

KACM010020462019



IN THE COURT OF II ADDITIONAL DISTRICT &
SESSIONS JUDGE AT CHIKKAMAGALURU

Dated this the 21st day of November, 2023

PRESENT

SMT. BHANUMATHI. B.C., B.A.L., LL.B.,
II Addl. District & Sessions Judge,
Chikkamagaluru.

S.C. No.113/2019

COMPLAINANT : State by Sakharayapatna Police.
(Represented by the Public
Prosecutor, Chikkamagaluru)

vs

ACCUSED 2.Smt.Greemi W/o. Kushalgowda,
Aged about 50 years,
R/o. Kushal Extension,
Sakharayapatna, Kadur Taluk,
Chikkamagaluru District.

(Represented by Sri H.M.S,
Advocate)

ORDER ON APPLICATION FILED UNDER
SECTION 227 OF CR.P.C.

The accused No.2 has filed this application seeking her discharge from the offences punishable under Sections 143, 144, 148, 450, 440, 506, 504,

307 and 120-B of Indian Penal Code r/w. section 34 of said Code in the above case.

2. In the said application, it is contended by the accused No.2 that she has not committed any of the offences alleged against her and she is innocent of the same. The complainant and accused No.2 are the husband and wife and the complainant has not made any allegations against her and the complainant police have not mentioned anything against her and therefore, she was not arraigned as accused in the FIR, but at the time of submitting charge sheet, the police have inserted her name by arraigning as accused No.2 in the charge sheet at the instigation of some persons, who are inimical towards her.

3. It is further contended by the accused No.2 that there is no material to hold that she has committed the offences alleged against her. Hence, it is just and necessary to discharge her in the above case. In case it is not done, she would be put to untold hardship, injury and inconvenience and no prejudice or harm would be caused to other side if this application is allowed. Inter-alia on these grounds, accused No.2 sought to discharge her for the aforesaid offences.

4. On the other hand, this application has been resisted by the Public Prosecutor by filing statement of objections. By reproducing the allegations leveled by the prosecution in the charge

sheet, it is contended that the application filed by the accused does not contain any plausible and sufficient ground to discharge her and the grounds stated in the application do not disclose that there is no sufficient material and ground for proceeding against her. The investigating officer filed final report against accused by collecting sufficient material. The documents submitted along with the final report disclose that the accused No.2 being the wife of the complainant is having illicit relationship with accused No.1 and with an intention to kill the complainant, who is obstacle to their illicit relationship, the accused Nos.1 and 2 hatched conspiracy. Further, on 21.02.2019 at about 11.30 p.m, the accused No.1 along with accused Nos.3 to 8 went near the house of complainant in car bearing No.KA-18/Z-2425 situated at Sakharayapatna, Kadur Taluk and trespassed into the compound wall of his house, accused No.1 tried to assault on the head of complainant with an iron long, but he escaped and went inside the house and locked the door and then the accused damaged the window glass of his house and the glass of his car and caused damage to the tune of Rs.500/- and abused him in filthy language and issued threat to take away his life and after completing investigation, the investigating officer has submitted charge sheet against accused Nos.1 to 8 for the aforesaid offences. It is further contended that the material submitted with the charge sheet including the further statement of complainant and the

statements of witnesses and the mahazars reveal the commission of offence by the accused No.2 and it is necessary for the prosecution to prove the same in the full fledged trial. Inter-alia, on these grounds the prosecution sought for rejecting the application.

5. Heard both side and perused the materials placed on record.

6. In the facts and circumstances of the case, the points that arise for the consideration of this court are:

1. Whether the accused No.2 has made out any ground to discharge her from the charges leveled by the prosecution against her in this case?

2. What order ?

7. My findings on the above points are as under:

Point No.1: In negative,

Point No.2: As per final order
for the following:

REASONS

8. The learned counsel for the accused No.2 and the learned Public prosecutor have argued as per their contentions taken in their application and statement of objections respectively.

9. It is settled position of law that at the time of framing charges, the test of prima facie case has to be applied and if there is a ground for presuming that the accused might have committed the offence, then the court can justifiably say that a prima facie case existed against him and in the said situation, framing of charge is justified. If on the basis of material available on record, the court comes to the conclusion that the commission of offence is probable and if the court were to think that the accused might have committed the offence, it can proceed to frame charge. At the time of framing charge the probative value of the material on record cannot be gone into and the materials brought on record by the prosecution are to be accepted as true at that stage. Thus at the stage of framing charge, the court is required only to see whether there is a prima facie case for proceeding against the accused and not to see whether there is sufficient evidence for conviction and the court is not expected to see independent corroboration at that stage.

