



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 217 OF 2015

Madiha W/o. Rehan Shaikh,
Aged : 20 years, Occu. : Household,
R/o. Flat No. 202, 2nd Floor,
Vishal Residency, Near GCC Club,
Hatkesh Road, Mira Road, Thane,
Taluka & District Thane.

... Applicant

Versus

1. State of Maharashtra,
2. Rehan S/o. Abdul Karim Salar (Shaikh),
Aged : 25 years, Occu. : Business,
R/o. 387, Shani Peth, Jalgaon,
Taluka & District Jalgaon.

... Respondents.

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Mr. Naseem R. Shaikh, Advocate for Applicant.
Mr. S. M. Ganachari, APP for Respondent – State.
Mr. N. E. Deshmukh, Advocate for Respondent No.2.

.....

WITH

CRIMINAL REVISION APPLICATION NO.8 OF 2016

1. Rehan S/o Abdul Karim Salar,
Age : 25 years, Occu. : Business,
2. Abdul Karim S/o Abdul Majid Salar,
Age : 60 years; Occu. : Business/Social worker;
3. Ruksanabi W/o Abdul Karim Salar,
Age : 57 years; Occu. : Household;
4. Irfan S/o Abdul Karim Salar,
Age : 31 years; Occu. : Business;
5. Javed S/o Latif Salar,
Age : 43 years, Occu. : Business;

Applicant Nos.1 to 5 are
R/o : 387 Shani Peth, Tal & Dist. Jalgaon.

6. Abdul Aziz S/o Abdul Majid Salar,
Age : 56 years, Occu. : Business,
R/o : Balirampeth, Jalgaon ... Applicants

Versus

1. The State of Maharashtra,
2. Madiha S/o. Rehan Shaikh,
Age : 23 years, Occu. : Nil,
R/o. : Plot No.202, 2nd Floor,
Vishal Residency, Near Hudkeshwar,
Meera Road, Thane (East),
At present camping at 375 Shani Peth,
Jalgaon. ... Respondents.

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Mr. N. E. Deshmukh, Advocate for Applicants.
Mr. S. M. Ganachari, APP for Respondent - State.
Mr. Naseem R. Shaikh, Advocate for Respondent No.2.
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 18 DECEMBER 2024
PRONOUNCED ON : 07 JANUARY 2025

JUDGMENT :

1. In this revision, exception has been taken to the order dated 31.10.2015 passed by learned Additional Sessions Judge, Jalgaon on Exh.22 in Sessions Case No.148 of 2013 partly allowing the application, thereby discharging the present respondent no.2 (original accused) from charge under section 376 of Indian Penal Code.

BRIEF BACKGROUND

2. Applicant Madiha approached Shanipeth Police Station, Jalgaon lodging a report on 11.01.2013 alleging that, present respondent no.2 Rehan, who was her neighbour, developed acquaintance with her, started visiting her house on some or other count and lured her with promise of marriage and against her will and wish developed physical intimacy on several occasions. He also took her to a Mosque at Bandra, Mumbai performed marriage with her. During cohabitation, he subjected her to maltreatment and demanded Rs.5,00,000/-. Therefore, on above acquisitions, made in the report, Shanipeth Police registered crime bearing No.4 of 2013 for offence punishable under sections 376, 498-A, 504 and 506 of Indian Penal Code.

Present respondent no.2 stood charge-sheeted and case was on the file of learned Additional Sessions Judge, Jalgaon.

During pendency of trial, respondents invoked provision under section 227 of Cr.P.C. seeking discharge. After hearing both sides, learned Additional Sessions Judge by order dated 31.10.2015 partly allowed the application Exh.22, thereby discharging present respondent No.2 Rehan only from the charge under section 376 of IPC amongst above other charges.

Feeling aggrieved by the above order dated 31.10.2015 on Exh.22, original complainant has approached this court by instituting present revision thereby praying to set aside the impugned order.

SUBMISSIONS

3. Learned counsel for applicant in Criminal Revision Application No. 217 of 2015 apprised the court about above factual matrix regarding relations, gaining access and acquaintance and on promise of marriage, but against her wish, being sexually ravished and performing marriage and further setting up demands, ill treating her and finally disowning her, resulting into registration of crime.

