



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1086 OF 2023

1. Bhagyashali D/o. Ratnakar Khillare,
Age : 27 years, Occu. : Pvt. Service,
2. Nilabai W/o. Ratnakar Khillare,
Age : 55 years, Occu. : Household,
3. Ratnakar S/o. Rambhau Khillare,
Age : 60 years, Occu. : Nil,
All R/o. Junuwadi, Taluka Jintur,
Dist. Parbhani

... Petitioners
(Orig. Acc. Nos.1, 2 and 3)

Versus

1. The State of Maharashtra,
Through P.S.O., Police Station,
Jintur, Dist. Parbhani

... Respondent
(Orig. Complainant)

...
Mr. Ajinkya Reddy, Advocate for Petitioners.
Mr. S. A. Gaikwad, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26th AUGUST, 2024

PRONOUNCED ON : 2nd SEPTEMBER, 2024

ORDER :

1. In this criminal writ petition, there is challenge to the judgment and order passed by learned Sessions Judge, Parbhani dated 31.03.2023 passed in Criminal Revision Petition No.46 of 2022, thereby dismissing the revision arising out of order passed below Exh.17 by Assistant Sessions Judge, Parbhani in Sessions Trial No. 42 of 2018 dated 05.02.2022.

2. In nutshell case put-forth is that, present petitioners by invoking powers under section 156(3) of the Code of Criminal Procedure (Cr.P.C.) moved learned Judicial Magistrate First Class, Jintur seeking directions to register FIR against accused (i.e. present petitioners) for commission of offence of abetment to commit suicide. Learned J.M.F.C. entertained the said complaint and directed registration of crime vide its order dated 03.11.2016 for offence punishable under sections 306, 323, 504 and 506 r/w section 34 of Indian Penal Code (IPC) and in consequence to the same, after investigation charge-sheet was filed and case was registered as R.C.C. No.217 of 2017 and it was dealt by Assistant Sessions Judge, Parbhani vide Sessions Trial No. 42 of 2018.

3. Present petitioners filed discharge application by invoking provisions under section 227 of Cr.P.C. on the ground that there was no material in the entire charge-sheet in support of the accusations. Learned Assistant Sessions Judge, Parbhani rejected application Exh.17 by order dated 05.02.2022.

4. Feeling aggrieved by the same, present petitioners moved the learned Sessions Judge, Parbhani by filing Criminal Revision Application No.46 of 2022, thereby taking exception to the order passed by learned Assistant Sessions Judge, Parbhani.

5. After hearing both sides, learned Sessions Judge by judgment and order dated 31.03.2023 dismissed the criminal revision, giving rising to instant criminal writ petition by invoking Articles 226 and 227 of the Constitution of India.

6. Pleading innocence and false implication, learned counsel for petitioners would point out that, it is clear abuse of process of law i.e. merely on account of losing son by the *de facto* complainant. Apprising this court about the background, it is submitted that, there are allegations that, present petitioner no.1 was in love with deceased son of complainant. It is pointed out that, in fact deceased himself was married. There is no foundation to the allegations. Moreover, solitary incident of beating would not amount to inducement and abetment to commit suicide. Learned counsel pointed out that, alleged incident is of 28.07.2016. Deceased Nitin consumed poison on 29.07.2016 at his own house i.e. next day. It is emphasized that, since the morning of 28.07.2016 till 29.07.2016 petitioners were not in contact with deceased, no role is attributed to them during these two days to connect them with alleged consumption by deceased. Learned counsel pointed out that, there is nothing to connect present petitioners in proximity to alleged consumption and therefore

offence of suicide, by no means get attracted. According to learned counsel, mere incident of beating or humiliation would not constitute abetment to commit suicide. That, there was no *mens rea* and resultantly it is his submission that, when essential ingredients for attracting section 306 of IPC like inducement, abetment, instigation or positive act on their part being not available, making applicants face ordeal of trial would amount of hardship and injustice and consequently it his submission that, it is a fit case to discharge the applicants by invoking section 227 of Cr.P.C.

In support of his submissions, learned counsel for petitioners has relied on *Priyanka Premraj Mhasaye and Ors. v. State of Maharashtra*, AIROnline 2021 Bom 3999 and *State of West Bengal v. Indrajit Kundu and Ors.*, AIROnline 2019 SC 1201.

7. On the other hand, learned APP pointed out that, there is ample evidence against applicants which has emerged upon complete investigation. He pointed out that, there are witnesses who have seen incident at hand pump wherein present petitioners beat deceased in public, thereby insulting and humiliating him. They were regularly threatening him to divorce his legally wedded wife and elope with petitioner no.1. Their such threats were heard and seen by independent witnesses, whose statements under

section 164 of Cr.P.C. are recorded. According to learned APP, only because of continuous harassment, deceased consumed poison, there was no other reason. That apart, there are allegations of beating, commission of offence under sections 504 and 506 of IPC. There being ample evidence, it is his submission that it is not at all a case of discharge by invoking section 227 of Cr.P.C..

