



**IN THE COURT OF II ADDL. DISTRICT & SESSIONS JUDGE,
AT MANDYA.**

Dated this the 31st day of October 2023.

PRESENT

Sri Krishna Prasad Rao K. B.A, LL.B.,
II Addl. District & Sessions Judge,
Mandya.

S.C. No.113/2022

COMPLAINANT : State by Belakavadi Police Station.
(By learned Public Prosecutor, Mandya)

-Vs-

ACCUSED PERSONS : Sri Shadaksharaswamy and another.

**APPLICANT/
Accused No.2** : Sri H.S. Mahadevaswamy,
S/o Late Shanthaveerappa,
Aged about 52 years,
R/o Hagalahalli Village,
C.A. Kere Hobli, Maddur Taluk.

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1. Provision under which the application is filed : Under Section 227 of Cr.P.C.
2. Relief sought for : Discharge from the case.
3. The date on which the application is filed : 09.01.2023.
4. Number of the application : -

5. The date on which the objections
are filed by different opponent : 12.05.2023
6. The date on which the orders were
passed on the said application : 31.10.2023.

**ORDERS ON THE APPLICATION FILED BY THE ACCUSED NO.2
UNDER SECTION 227 OF CR.P.C.**

The Complainant police have filed final report against the accused persons for the offences punishable under Sections 302, 201, 498(A), 304(B) r/w Section 34 of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act.

2. The accused No.2 has filed application under Section 227 of Cr.P.C to discharge him from the above case. It is contended that on perusal of the complaint dated 17.11.2021 it reflects that there is absolutely no allegation made against the accused No.2. The 2nd complaint reflects that there was misunderstanding between accused No.1 and deceased about 2-3 months prior to alleged incident and thereafter deceased left the house of the accused No.1 and she was residing in her parents house and she used to attend computer classes from her parents house to K.M. Doddi. Thus, there is absolutely no allegations made against anybody including the accused No.2. During the investigation in connection with the above crime, the Complainant Police found as if accused No.1 has committed the murder of deceased and thereafter they have received complaint from father of deceased and arrested the accused Nos.1 and 2 on 21.11.2011 and produced the accused Nos.1 and 2 before the learned Senior Civil Judge and JMFC., at Malavalli on 21.11.2021 and alleging that they have committed offences

under Section 302, 201, 498(A), 304(B), 114 r/w Section 34 of I.P.C. and remanded the accused Nos.1 and 2 to judicial custody on 21.12.2021. Accused No.2 filed petition seeking for bail in Crl.Misc.No.1200/2021 on the file of the Hon'ble Prl. District and Sessions Judge at Mandya and the same came to be allowed on 06.12.2021 and thereafter accused No.2 was released on bail. In missing complaint as well as so-called 2nd complaint there was absolutely no allegations made against the accused No.2 and therefore there is no direct nexus to accused No.2 and the alleged incident.

3. Admittedly marriage of deceased with accused No.1 took place during COVID-19 Pandemic in the house of accused No.2. Thus there was no occasion to demand any dowry from the parents of the deceased and therefore the question of receiving any dowry do not arise at all. However in the so-called statements of witness under Section 161 of Cr.P.C. said to have been recorded by the Investigating Agency, discloses as if demand of dowry was not at the time of marriage talks and after two days it is alleged that there was demand of dowry and received the same by the accused and further there was absolutely no allegations made against the accused No.2 for having demanded alleged dowry as on the date of the marriage and till the death of deceased. Thus there is no overt-act attributed against the accused No.2 and further there is no direct nexus to the death of deceased and accused No.2. As such the investigating Agency falsely implicated the accused No.2 in the case on hand. The marriage of deceased with accused No.1 was an arranged marriage and there was

absolutely no demand of dowry or anything as alleged in the 2nd complaint. Admittedly, the marriage of deceased with accused No.1 held on 10.06.2020 and admittedly the father of deceased took the deceased fifteen days prior to lodging missing complaint to his village. Deceased has not resided in matrimonial house for longer period and therefore the question of giving any torture etc., to her does not arise at all. Admittedly, there is absolutely no allegation made against the accused No.2 and his wife accused No.3 as well as accused No.4. In spite of it, Complainant-police falsely implicated the accused No.2 and other accused in the above crime at the instance of persons who are not in good terms with them.

