



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 68 OF 2024

Ganesh Sahebrao Vikhe
Age: 32 years, Occu.: Service,
R/o. Vaijapur, Tal.Vaijapur,
Dist.Aurangabad.

....Applicant
(Orig. Accused)

Versus

The State of Maharashtra
Through Investigating Officer,
Gangapur Police Station,
Tal.Gangapur, Dist.Aurangabad.

.....Respondent

.....

Advocate for Applicant : Mr. Vishweshwar Haribhau Pathade
APP for Respondent : Ms.Vaishali S.Chaudhari

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 MARCH, 2025

PRONOUNCED ON : 17 MARCH, 2025

ORDER :

1. Vide present revision application, applicant / original accused is questioning the order dated 08-12-2023 passed by the learned Assistant Sessions Judge, Vaijapur, Dist.Aurangabad on application below exh.28 seeking discharge by invoking Section 227 of the Code of Criminal Procedure (Cr.PC).

2. It is submitted that applicant was chargesheeted for commission of offence under Sections 306, 498-A read with 34 of the Indian Penal Code (IPC) in consequence to crime bearing no.3058 of 2015. That, apparently there was false implication on allegations of harassment and demand. That, merely because dead body was found in the well, said occurrence is reported and crime is registered alleging cruelty and abetment to commit suicide. Learned counsel submitted that now entire investigation is over. That, required ingredients for attracting neither Section 498-A nor Section 306 of IPC are available in the chargesheet. That, there were general and vague allegations. That, it was not proved whether deceased accidentally fell or drowned or whether she committed suicide and therefore, applicant had filed discharge application exh.28 by invoking Section 227 of the Cr.PC.. That, learned trial Court failed to consider and appreciate settled legal provisions while granting or rejecting discharge application. That, moreover, applicant was not residing with deceased at the time of incident. However, alongwith other family members, he is also implicated. That, he has recently joined services as Gramsevak, but because of implication, his service career is in jeopardy. On the above grounds, learned counsel questions the legality and sustainability of the

impugned order passed by the learned Assistant Sessions Judge, Vaijapur.

3. Learned APP pointed out that after marriage, deceased was subjected to cruelty in the backdrop of demand of Rs.50,000/- for construction of house apart from setting up demand of ornaments. That, due to harassment on account of non-fulfillment of demand, deceased committed suicide. That, on lodgment of report, investigation was carried out which revealed complicity of accused and therefore, he and others were chargesheeted. That, all required ingredients for attracting charge of both Sections 498-A and 306 of the IPC are available. That, Section 34 has been invoked as family members were also involved. Thus, according to learned APP no fault can be found in the impugned order of rejection of discharge.

4. Heard. Present application is apparently preferred invoking provisions under Section 227 of the Cr.P.C. Before analyzing above material, it would be fruitful to give a brief account of the settled legal position and land mark judgments in which, guidelines and principles are enunciated regarding objects and scope of Section 227 of the 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.PC., 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.PC. 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.

5. Bearing above legal requirements in mind, perused the papers and impugned order. After considering above submissions and on going through the papers, it seems that applicant was convicted for commission of offence under Sections 306, 498-A read with 34 of the IPC by Gangapur Police on receipt of report from Devidas resulting into registration of crime no.3058 of 2015. Perused the FIR and also statements of witnesses, who are said to be near and dear ones of deceased. Documents show that deceased was found dead in a well. Therefore, though question was raised as to whether it was accidental fall or whether it was suicide, trial otherwise also becomes

imperative. On going through the papers placed on record, *prima facie* it cannot be said that essential ingredients for attracting the charges are not available. Therefore, this Court does not find any reason to record opinion at this stage that there is no material for applicant to face charge. Merely because he is in Government service, is no good ground to grant discharge.

6. Perused the impugned order. Learned trial Court has appreciated arguments advanced before it, and after perusing the papers and material gathered during investigation, after discussing legal precedents, application exh.28 has been rejected. Considering the material available on record, this Court is of the view that there is sufficient material for undertaking trial. Resultantly, no fault can be found in the impugned order. Hence, following order is passed :

ORDER

Criminal Revision Application No.68 of 2024 is rejected.

(ABHAY S. WAGHWASE)
JUDGE