8. Here, it is emerging that, deceased Nitin died on 05.08.2016. When informant's attempt to take his complaint by police and to lodge report went futile, he seems to have knocked the door of learned J.M.F.C. by invoking section 156(3) of Cr.P.C. and in consequence to directions by learned J.M.F.C. Jintur dated 03.11.2016, crime seems to have been registered and further investigated and it culminated into charge-sheet bearing No.44 of 2017 for commission of offence under sections 306, 323, 504 and 506 r/w section 34 of IPC at the hands of Jintur Police Station.

9. After filing of charge-sheet, present petitioners who were arraigned as accused therein initially approached learned Assistant Sessions Judge by exercising powers under section 227 of Cr.P.C. praying to discharge, but when their such request was turned down, they approached learned Sessions Judge, however, they even did not find favour in their Criminal Revision Petition No.46 of 2022 and hence instant writ petition.

10. Powers under section 227 of Cr.P.C. being invoked, it would be profitable to reproduce the provision itself for the sake of gravity and clarity :

“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.”

In umpteen judgments time and again the Hon’ble Apex Court has dealt and discussed the scope and powers under section 227 of Cr.P.C. and has culled out a proposition that, court while considering the question of framing charge, has undoubted power to sift and weigh the evidence for a limited purpose of finding out whether or not prima facie case against the accused has at all been made out, and when the court is convinced and satisfied from the available evidence and material produced before it that, there is grave suspicion regarding involvement of accused, he deserves to be discharged. That, court cannot merely act as a mouthpiece of the prosecution and proceed with the trial. It is also settled position that, however, no roving inquiry is expected to be carried out which would amount to conducting trial itself.

In the case of *P. Vijayan v. State of Kerala and Anr.*, (2010) 2 SCC 398, in paragraph no.13, the Hon'ble Apex Court took note of the principles enunciated earlier in *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4, which read thus :-

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(1) *That the Judge while considering the question of framing the charges under Section 227 of the Code 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.*

(2) *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.*

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

(4) *That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

11. The above legal proposition has also been reiterated in following rulings :-

- 1) *Yogesh alias Sachin Jagadish Joshi v. State of Maharashtra, AIR 2008 SC 2991;*
- 2) *State of Tamil Nadu v. N Suresh Rajan & Ors., (2014) 11 SCC 709;*
- 3) *BK Sharma v. State of UP, 1987 SCC OnLine ALL 314*

12. Keeping above parameters and requirements in mind, here, in case in hand prosecution has been launched for commission of offence under sections 306, 323, 504 and 506 r/w section 34 of IPC. The gist of prosecution version is that, present petitioner no.1 a married lady had love affair with deceased son of complaint, who was also married, and according to prosecution, all accused were insisting deceased to divorce his legally wedded wife and elope with petitioner no.1.

13. On sifting the evidence, it emerges that, there was an episode involving present petitioners and deceased on a public hand pump. There are allegations that, at that point, in above backdrop and demand, there was initially offer to deceased to take money and run away with petitioner no.1. In same episode, there are allegations of beating and threats. This episode was eye witnessed by persons, namely Santosh, Mukida, Prayagbai and Shantabai and their statements appear to be recorded both, under section 161 as well as section 164 of Cr.P.C.. Coupled with it, there

is said to be audio recording of deceased himself i.e. in his own mobile and the same was with informant father and sim cards are handed over to police.

Consequently, here, there are prima facie allegations of forcing deceased to divorce his legally wedded wife and marry/remarry petitioner no.1 with whom there was alleged affair. A day after the episode at water hand pump, there is consumption, due to which unfortunately son of informant succumbed to death. As stated above, witnesses are on the point of pressurizing deceased to do as above, and therefore, he was said to be under mental stress. Hence, it cannot be said that there is no material at all in support of accusations. There are not only allegations of abetment to commit suicide, but also allegation of other offence of beating as well as issuing life threats. Therefore, in the considered opinion of this court, it cannot be said at this juncture that there is no material to face trial at all.

14. I have considered both the citations taken recourse to by the learned counsel for petitioners. In the case of ***Priyanka Premraj Mhasaye and Ors. (supra)***, proceeding were under consideration for relief under section 482 Cr.P.C. and as such, does not come to the aid of petitioners. As regards to second ruling is concerned, facts were distinct. Victim therein had developed

intimacy and relationship with appellant therein. Parents of the appellant addressed the girl as a call girl on 05.03.2004 and so she committed suicide on 06.03.2004 and so the Hon'ble Apex Court held that, there cannot be abetment as there was no goading, solicitation or insinuation to commit suicide.

15. Here, witnesses prima facie stated about continued course of conduct compelling deceased to give divorce to his wife and take away petitioner no.1 and in such backdrop, there was said to be abuse and beating in presence of witnesses. As stated above, there is also alleged audio recording of deceased handed over to police. Therefore, sufficiency of material in the case in hand distinguishes it from the relied cases. No case is made out to invoke section 227 of Cr.P.C. to discharge petitioners from all the charges. Hence, the criminal writ petition stands dismissed.

(ABHAY S. WAGHWASE, J.)