4. A kind perusal of the second complaint reflects that, the Complainant-police have prepared the same and obtained the signature of the father of the deceased as if the accused Nos.1 to 4 were committed the alleged offences. The entire allegations made against the accused No.2 in the second complaint is contrary to the 1st complaint. The Complainant-police without conducting preliminary enquiry, registered false case against the accused No.2 and falsely implicated his name in the charge-sheet. Complainant-police while investigating the matter have come to the conclusion that there was no evidence to show that the accused Nos.3 and 4 were involved in the alleged crime and accordingly they have deleted their names while filing charge- sheet. Thus, deleting the names of accused Nos.3 and 4 itself shows that the entire case of the Complainant-police against the accused-2 is also doubtful and cannot be believed at all. The entire allegations made in the charge-sheet

against the accused No.2 prima-facie doubtful and there is absolutely no material or evidence to connect the accused No.2 with destruction of evidence or hatching the conspiracy to commit the alleged offence by the accused No.2. The entire statement said to have been recorded under Sections 161 and 164 of Cr.P.C did not say anything about the involvement of the accused No.2 in the alleged offence rather than one alleged that as if the accused No.2 along with his wife demanded dowry and received the same. Except the said allegations, there is absolutely no overt-act attributed against the accused-2 in the alleged crime. Admittedly, the marriage took place in the house of accused No.2 during the period of COVID-19 pandemic and therefore the question of demanding any dowry and receiving the same do not arise at all. Prima-facie no material available to show the involvement of the accused No.2 in committing the alleged offence. Since accused No.2 is the father of accused No.1, the father of deceased made unnecessary allegations against the accused No.2 and accordingly the Complainant-police without application of mind, implicated his name in the charge-sheet. If the materials collected by the Investigating Agency are not sufficient to create any strong suspicion about the complicity of the accused No.2 in the crime then Court may discharge the accused No.2 from the above case as ruled out in **ILR 1988 Karnataka 1754**. It is settled principles of law that at the stage of charge, Court has to consider broad probability of case total effect of evidence any basic infirmity and find out whether prima-facie case made out against accused. No Specific allegations against the accused Court ought to have discharge them as ruled out in **2004(3) Crimes 566**. On the above said

grounds the accused no.2 prays this Court to discharge him from the above case.

5. The learned Public Prosecutor has submitted her objections opposing the application filed by the accused No.2. It is contended by the learned P.P. that the Complainant in his complaint dated 21.11.2011 stated that accused No.1 had killed his daughter, accused Nos.1 and 2 and accused No.1 father's brother Ravi and Anitha used to give dowry harassment. They obtained money and gold as dowry and accused persons instigated to kill his daughter. They obtained money from his son without his knowledge. Due to all these reasons accused Nos.1, 2 and given up accused persons are responsible for the killing of his daughter. The role of accused is important. All the witnesses had stated in their statement that Complainant and CW-6 went to Hagalahalli and gave Rs.80,000/- dowry to the hands of accused No.2. CW-6 had stated in his statement that one week prior to marriage he went to Hagalahalli and gave the dowry amount to accused No.2 in the presence of accused No.1. The friends of accused H.M. Shekar, H.K. Sudarshan, H.J. Shivaraju and Manu in their statements had given statement about dowry demand and giving of dowry by Complainant and CW-6 to accused No.2. She relied upon the following decisions :

- 1. SCC 2010(2) 398 in between Vijayan Vs State of Kerala.**
- 2. SCC 2012(9) 460 in between Amith Kapur Vs Rameshchandra.**
- 3. AIR 2014 SC 3502 in between Dinesh Tivari Vs State of U.P.**

4. 2014 CrI.L.J. 1444 in between State of Tamilnadu Vs N. Suresh Rajan.

