



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 234 OF 2024

Shahaji Sheshrao Kamble,
Age : 33 years, Occu. Pvt. Employment,
R/o. Subhedar Ramji Nagar, Latur,
District : Latur.

... Applicant

Versus

The State of Maharashtra,
Through Police Station Officer,
Shivajinagar Police Station, Latur.

... Respondent

.....
Mr. Tushar Shinde h/f Mr. C. K. Shinde, Advocate for the Applicant.
Mr. N. B. Patil, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.12.2024

Pronounced on : 18.12.2024

ORDER :

1. Revisionist herein takes exception to the order dated 29.06.2024 passed by learned Additional Sessions Judge, Latur below application Exhibit 51, in Sessions Case No. 153 of 2021, thereby rejecting prayer for discharge sought under Section 227 of Cr.P.C.

2. Appraising this Court regarding background of indictment of present revisionist, it is pointed out that, one Mubarak Mahamad Bargir lodged report, resulting into registration of crime on

19.07.2018, narrating that his daughter Nilofar, who was a student of 11th Standard, committed suicide by jumping from the terrace of institution. Learned counsel pointed out that apart from present revisionist, in all five persons are named as accused. That, present revisionist, who is a lecturer and also rector of the hostel, is impleaded as accused no.1.

3. It is pointed out that in short, case of prosecution is that, deceased Nilofar, who was put up in a hostel, had an affair with juvenile accused Ruturaj. That, ATM card of room-mate of deceased Nilofar, namely, Gayatri, was reported to be stolen. In the capacity of teacher and rector and on directions of Supervisor, revisionist had made inquiries with Nilofar. That, during inquiry, it was revealed that deceased had handed over ATM card of Gayatri to her boyfriend Ruturaj and he withdrew Rs.5,000/-. Therefore, present revisionist had called said boy, room-mate Gayatri as well as Nilofar and had made inquiries with them, and in the capacity of rector, he had sought say of each of them in writing. That, deceased objected to taking anything in writing from her boyfriend Ruturaj, accepted responsibility and when revisionist informed that parents of deceased Nilofar would be required to be called, she too refused to give any written apology. The Revisionist left inside the chamber. Shortly

thereafter, when only deceased was left in the waiting room, she went towards terrace and allegedly jumped and attempted to commit suicide. Learned counsel pointed out that she unfortunately expired on 19.07.2018 while undergoing treatment and thereafter, Mubarak Mohamad Bargir, father of deceased Nilofar, lodged report naming present revisionist and others responsible for the suicide and hence, crime for offence under Section 305 r/w 34 of IPC has been registered.

4. Learned counsel further submitted that apparently, from the very FIR, only material against revisionist is that in the capacity of rector, on receipt of complaint about loss of ATM card, he had conducted inquiry, which revealed ATM card being taken by deceased, who was a room-mate of Gayatri, and it was given to her boyfriend who used the same. Being in-charge of hostel and in the capacity of teacher, he performed his duty. There was no *mens rea*. Learned counsel submitted that only when he informed deceased that her parents would be required to be summoned and after leaving the waiting room, and while he was in the chamber of co-accused Omkar, he got the news that Nilofar jumped. Thus, according to learned counsel, there is no element of inducement or abetment to commit suicide, which are *sine qua non* for attracting the charge.

5 Learned counsel pointed out that the boy with whom she was in relationship, had also, in presence of revisionist, questioned deceased for not informing him that ATM card belonged to Gayatri and further said that she ought not to have done so. That, except such evidence in the entire charge, there is no iota of evidence. Making revisionist face trial in absence of even a *prima facie* case, would subject him to face the ordeal of trial for no reason and hence, prayers are raised for allowing the revision by setting aside the impugned judgment.

6. Learned counsel pointed out that learned trial court failed to appreciate the requirement of essential ingredients for attracting the charge and in absence of any evidence and without assigning sound reasons, rejected the application. Hence, he prays for indulgence at the hands of this Court.

Learned counsel for the revisionist placed reliance on the decision of Hon'ble Apex Court in ***V. P. Singh etc. v. The State of Punjab and others*** [Criminal Appeal No. 2103 of 2010 decided on 24.11.2022]. According to him, facts in the said case are identical and therefore, the ratio applies here too.

