

IN THE COURT OF SESSIONS JUDGE, BULDANA.

(Presided over by Mr. S.C. Khati)

Sessions Case No.53/2021.

(CNR : MHBU010010972021)



State of Maharashtra (P.S. Dhad)

Vs.

Rahul Sandu Borkar + 3

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Order below Exh.59.

(Dated : 20-06-2024)

Prologue:

1. The applicants/accused persons *viz.* Sandu Vithoba Borkar, Kamalbai @ Shahubai Sandu Borkar & Sima w/o Kailas Gaikwad have made present application under Section 227 of the Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') for their discharge from the case.

Facts in short:

2. The applicants/accused are arraigned for having committed offences punishable under Sections 498-A, 304-B, 323 read with 34 of Indian Penal Code, 1860 (for brevity 'I.P.C.') alongwith deceased co-accused Rahul Borkar/accused No.1, vide Crime No.30/2020 registered with Dhad Police Station, on the report being lodged by one Dnyaneshwar Ramdas Kharat, who

asseverates that his daughter Pooja (deceased) was married to Rahul Sandu Borkar/accused No.1 (now dead). It is alleged by Dnyaneshwar Kharat that his daughter Pooja was incessantly harassed for demand of dowry by the applicants/accused and deceased accused No.1 Rahul; due to non-payment of said dowry amount, they kept her on starving and burnt clothes on her person; and due to extreme torture, harassment and cruelty inflicted, his daughter Pooja consumed rat killing poison on February 16, 2020 and died on February 19, 2020.

3. The contention of Shri P.R. Sanap, learned Chief Legal Aid Defence Counsel for applicants/accused is that in the statement of Dnyaneshwar Kharat recorded under Section 161 of Cr.P.C. on 21-02-2020, only instance of the year 2018 is narrated, in which name of applicant/accused Seema is mentioned. Further, learned counsel would contend that there are no grave allegations of demand of dowry and cruelty alleged against the applicants/accused. Learned counsel buttresses his contention by relying upon the statement of one Kailas Gaikwad, who is husband of applicant/accused No.4 Seema Gaikwad, wherein he mentions that his wife has been unnecessarily entangled in the offence; in

fact, at the time of registration of crime, she was carrying pregnancy of six months and she delivered a baby girl on May 25, 2020; furthermore, she resides with him at her matrimonial home at Pimpalgaon Sarai, Tq. Chikhli, which is far away from the house of deceased Pooja. Learned counsel further brought attention of this Court towards the dying declaration of deceased Pooja, wherein she has not raised any aspersion against the applicants and deceased accused No.1, who was her husband and is already expired during pendency of the proceeding. Learned counsel would contend that in absence of evidence, prima facie case is not made out against the applicants/accused to frame charge against them. Learned counsel would contend that taking into consideration age and medical ailment of the applicants, they be discharged so as to avoid persecution of rigmarole trial. Hence prayed for discharge.

4. *Per contra*, Shri V.L. Bhatkar, learned Public Prosecutor for State strongly opposed the application contending that the informant Dnyaneshwar Kharat has specifically alleged the role of all applicants in commission of the crime about demand of dowry in his oral report. He further alleges that for non-fulfillment there was incessant ill-

treatment and harassment. Learned counsel also brought attention of this Court towards the statements of Vasanta Narote, Rameshwar @ Pintu Narote & Madhaorao Ingle to contend that the deceased had spelt before them about ill-treatment inflicted upon her and predetermined intention to end her life due to harassment at the hands of applicants and co-accused. Learned counsel would contend that there is sufficient prima facie material to nail the applicants/accused in the crime and, therefore, they do not deserve to be discharged at this stage.

5. I have heard learned Chief Legal Aid Defence Counsel Shri Sanap and learned Public Prosecutor Shri Bhatkar for the parties. Perused charge-sheet.