5. AIR 1997 SC 1489 in between State of Karnataka Vs Muniswamy and others.

6. 2008 SAR (CrI.) P.897 in between Sangi Brothers Vs Sanjay Chowdary.

7. ILR 2008 Kar. P.2876 in between Shivaram Shetty Vs Delhi Police.

It is contended by the learned P.P. there are allegations against accused No.2. There is a prima-facie case against the accused No.2. He cannot be discharged without conducting trial. Hence she sought for dismissal of the application.

6. Heard both the sides. Perused the documents available on record.

7. The only point that arise for my consideration is :

Whether the accused No.2 has made out grounds to allow the application filed by him under Section 227 of Cr.P.C. as sought for ?

8. My finding on the above point is in **Negative** for the following ;

REASONS

9. The case of the prosecution as per charge-sheet averments is that during May-2020, accused Nos.1, 2 and 4 along with CW-10 came to the house of CW-1, looked at deceased S.Sandhya and asked to marry her and due to Corona decided to conduct marriage in the house of bride groom. On

next day accused Nos.1 and 2 went to the house of CW-1 in the presence of CW-1 to 3, 6 to 9 demanded dowry of Rs.1,00,000/- cash and one golden ring. When CW-1 told he does not have that much amount, accused did not agree. Thereafter CW-1 agreed to give Rs.80,000/- for the sake of his daughter well being. 4-5 days later engagement took place in the house of CW-1, as dowry CW-1 gave one golden ring weighing 6 grams to bride groom.

10. Prior to one week of date of marriage i.e., 10.06.2020, CW-1 and CW-6 went to S.I. Hagalahalli Village and gave Rs.80,000/- cash as dowry, in the presence of accused No.1, Accused No.2 took the money from CW-1 and marriage took place on 10.06.2020.

11. After marriage accused No.1 picked up quarrel with deceased Sandhya for the reason that they did not give dowry as demanded by them, abused and gave mental torture to her. CW-1 and 3 came to know about this from deceased, CW-3 as more dowry amount from her Canara Bank Account No.043423 00027128 through her mobile No.7892179249 to the friend of accused No.1, Karnataka Bank Account No.9272500101437901 to the mobile No.9964715254 sent Rs.25,000/- through Phone-pay. Accused No.1 harassed Sandhya to give more dowry from her parents house and CW-1 gave Rs.20,000/- one time and Rs.30,000/- on another time totally gave Rs.50,000/- to deceased and Accused No.1 obtained it.

12. Thereafter accused No.1 to fulfill his habits took golden necklace of Sandhya, gave it to CW-20 and obtained

money. He pledged engagement ring in the name of his friend CW-22 in Neel Kamal Pledge Shop at Chandupura Gate. Accused No.1 went to the house of CW-1 asked to give chain of her mother, CW-2 gave it to accused No.1. He threatened that if they inform the matter to his parents, he will desert their daughter. Thereafter gave chain to CW-19 and obtained amount.

13. Deceased Sandhya used to go to computer class at Manipal Computer Education Centre, K.M. Doddi and doubting her chastity, in order to kill her on 15.11.2021 went near computer class, talked with her took her in bike, as bike stopped, he left her. On 16.11.2021 accused No.1 in order to kill Sandhya took her in Honda Activa motor bike bearing No.KA-11-R-0532 came to K.M. Doddi at 10.30 a.m. took her to various places, CW-4 and CW-5 saw accused No.1 and deceased Sandhya in scooter near Thenkahalli Gate and they were proceeding to Kunduru Betta. Accused No.1 under the guise of proceeding to Kunduru Betta, took her on canal top road at 1.00 p.m. asked Sandhya to wash her hands and legs in the Nanjapura Irrigation, Kunduru Canal water, when Sandhya was getting down in the flowing water, he strangulated the neck of Sandhya drowned her in water, suffocated her and killed her and in order to destroy evidence pushed the dead body in the water.