7. In answer to above, learned APP pointed out that deceased Nilofar was admittedly in the hostel, of which revisionist was the rector. He had summoned deceased and made inquiries with her. Even the girl, whose ATM card was found to be missing, was present. Her statement is also recorded. Only because action was taken by revisionist regarding seeking apology in writing, extreme step of committing suicide has been taken. Except revisionist, who was an authority, there was no other person and as such, his name having been repeatedly stated by witnesses and his indulgence in the matter having triggered the episode, learned APP submitted that it cannot be said that there is no iota of evidence. Learned APP submitted that there is not only *prima facie* evidence, but even sufficient evidence for him to face trial and for all above reasons, learned APP prays to reject the application.

8. Section 305 of IPC, with which the revisionist is charged, is reproduced below :

“S.305. Abetment of suicide of child or insane person.-

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.”

Essential ingredients for attracting Section 305 IPC are :

- i. There was suicide by a person;
- ii. Such person must be below 18 years of age or a delirious idiot or an intoxicated person.
- iii. Accused abetted the commission of suicide.

9. Perused the papers and chargesheet. It transpires that Shivajinagar Police Station, Latur registered crime no. 187 of 2018 for commission of offence punishable under Section 305 r/w 34 of IPC against in all 5 persons, including the present revisionist. Crime seems to be registered on report of father of a girl, who was studying in 11th Standard and was put up in a hostel and she allegedly jumped from hostel terrace on 17.07.2018. While undergoing treatment, she succumbed and therefore, her father approached police and lodged report.

10. Before adverting to the merits of the case, it would be fruitful to give a brief account of the settled legal position regarding objects and scope of Section 227 of Cr.P.C.

In the case of *Sajjan Kumar v. CBI* MANU/SC/0741/2010 : (2010) 9 SCC 368, on the scope of Section 227 of Cr.P.C., the Hon'ble Apex Court observed in para 21 as under :

"21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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, 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 discloses 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."

The Hon'ble Apex Court, on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** MANU/SC/0595/2019 : (2019) 16 SCC 547, observed as under:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court

dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial..."

In ***Asim Shariff v. National Investigation Agency*** MANU/SC/0863/2019 : (2019) 7 SCC 148 the Hon'ble Apex Court has observed that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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 material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion

against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

Some other rulings on this aspect can be named as ***State of Maharashtra and others v. Som Nath Thapa and others*** (1996) 4 SCC 659; ***State of M.P. v. Mohanlal Soni*** (2000) 6 SCC 338; ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460; ***Asim Shariff v. National Investigation Agency*** (2019) 7 SCC 148.

11. Keeping in mind the above settled legal position, if the FIR is perused, father initially made statement that he found calls from accused Ruturaj, who is juvenile, received on the mobile of his wife and therefore he called up accused Ruturaj from the mobile of his wife and questioned accused, whereupon accused expressed his love towards daughter of informant. Therefore, informant father warned him to stay away from his daughter. In February 2018, deceased had allegedly cut her vain and therefore informant father was called to the college at Latur. Thereafter, on 17.07.2018 he received information

that again his daughter had cut vain and after such news when he and his wife went to Latur, he claims to have learnt that Umakant Honrao and staff had forcibly sought something in writing from his daughter, as a result of which she jumped and committed suicide. On his report to the above extent, police registered above crime against four persons, including present revisionist who is said to be lecturer as well as rector of the hostel.

12. In the chargesheet, there are statements of parents, neighbor, friend cum room-mate and non-teaching staff of the college. Taking the episode of suicide into consideration, which is focal point, statement of room-mate of deceased, namely Gayatri, is of more significance because she was party to the meeting on relevant day comprising of present revisionist in the capacity of teacher/rector, juvenile accused and deceased.

13. Statement of Gayatri is recorded on 18.07.2018 i.e. next day, wherein she has stated that she studies in 11th standard and she shares room with deceased and they both were consequently good friends. Gayatri seems to have given statement that, on 27.06.2018, she and deceased together went for withdrawal of money for herself. She reported that on 07.07.2018, her ATM card went missing and therefore, she called her father, informed about it and requested him

to block the ATM card. She further gave statement that, her father questioned her whether on 30.06.2018 she had withdrawn Rs.5,000/-, to which she denied and therefore her father asked as to who all knew her ATM pin number and she informed that no one except deceased Nilofar knew about it. Therefore, on 16.07.2018, mother and cousin sister of Gayatri visited institution and informed Bukhtar Sir about theft of money and requested for change of hostel room. Thereafter said Bukhtar Sir appears to have summoned present revisionist, informed him about theft of ATM card and asked him to make inquiry. At that time also Gayatri told revisionist that only deceased knew pin number of her ATM.