4. Learned counsel further pointed out that, there is sexual exploitation of victim by playing deceit i.e. by the respondent Rehan since February 2012. It is pointed out that, revisionist was threatened to be defamed and blackmailed. That, therefore, offence was registered. That, after thorough investigation, investigating machinery found sufficient material to make respondent face trial. That, required ingredients for each of the offence, for which crime was registered, were available in the evidence. That, statements of 7 to 8 witnesses, which are consistent, were recorded by police machinery and only on satisfaction of sufficiency of material, respondent was charge-sheeted. That, learned trial court failed to

consider and appreciate the contents of the charge-sheet. That, learned trial court even ignored the settled legal position while dealing with application for discharge and passed impugned order. That, no sound reasons are assigned while discharging respondent from charge under section 376 of IPC. Learned counsel further pointed out that, grave offence was committed, but accused is discharged from the same. That, there is improper appreciation of charge-sheet as well as law and hence, learned counsel seeks indulgence by setting aside the impugned judgment. He seeks reliance on following rulings :-

- (i) *Vaibhav S/o. Gajanan Tekam v. State of Maharashtra Criminal Appeal No.437 of 2021 (High Court of Bombay Nagpur Bench);*
- (ii) *Manendra Prasad Tiwari v. Amit Kumar Tiwari & Anr. Criminal Appeal No.1210 of 2022 (Arising out of S.L.P. (Criminal) No.3015 of 2022;*
- (iii) *Ravindra Laxman Ghogardare v. State of Maharashtra, AIR Online 2019 Bom 177;*

5. Per contra, learned counsel for respondent No.2 would submit that, there was apparently false implication. That, all accusations are motivated. That, apart from immense delay in lodging false report, it was a clear attempt to implicate respondent with ulterior motive. That, learned trial court below scrupulously examined the charge-sheet and on getting convinced regarding case being made out for invoking section 227 of Cr.P.C. order has been passed. That, it is in consonance with the settled legal position. That,

impugned order is infallible and hence prays for not to disturb it.

ANALYSIS

6. Here, on going through the material gathered by prosecution and tendered by way of charge-sheet, it is emerging that, revisionist and respondent no.2 were neighbours. In report to police in 2013, it was informed by her that, since February 2012, respondent Rehan was trying to allegedly come close to her and even he expressed his desire to marry her. Such information was even passed to her mother through her sister. She informed that in April 2012, respondent had physically intercourse with her and then promised to perform marriage with her. She claims that, when subsequent attempts to have physically intimacy were turned down by her, he threatened to defame her saying that, he had video clips of physical intimacy. It has also come in her report that, when she had been to Mumbai, in July 2012, he called her near carter road, in a masjid and performed marriage with her. This was subsequently informed to her mother. However, subsequently, later on he informed that his family members are asking him to seek divorce from her. Thereafter she has reported about demand of Rs.5,00,000/- for accepting her as his wife.

7. Apparently, as pointed out there is inordinate delay. Her above report clearly shows that she merely speaks that he had

intercourse in the backdrop of promise of marriage. However, she herself reported that he took her to Masjid and performed marriage with her and has spent couple of months with her. After alleged episodes of physical intimacy and marriage in July 2012, report of commission of offence is apparently lodged in January 2013. In spite of being charge-sheet, there does not seem to be any evidence about any video clips of alleged intimacy on the basis of which she was allegedly threatened to be defamed.

8. 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.

9. Here, though there were allegations of commission of offence under section 376 of IPC, in the light of discussion made in aforesaid paras, it is apparently emerging that, there seems to be acquaintance between revisionist and respondent Rehan being neighbours. Talks regarding marriage proposal seem to be known to her mother and sister also. She admits that she got married in a Masjid on or around 14.07.2012. Thereafter, there seems to be allegation of demand of money and then finally in January, 2013 i.e after almost six months also allegations are made for commission of offence under section 376 of IPC.

10. Thus, initially, revisionist alleges threats of defamation, but subsequently gets married and also spends considerable time

with respondent. Therefore, with such material, allegations as regards to, more particularly section 376 of IPC, accusations do not inspire confidence. There is no material in the charge-sheet for prosecuting respondent for said charge. Therefore, learned trial court has not committed any error in discharging respondent Rehan from said charge amongst other charges.

For above reasons, no case is made out for interference.

11. Even husband and in-laws have preferred Criminal Revision Application No.08 of 2016 praying for quashing the impugned order dated 31.10.2015 passed below Exh.22 to the extent of refusing to grant discharge for offence punishable under sections 498-A, 504, 506 r/w 34 of IPC.

However, after going through the available papers and the FIR, even this court is of opinion that, at this stage it cannot be said that, there was no cruelty or demand. Such aspects needs to be gone into only on full-fledged trial. Therefore, as like trial court, in the considered opinion of this court, application for discharge from offence under sections 498-A, 504, 506 r/w 34 of IPC cannot be entertained and no relief as prayed can be granted.

There is no reason to interfere. Hence, both revisions have no substance and are devoid of merits. Accordingly, the following order is passed :-

ORDER

Both revision applications stand dismissed.

(ABHAY S. WAGHWASE, J.)