14. It is the contention of accused No.2 that on perusal of 2 complaints, there is no allegation made against accused No.2, accused No.2 has nothing to do with the incident, there is delay in moving criminal law into motion, due to pandemic, there was no occasion to demand dowry, there are no eye witnesses, the

case is based on circumstantial evidence, if accused No.2 demanded dowry, question of deleting accused Nos.3 and 4 from charge-sheet does not arise, there is no participation of accused No.2 in committing murder of deceased, there is no material to file charge-sheet against accused No.2 and prayed to discharge accused No.2.

15. The counsel for Applicant relied upon the following decisions :

- 1. AIR 2009 SC 1013 in between Rukmini Narvekar Vs Vijaya Satardekar and others.**
- 2. 2010 Cri.L.J. 2672 in between Pradeepkumar Vs State of Karnataka.**
- 3. ILR 1998 Kar 1754 in between State of Karnataka Vs Khawali @ Babujan.**
- 4. 2018(1) KCCR 28 in between Shamabanu Imtiyaz Ahmed Jambagi and others Vs State of Karnataka by High Grounds Police Station.**

I have gone through the above rulings. The facts of the said case are different and are not applicable to the case in hand.

16. On the other hand it is the contention of learned P.P. that accused demanded Rs.1,50,000/- as dowry and obtained Rs.80,000/-, CW-1 and 6 went to house of accused No.2 and gave dowry amount and accused No.2 received it. When the deceased was going to computer class, accused No.1 met her and in order to kill her drowned her in canal water, all the witnesses had corroborated each other regarding the taking of dowry by accused persons, CW-6 and CW-1 one week prior to

marriage went and gave amount to accused No.2 in the presence of accused No.1, accused No.2 had instigated accused No.1 to kill the deceased and prayed to reject the application.

17. CW-1, CW-2, CW-3, CW-6, CW-9, CW-10 and CW-11 have given Section 161 of Cr.P.C. statement before police wherein they had stated regarding the obtaining of dowry by accused Nos.1 and 2. All those allegations made against accused No.2 have to be proved at full fledged trial. It cannot be said that no material is found to proceed with the case against accused No.2. Records point out that there is a prima-facie case against the accused No.2 regarding the dowry harassment to deceased.

18. Perusal of the records reveal that, the allegations made against the accused No.2 are that he had also demanded dowry from CW-1 and also received dowry amount and in collusion with accused No.1 gave mental harassment to deceased Sandhya.

19. The Hon'ble Prl. District and Sessions Judge, Mandya while granting regular bail to accused No.2 has observed in its order that :

"On the basis of said voluntary statement, I.O. came to know that accused No.2 H.S. Mahadevaswamy being a father of accused No.1 also instigated to the accused No.1 to commit said offence. On reading of remand application, voluntary statement, it reveals that accused No.2 Mahadevaswamy was not at all present at

spot, he was not directly participated in the crime. Accused No.2 Mahadevaswamy is aged about 52 years and permanent resident of Hagalahalli Village, Maddur Taluk. Whether the petitioner instigated to the accused No.1 to commit said offence or not is a matter of trial and requires evidence".

20. Records point out that, there is a prima-facie case against the accused no.2 regarding the dowry harassment to deceased. In the circumstances, the accused No.2 is not entitled for discharge from this case. With these observations, I answer this point in the Negative and I proceed to pass the following :

ORDER

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

(Dictated to the Stenographer transcribed by her and transcript, corrected by me and then pronounced in open Court on this the **31st day of October 2023**)

(Krishna Prasad Rao K.)
II Addl. District & Sessions Judge,
Mandya.