14. Thereafter, around 2.30 p.m. to 3.00 p.m., present revisionist made inquiry with juvenile accused Ruturaj, who told that he did not knew to whom card belonged to, but he admitted that ATM card was handed over to him by deceased Nilofar and he had withdrawn Rs.5,000/-. Hearing this, Gayatri claims that, present revisionist called deceased from the class, i.e. in the waiting room, and made inquiry with her and questioned as to why she withdrew so much amount. Gayatri stated that, on such questioning, deceased went silent but later on stated that she was in need of money and hence she had withdrawn the amount. On further inquiry about the ATM card,

deceased allegedly told that she had destroyed the ATM card. Gayatri further stated that thereafter, present revisionist asked who amongst the two would return the money, upon which deceased allegedly said that juvenile Ruturaj has no concern and that at her instance he withdrew money. Thereupon, revisionist asked them to give in writing, upon which, deceased said that juvenile accused Ruturaj will not give anything in writing and that entire fault is hers and she snatched the blank paper handed over to juvenile Ruturaj, crushed and crumpled it and threw it away. Gayatri further states that upon this, juvenile accused blamed deceased in anger saying that she has not behaved properly and that she has committed mistake and that she ought not to have committed theft. After this, Gayatri stated that, when deceased was talking with revisionist, again juvenile asked her not to talk, but to keep silent. **Thereafter, revisionist told them to be quite and not to quarrel.** Thereafter deceased declared that she too would not give anything in writing saying that she had orally accepted and there is no need to give anything in writing, upon which, revisionist allegedly said that if she is not ready to give anything in writing, then her parents would be informed. According to Gayatri, thereafter, Ruturaj left waiting room. As parents of Gayatri had come to meet Omkar Sir, revisionist and Gayatri also left the waiting room leaving deceased alone in the waiting room. Thereafter,

when revisionist, Gayatri and her parents were in the cabin of Omkar Sir, at that time, juvenile accused and one peon came running to the cabin and informed that deceased had jumped from the terrace.

15. There is also statement of staff, namely Datta Haridas Dhaware and he has stated that on 17.07.2018, when he was on duty near chamber of Omkar Sir, around 2.30 p.m. when Professor Pawar was present in the chamber of Omkar Sir, present revisionist Shahaji Kamble came there and summoned Ruturaj i.e. juvenile in the waiting room. That time, Gayatri Bhokre (room-mate of deceased) and deceased herself were also called for inquiry. Professor Patwari also came there. Inquiry with the students was being conducted. Thereafter Professor Pawar and Patwari left. Present revisionist Shahaji Kamble and room-mate of deceased namely Gayatri entered chamber of Omkar Sir. At that time, deceased came out of the cabin and she started climbing stairs. At that time, according to this staff, juvenile asked in frightened state to him to see where deceased was going, upon which he and another staff Santosh Dawkhare followed her. Deceased went to terrace and while these three went after her and while they were giving call to her, she jumped and so they returned and informed about it to others, including revisionist and the girl was taken to the hospital.

16. Therefore, after going through the above statement with a limited purpose of ascertaining whether there is prima facie material, it is revealed, more particularly from the statement of room-mate Gayatri, that deceased had acquaintance with juvenile accused Ruturaj. Gayatri categorically stated that deceased being her room-mate, was only aware of her ATM card details. The same went missing. On conversation with father, Gayatri learnt that Rs.5,000/- had been withdrawn on 30.06.2018. When Gayatri denied withdrawal, her mother and cousin came to the institute and requested the college authorities for change of room. Bukhtar Sir seems to have called present revisionist and informed about theft of ATM card and had asked to conduct inquiry and only in consequence of it, present revisionist seems to have summoned juvenile accused as well as deceased and there seems to be meeting in waiting room between present revisionist, Gayatri, Ruturaj and deceased. From the statement of Gayatri, it is also emerging that deceased confessed that she took the ATM card and at her instance, juvenile accused used the ATM and withdrew Rs.5000/-, upon which revisionist asked them to decide as to who is to repay the amount and even sought apology in writing. From the statement of Gayatri, it is also emerging that deceased resisted any writing to be taken from Ruturaj and subsequently even refused to give anything in writing from her side

also, upon which revisionist declared that her parents would be required to be summoned and called. After this, according to the statement of Gayatri, Ruturaj went out and revisionist and she herself left the waiting room and went in the chamber of Omkar Sir. At such point of time, only deceased was available in the waiting room and thereafter, deceased seems to have gone to the terrace and she had jumped.

