



(1)

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

CRIMINAL REVISION APPLICATION NO.146 OF 2025

1. Aashiya Khursid w/o Shakil Ahmed,
Aged about 41 Years,
Occupation : Household,
R/o. Yogendra Nagar, Kotol Road,
Nagpur.
2. Fatima Khursid w/o Rizwam Ali,
Aged 42 Years,
Occupation : Household,
R/o. Plot No.38,
Nirala Society, Azad Colony,
Umred Road, Nagpur.
3. Sayyad Nikhatara w/o Niyaz Ali,
Aged 58 Years,
Occupation : Household,
R/o. Plot No.13, Khurana Layout,
Anant Nagar, Nagpur.
4. Nujhat Ara alias Nilofar
w/o. Akiluddin Quazi,
Aged about 53 Years,
Occupation : Household,
R/o. Plot No.401,
Bloosam Apartment,
Borgaon Road, Katol Road,
Nagpur.
5. Qamaraara w/o Abdul Hafiz,
Aged about 79 Years,
Occupation : Household,
R/o. Suraj Nagar, Near Palloti
School Gorewada Road,
Nagpur.
6. Sayara Khursid w/o. Zakir Ali,
Aged about 50 years,
Occupation : Service,
R/o. Shahid Ward, Katangi Road,
Seoni, Madhya Pradesh.

[Accused Nos.2,
3,4,5,6,7 & 9]

.... APPLICANTS

(2)

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Ganeshpeth,
Nagpur City, Nagpur.

....NON-APPLICANT

Mr. R. M. Patwardhan, Advocate for applicants.
Mr. N. B. Jawade, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/02/2026

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel for the parties.
4. Present revision application is filed challenging the order passed by the learned Special Judge, Special Court for Differently able Persons, Senior Citizens, and Marginalized Sections of Society, Nagpur and District Judge – 9 and Additional Sessions Judge, Nagpur rejected the discharge application of the present applicants, who are the original accused Nos.2 to 7 and 9 dated 29.07.2025 below Exh.7.
5. Brief facts which are necessary for the disposal of the revision application are as under:

(3)

The applicants are charge sheeted by Ganeshpeth Police Station, Nagpur for the offence punishable under Sections 304B, 306 read with Section 34 of the Indian Penal Code in connection with Crime 75/2016 in respect of death of Sharbano Ahmad Husan (hereinafter referred to as 'deceased') on 09.04.2016. As per the allegations in the First Information Report (hereinafter referred to as 'FIR') which is lodged by the father alleging that the marriage of the deceased was performed with Ahmad Hasan Mohammad Abdul on 08.02.2014 at Raipur (Chhatagarh). After marriage, she resumed cohabitation and she was blessed with son. It is alleged that in the marriage, there was no demand of dowry, but on the next day of marriage, the applicants started ill-treating her as nothing was given as a dowry in the said marriage. It is alleged that the husband of the deceased was ill-treating her by physically assaulting and all the applicants and her mother-in-law were taunting her abusing her and therefore, being fed up with the same, she has committed suicide by hanging herself on 09.04.2016.

6. On the basis of the said report, police have registered the crime against the present applicants as well as the other co-accused. During investigation, the Investigating Officer has collected the PM Notes as well as recorded the various statements of the witnesses and after completion of the

(4)

investigation submitted a charge sheet against the present applicants.

7. After filing of the charge sheet and after committal of the case to the Sessions Court, the applicants who are the original accused Nos.2 to 7 and 9 prefer an application under Section 227 of the Code of Criminal Procedure for discharge on the ground that the present applicants are residing at their respective matrimonial houses along with their children. There is general and omnibus allegations levelled against them. They never resided along with the deceased and her husband. Only deceased was residing along with her husband, her child and mother-in-law. As far as the present applicants are concerned, there is no allegation at any point at any specific date the present applicants came to her house, ill-treating her and as there was no alternative before her and therefore, she committed suicide. It is submitted that the entire allegation levelled against them is of general, omnibus and vague in nature and merely because they are the relatives of the husband of the deceased and therefore, there is no sufficient material to frame the charge against them and therefore, they be discharged from the charges.

8. Heard learned counsel Mr. Patwardhan for the applicants. He taken me through the various statements of the

(5)

witnesses and submitted that none of the statement discloses any specific instances as far as the involvement of the present applicants are concerned. He submitted that on the contrary, the statement of the prosecution witnesses itself shows that the deceased was residing along with her husband and mother-in-law. The statements nowhere state that at any point of time the present applicants have visited and there was a quarrel and due to that quarrel, she fed up and committed suicide by hanging herself. Thus, there is no proximity between the abetment at the hands of the present applicants and the committal of the suicide by the deceased. No specific role is attributed to the present applicants and therefore, the application deserves to be allowed.