10. It is also settled that at the stage of considering the application for discharge, the court has to proceed with the presumption that the materials on record produced by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of the ingredients of the alleged offence and it is also

trite that no weightage is to be attached to the probable defence of accused at the time of framing the charges. It has been held in the catena of decisions that the strong suspicion against the accused even if the matter remains in the region of suspicion cannot take the place of proof of his guilt at the conclusion of trial, but at the initial stage even if there is a strong suspicion, which leads the court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no ground for proceeding against the accused and the court should proceed to frame charge against the accused. The evaluation of materials at the stage of Section 227 of Cr.PC is only for the purpose of deciding prima facie whether the court should proceed with the trial or not and at this stage, the accused can be discharged only if the evidence which the prosecutor proposes to adduce to prove the guilt of accused is fully accepted on its face value before it is challenged in the cross examination or evidence if any, then also it cannot be proved that the accused has committed the offence.

11. With this backdrop let me proceed to consider whether the materials placed on record by the prosecution in the case on hand, prima facie establishes that there is a ground to presume that there are sufficient grounds for proceeding against the accused.

12. It is seen from the records that on 22.02.2019, the complainant police registered case against one Ganesh Gowda, Sandeepa and others in Crime No.41/2019 for the offences punishable under sections 143, 144, 147, 448, 427, 506, 307, 511 and 120-B of IPC r/w. Section 149 of IPC on the basis of the written complaint lodged by one Kushal S.L. In the complaint and FIR, there is no specific allegation against accused No.2 herein and therefore, she was not arrayed as accused therein. After completing investigation, the complainant police submitted charge sheet against the accused Nos.1 to 8 for the offences punishable under sections 143, 144, 148, 450, 440, 506, 504, 307 and 120-B of IPC r/w. Section 34 of IPC and in the charge sheet, one Greemi, who is the wife of complainant is arrayed as accused No.2.

13. When the matter was set down for hearing the arguments before framing charge, the accused No.2 has filed this application seeking her discharge from the alleged offences on the premise that her name is not forthcoming in the complaint and FIR and as such she was not specifically arrayed as accused in FIR, but in the charge sheet she has been arrayed as accused No.2 even though no material has been placed on record to show her involvement in the crime in question.

14. On perusal of the complaint and FIR dated 22.02.2019, it is noted that though it is alleged by the complainant that the accused No.1 had issued

threat to him to take away his wife, there is no allegation as such against the accused No.2. But in the further statement, which is said to have been recorded by the police on 24.02.2019 i.e., two days after the lodgment of complaint, the complainant is said to have stated that his wife Greemi, the accused No.2 herein had contested Zilla Panchayath election and at that point of time, she became acquainted with the accused No.1 herein during campaign and since then his wife and accused No.1 developed intimacy and when he questioned her about the same, she had issued threat to take his life if he comes in their way, but he had not mentioned the same in the first information due to embarrassment and on account of family reputation. By stating about the phone numbers of his wife and the accused No.1, the complainant also alleged that they used to talk intimately over phone and when he questioned his wife about the same, quarrel had taken place between them on several occasions. He also alleged that when the accused No.1 and other accused committed the offence on 21.02.2019 at 11.30 p.m, his wife was not there in the house and she resided with accused No.1 in his farmhouse situated at Honnavarike since three months prior to then. The complainant further stated that his wife and accused No.1 had illicit relationship and therefore, they hatched conspiracy to kill him and consequently, the accused No.1 along with accused Nos.3 to 8 had attempted to take his life on that day.

15. Thus in the further statement of complainant dated 24.02.2019, there is clear allegation against the accused No.2 and the complainant has also stated about the reason for not making allegation against his wife i.e., accused No.2 at the earliest point of time in the first information statement reported by him to the police on 22.02.2019. When such being the case, at this stage, it cannot be said that there is no material to proceed against the accused No.2.

16. In addition to this, the statement of CW.11-Thejasvini, who is said to be the wife of accused No.1 is also made available on record. In the said statement, she is said to have stated that she and her daughter had been neglected by the accused No.1 herein and when she came to know about his illicit relationship with the accused No.2, she questioned him about the same and at that point of time, he insisted her not to raise any objection in the said regard as he would take care of her also or else to leave him. She is also said to have stated that her husband i.e., accused No.1 used to talk intimately with accused No.2 over phone in their house. Having regard to these aspects, it cannot said at this stage that there is no material to proceed against the accused No.2.