17. Therefore, as regards the present applicant is concerned, the only role which is emerging is that on information of Bukhtar Sir, revisionist conducted inquiry and when it was revealed on talks with deceased and Ruturaj, it emerges that, ATM of Gayatri was stolen by deceased and further used it for withdrawal, so she was called upon to apologize in writing. Thereafter, statement of Gayatri shows that when revisionist was in the chamber of Omkar Sir and while deceased was alone in the waiting room, she climbed the stairs to the terrace and jumped from there.

18. Learned counsel for revisionist pointed out that, mere seeking apology in writing for committing theft would not constitute *mens rea* and would not be sufficient to attribute abetment, inducement or instigation to commit suicide. In support of his such submission, he has sought reliance on ***V. P. Singh etc.*** (supra).

19. After appreciating the submissions advanced, and on going through the report of father, statement of Gayatri in particular, it is emerging that father has lodged report on getting some information about Umakant Honrao and some staff members forcibly seeking something in writing. Therefore, report of father is apparently on some hearsay information. Applicant's name and role is surfacing in statement of Gayatri and the same is already dealt in aforesaid paragraph. Apparently, it is emerging that, after he sought written apology from deceased and when he left her company saying that if she is not ready to give apology, then her parents would be required to be informed, and further while he was in the chamber of Omkar Sir, the suicide appears to have been committed.

20. In the above ruling of ***V. P. Singh etc.*** (supra) relied by learned counsel, facts are identical as like present case and observations of Hon'ble Apex Court are borrowed and reproduced as under :

“To examine the factual matrix in the present case, in view of the aforesaid legal position, we find not an iota of material on record even assuming the complete charge sheet to be correct which could lead to a conviction in a case of abetment as there was absence of the necessary

ingredients to make the offence. While we appreciate the anguish of a father who has lost a young son, that cannot result in blaming the world (in the present case, the institution and its teachers) for what is a basic disciplinary action necessary for running the institute. (emphasis laid) A contra position would create a lawless and unmanageable situation in an educational institution. The suicide note further shows that there is something to be said about the relationship between the deceased and his father where in fact the deceased thought that his father could be blamed for the episode and thus asked to not to trouble his father. The anguish of the father ought not to have been converted into a case of abetment of suicide and certainly the investigation and the approach of the trial Court could have been more realistic keeping in mind the surrounding facts and circumstances in which the suicide episode occurred.”

21. From above discussion, here also it is emerging that, only on directions of Bukhtar Sir, revisionist seems to have conducted inquiry with the deceased and her boyfriend in presence of Gayatri. Only when revisionist declared that, if deceased is not giving written apology for the theft of ATM card, he would be constrained to inform her parents, the subsequent event appears to have taken place. In fact, from statement of Gayatri, it is emerging that when there was conversation going on between juvenile accused and deceased,

revisionist asked them not to quarrel. Therefore, he has intervened to pacify. Moreover, revisionist was not present when the girl proceeded towards stairs for terrace, rather he was in the chamber of Omkar Sir, as he too received news of suicidal jumping there itself. Thus, role of revisionist is of merely conducting inquiry and seeking written apology from deceased when it was revealed that she had stolen the ATM card of Gayatri. Such action on his part, by stretch of no imagination, that too in the capacity of rector, would not amount to abetting suicide. As pointed out by learned counsel, *mens rea* which is essential in offences of such nature, is also palpably missing. Therefore, with such quality of evidence, in the considered opinion of this Court, it would not be just and proper to make him face the process of trial. Hence, the following order :

ORDER

The Criminal Revision Application is allowed in terms of prayer clause [B] and disposed of accordingly.

[ABHAY S. WAGHWASE, J.]