9. Per contra, learned APP strongly opposed the said contention and submitted that considering the law regarding the discharge at this stage, even a grave suspicion is sufficient to frame the charge against the present applicants and therefore, the statements of the witnesses disclosing the involvement of the present applicants in the alleged offence. In view of that, the application deserves to be rejected.

10. Before entering into merits of the case, it is necessary to see what are considerations for considering the application for discharge.

(6)

11. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in **MANU/SC/1113 2023**, advertent to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in **(2014) 11 SCC 709**, **The State of Maharashtra vs. Som Nath Thapa**, reported in **(1996) 4 SCC 659** and **The State of MP Vs. Mohan Lal Soni**, reported in **(2000) 6 SCC 338**, observed as follows:

"10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu vs. N.Suresh Rajan and ors**, referred supra advertent to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit

(7)

Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece 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 trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the 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, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, 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 the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

13. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of

(8)

framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

14. In the light of the above principles laid down by the Hon'ble Apex Court, if the evidence in the present case collected during the investigation is taken into consideration. It is apparent that various statements including the statements of the neighbours are recorded by the investigating agency. These statements consistently shows that at the time of the incident the deceased was residing along with her mother-in-law and her husband. The statements further disclosed that there used to be quarrel between the mother-in-law, husband and the deceased. As far as the present applicants are concerned, who are already married and the daughters of Badrunisa one of the co-accused are residing at their matrimonial houses. The statements of the neighbours also discloses that there used to be quarrel between

(9)

the husband and wife as far as the present applicants are concerned. None of the statement discloses that at any point of time, they have visited and there was a quarrel between the present applicants and the deceased and due to that the deceased was depressed. In fact, the earlier occasion also the deceased has attempted to commit suicide by consuming a phenyl and she was admitted in the hospital. A statement was recorded wherein also she has not whispered that there was any ill-treatment at the hands of the present applicants. Thus, as far as the present applicants are concerned, except the general, omnibus and vague allegation there is nothing collected during the investigation to show that at any point of time the present applicants had been to the house of the deceased and her husband and there was quarrel and on that quarrel, she fed up with that and she has committed suicide.

15. To attract the offence punishable under Section 304B of IPC the requirement is that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. As far as

(10)

this ingredients of the sections are concerned, in order to seek conviction under Section 304B of IPC against the person for the offence of dowry death the prosecution is obliquely proved that the death of the woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances such death should have occurred within seven years of her marriage the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband and such cruelty or harassment should be or in connection with the demand of dowry and to such cruelty or harassment the deceased should have been subjected soon before her death. As far as the present applicants are concerned, admittedly, these ingredients are absent.

16. Now question remains whether there was any ill-treatment or abetment at the hands of the present applicants to connect them with the alleged offence. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine. The said Sections penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the

(11)

three criteria detailed in Section 107 of the Indian Penal Code. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

17. A question arises as to when is a person said to have instigated another. The word "instigate" means to goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done. It is well settled that in order to amount to abetment, there must be mens rea. Without knowledge or intention, there cannot be any abetment. The knowledge and intention must relate to the act said to be abetted which in this case, is the act of committing suicide. Therefore, in order to constitute abetment, there must be direct incitement to do culpable act.

18. By applying the above said legal principles to the facts of the present case admittedly, there are no specific allegations against the present applicants. Moreover, the facts on record shows that they were not residing along with the deceased. There is no allegation that at any point of time they have visited and ill-treated the deceased to such an extent that there was no alternative before her but to commit suicide. Thus, in the absence of any allegation against the present applicants the application deserves to be allowed. The learned trial Court has

(12)

not considered these aspects while considering the discharge application. Even a strong suspicion is not raised against the present applicants from the entire investigation papers. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is **allowed**.
- (ii) The order passed by the learned Special Judge Special Court for Differently-able Persons, Senior Citizens and Marginalized Sections of Society, Nagpur and District Judge – 9 and Additional Sessions Judge, Nagpur, in Sessions Trial No.399/2017 below Exh. 7 is quashed and set aside.
- (iii) The present applicants are discharged of the offence punishable under Sections 304B, 306 in connection with Crime No.75/2016 registered with Police Station Ganeshpeth, District Nagpur and Sessions Trial No.399/2017.

The application is disposed.

(URMILA JOSHI-PHALKE, J)