namely Rameshchandra Pandharilal Jaiswal, Lila Rameshchandra Jaiswal, Nilesh Rameshchandra Jaiswal, Satyabhama Sriram Bawaskar and Arvind Madhukar Tekade have stated about the stay of the deceased at the house of the accused persons. They have also stated about the ill-treatment and torture meted to the deceased initially to force her to accept the proposal to marry with the accused No.1 and later on, the torture and ill-treatment to her to leave the house of the accused persons. All these witnesses have attributed a specific role to the accused No.3. It is stated by these witnesses that the accused Nos.1 and 3 declared that the accused No.1 would not marry with her

and the deceased shall leave their house. It is also stated by all these witnesses that on other counts, she was ill-treated and tortured every day by these accused persons. It is seen on perusal of the statements of the witnesses that no serious role was attributed to the accused No.2 by these witnesses. In my view, at this stage, if the prayer for discharge is allowed, then it would tantamount to rejecting this material evidence compiled in the charge-sheet by the prosecution without testing that evidence on the touchstone of credibility. In my view, this evidence would be sufficient to frame the charge. As per Section 227 of the Cr.P.C., the material on record must be sufficient to presume that the accused have committed the offence. The law does not require that the evidence compiled in the charge-sheet must indicate that it is sufficient to record the conviction against the accused. The pros and cons of the evidence at such a stage cannot be gone into.

14] In the above background, it would be necessary to consider the settled position in law with regard to the factors to be considered at the stage of framing of charge or at the stage of deciding the application for discharge.

15] I may usefully refer the decisions of the Hon'ble Supreme Court in the cases of *Tarun Jit Tejpal Vs. State of Goa*

and Another [(2020) 17 SCC 556], Niranjana Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijaya and Others [(1990) 4 SCC 76] and Sajjan Kumar Vs. Central Bureau of Investigation [(2010) 9 SCC 368], wherein it has been held that appreciation of evidence at the time of framing of charge under Section 228 of Cr.P.C. or while considering discharge application filed under Section 227 of Cr.P.C. is not permissible. The Court is not permitted to analyse all the material touching the pros and cons, reliability or acceptability of the evidence. In *Tarun Jit Tejpal's case (supra)*, it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouth piece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that what needs

to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting accused has been made out. It is further held that the law does not permit a mini trial at the stage of deciding the discharge application or at the time of framing of charge.

16] In this case, there is evidence on record to attribute a specific role to the accused No.3. The said evidence, in my view, by applying the legal position from the decisions referred above, is sufficient to frame the charge. In the backdrop of the law laid down in the above decisions, if the evidence is tested on the touchstone of the credibility, then it would amount to holding the mini trial at this stage. The law does not permit the same. Therefore, in my view, in this case, the material is sufficient to frame the charge. The material on record is sufficient to satisfy the requirements to proceed against the accused by framing the charge.

17] There is one more reason to indicate that this petition is nothing but an attempt to delay the trial. The order, rejecting the discharge application, was passed on 5th December, 2017. The accused No.1 has not challenged the said order. The said order was challenged by the accused No.2 Ramakant Laxminarayan Jaiswal. His petition was allowed by this Court on 12th October, 2018 and

he has been discharged from this case. The petitioner/accused No.3 filed this petition in July, 2022. The petitioner/accused No.3 took 4½ years to challenge the order dated 5th December, 2017. I have perused the petition to find out whether any reason has been recorded in this respect. The petition is silent as to the reasons for filing this petition in the year 2022 against the order, rejecting the discharge application on 5th December, 2017. The delay is inordinate. The inordinate delay, in my view, would reflect on the bonafides of the petitioner.

18] Learned advocate for the petitioner in support of his submission, placed reliance on the following decisions:

- 1) Swamy Prahaladdas Vs. State of M.P. and Another [1995 Supp (3) SCC 438].*
- 2) Mariano Anto Bruno and Another Vs. Inspector of Police [2022 SCC OnLine SC 1387].*
- 3) Sanju Alias Sanjay Singh Sengar Vs. State of M.P. [(2002) 5 SCC 371].*

19] I have gone through the decisions. Relying on the above decisions, learned advocate for the petitioner submitted that the basic requirements of the offence of abetment, as defined under Section 107 of the IPC, are lacking in this case. Learned advocate

submitted that on the basis of the material on record, the intention/
mens rea required to constitute the offence of abetment are not
made out.

20] In the case of *Swamy Prahaladdas (supra)*, the accused
was discharged by setting aside the order of framing of charge. In
this case, the accused had told the deceased after quarrel, “to go and
die”. This statement was relied upon by prosecution as an evidence
of abetment, which ultimately led to the suicide.

21] In the case of *Mariano Anto Bruno (supra)*, after full-
fledged trial, the evidence was found insufficient to prove the basic
requirements of the offence of abetment, as defined under Section
107 of the IPC. It is held that the offence requires an active act or
direct act, which leads the deceased to commit suicide. It is further
held that the act must be such to reflect the intention of the
accused to push the deceased into such a position that he commits
suicide. It is held that the *mens rea* is required to be proved beyond
reasonable doubt and in the absence of proof of the same, the
benefit has to be given to the accused.

22] In the case of *Sanju Alias Sanjay Singh Sengar (supra)*,
the FIR was quashed on the ground that the material was not

sufficient to establish the basic requirements of the offence of abetment, as defined under Section 107 of the IPC. In this case, there was quarrel between the accused and the deceased and in which the accused had told the deceased, “to go and die”. The deceased was found dead two days later. This was the only evidence relied upon to substantiate the offence of abetment of suicide. The suicide note was also not found sufficient to establish the offence of abetment.

23] In my opinion, the decisions, relied upon by the learned advocate for the petitioner, would not be applicable to the case of the accused No.3 at this stage. The material in the form of suicide note, the statement of the informant and the statements of the other witnesses specifically attributed a prominent role to the accused No.3. The said material, at this stage, is sufficient to frame the charge against the accused No.3. The said material in the form of suicide note and the statements of the witnesses cannot be discarded by branding them as unworthy of credence. The appreciation of evidence, at this stage, is not permissible. If the appreciation of material on record is done for the purpose of evaluation of the credibility, then the same in my respectful opinion would be nothing short of holding the mini trial. In order

to discard the statements of the witnesses, the Court would be required to consider the pros and cons of the same. It is beyond the scope of enquiry at this stage. Therefore, in my view, the material on record is sufficient to frame the charge. The petitioner/accused No.3 came to this Court belatedly. Similarly, the benefit of discharge of the accused No.2 in the above background cannot be extended to the accused No.3.

24] The petition, therefore, stands dismissed. Rule stands discharged. No costs.

(G. A. SANAP, J.)

Vijay