17. As stated above, at the stage of framing charge, the court is not supposed to look into the probative value of the materials placed on record by the prosecution and the court is required to

accept the same as true. Hence, this court is not supposed to look into the probative value of the complaint, further statement of complainant and the statements of witnesses and other materials placed on record by the prosecution and the same are required to be accepted as true. The allegations forthcoming in the further statement of the complainant and the statements of witnesses are sufficient at this stage to proceed against the accused No.2.

18. The standard of test, proof and judgment which is needed for finding of a guilt or otherwise is not necessary for framing of charge at this stage and even if a strong suspicion is founded on materials relied by the prosecution, the court can proceed against the accused and this court need not undertake an elaborate enquiry in sifting and weighing the materials and to verify truthfulness or otherwise of the statements of the aforesaid witnesses and the documents relied by the prosecution. If the allegations made in the complaint, further statement of the complainant and statements of witnesses recorded under Section 161 Cr.P.C and the documents produced by the prosecution are accepted as true at their face value, a strong suspicion is entertained regarding the commission of alleged offences by the accused No.2 and it is held in catena of decisions that if the court entertains even a strong suspicion on going through the prosecution materials, it is sufficient ground for proceeding against the accused by framing charges.

19. Further, at this stage, only the material produced by the prosecution to substantiate the allegations made against the accused have to be considered and the probable defence or any documents produced by the accused in support of their defence cannot be looked into. Moreover the veracity of the respective contentions of the prosecution and this accused needs to be tested and established in a full fledged trial and the same cannot be considered at this stage of framing charge.

20. Further, the accused cannot be discharged merely on the ground that there are inconsistencies in the statements of witnesses recorded under section 161 of CrPC. The veracity and truthfulness of the prosecution materials collected by the investigating agency during investigation and the other aspects contended by the accused is yet to be decided in full fledged trial and those aspects cannot be considered at the stage of framing the charge. In this regard, I place reliance on the decision of Hon'ble Supreme Court in the case of **Sheoraj Singh Ahlawath and others -VS- State of U.P. and others** reported in **2013(11) SCC 476**, wherein it has been held that:-

B- C.P.C. 1973- Ss.239 and 240-
Discharge of accused- refusal of, on
ground that inconsistency in materials
produced by prosecution cannot be looked

into for discharge of accused in absence of full – fledged trial- validity of- In her complaint, respondent 2- complainant alleging that appellant 3 accused (her husband) and appellants 1 and 2(her parents-in-law) subjected her to cruelty, harassment and demanded dowry- appellants-accused filing application for discharge based on contradictions in statement of witnesses- trial court rejecting their application concluding that discharge could be considered after prosecution adducing evidence- High court also declined to discharge appellant-accused-Tenability of- Held, allegations against all appellant-accused were specific-Truthfulness of those allegations could not be determined while framing charges and that can be ascertained only after conclusion of trial- court cannot speculate truthfulness of falsity of allegations made against accused while framing of charge- Contradictions and inconsistencies in statement of witnesses cannot be looked into at this stage for discharge of appellant-accused, though they may be considered after completion of trial- Though unscrupulous litigants take advantage of legal process and such measure might subject innocent persons, falsely implicated in criminal cases, to harassment but as long as legal requirement and settled principles do not permit discharge of accused, he cannot be

discharged- as allegations against appellant-accused were very specific, refusal of discharge was proper.

21. In the case of **State by Inspector of Police – VS- S. Selvi and another in 2018(13) SCC 455** the Hon'ble Apex Court has held at para 9 as follows:

9)..... On going through the judgment of the High court, we find that the High court has virtually appreciated the entire material on record as if the High court is trying a criminal case. It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case. At this preliminary stage, the High Court was not justified in concluding that the accused is entitled for discharge merely on the ground of discrepancy in the timings of the incident., The question as to whether respondent 1 was present on the place of incident or not during the relevant point of time or she had been in Calcutta as sought to be argued before this court is a matter of

proof. Such facts needs to be gone into by the trial court after recording the evidence.

22. Thus on perusal of the averments made in the further statement of the complainant and other materials placed on record by the prosecution, I could make out that there is sufficient ground to proceed against the accused No.2 as I could presume from the said materials available on record that the accused No.2 might have committed the alleged offences. Accordingly, I answer point No.1 in the negative.

23. **Point No.2**: In view of the findings on point No.1, I proceed to pass the following:

ORDER

The application filed by the accused No.2 under Section 227 of Cr.P.C is hereby rejected.

(Dictated to Stenographer Grade-I directly in computer, script corrected and then signed by me on this the 21st day of November, 2023)

Sd/-

(BHANUMATHI. B.C)

II Addl. District & Sessions Judge
Chikkamagaluru