Law on discharge:

6. At the outset, it would be just to refer the principles of law on discharge, as laid down in the case of **Vishnu Kumar Shukla and Another v. State of Uttar Pradesh and Another**, AIR 2024 Supreme Court 90, specifically in Para Nos.20, 21 & 22, which read as under,

20. In State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both

provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, State of Bihar v Ramesh Singh, (1977) 4 SCC 39; Union of India v Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v Dilip N Chordia, (1989) 1 SCC 715; Niranjana Singh Karam Singh Punjabi v Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v Shiv Charan Bansal, (2020) 2 SCC 290. We need only refer to some, starting with Prafulla K Samal (supra), where, after considering Ramesh Singh (supra), K P Raghavan v M H Abbas, AIR 1967 SC 740 and Almohan Das v State of West Bengal, (1969) 2 SCR 520, it was laid down as under:

'10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

(emphasis supplied)

21. In Niranjana Singh Karam Singh Punjabi (supra), this Court was alive to reality, stating that '... it cannot be expected even at the 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.' If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in Sajjan Kumar v Central Bureau of Investigation, (2010) 9 SCC 368. The Court, in Dinesh Tiwari (supra) had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is 'strong suspicion', reference to Dipakbhai Jagdishchandra Patel (supra) is warranted, where it was explained that it is '... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.'

22. In a recent judgement viz. State of Gujarat v Dilipsinh Kishorsinh Rao, 2023 INSC 894 : (AIROnline 2023 SC 865), this Court held:

'7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the

investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. *At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.*

9. *If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.*

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. ...*

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11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. 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. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.' (emphasis supplied)

7. In view of principles of law enunciated by Hon'ble Supreme Court in the above cited case, this Court has to prima facie see whether the offence has been committed and whether there is sufficient ground to proceed against the accused.

8. While analyzing prima facie case, foremost material is the oral report of Dnyaneshwar Kharat, father of deceased Pooja, who has alleged that his daughter deceased

Pooja has stated that the applicants/accused and deceased accused No.1 were demanding dowry and used to state her to bring amount of dowry; and on her failure, they assaulted her, burnt the clothes on her person and kept her on starvation for four days. When deceased had narrated the aforesaid instances to the Police Patil Mahadu Ingle, Sarpancha Vasanta Narote, President of Tanta Mukti Committee Rameshwar Narote, they had held a meeting and gave understanding to her in-laws.

9. I have gone through the statements of Vasanta Narote, Rameshwar @ Pintu Narote & Madhaorao Ingle, who had categorically stated that on 15-02-2020 Pooja and her mother had come to them and they narrated about the ill-treatment inflicted upon Pooja by applicants and co-accused and, therefore, a meeting was arranged and understanding was given to in-laws of Pooja; at that time, deceased Pooja had also stated to them that she got disgusted due to incessant harassment at the hands of applicants and deceased accused No.1 and she would end her life.

10. From the statements of informant and other witnesses, there appears a prima facie case against the applicants/accused having committed the offence of cruelty inflicted

upon deceased Pooja in order to fulfil their unlawful demand of money, voluntarily causing hurt to deceased Pooja and death of deceased Pooja is within seven years of her marriage under unnatural circumstances. This Court, on the aforesaid principles of law, has evaluated the material on record and found that there are suspicious circumstances against the applicants/accused and is also satisfied that the evidence on record gives rise to to strong suspicion. The evidence on record against the applicants/accused depicts prima facie commission of the offence under Sections 498-A, 304-B, 323 read with 34 of I.P.C. as the allegations of harassment and cruelty to deceased Pooja are just before her death. At this stage, this Court do not intend to place much reliance on the dying declaration given by deceased Pooja; the same has to be proved during the course of trial. Further, material on record has to be taken holistically. Therefore, there is sufficient material to frame charge against the applicants/accused. Hence this Court is not inclined to consider present application of applicants/accused for their discharge from the case, which deserves to be rejected. Hence I pass the following order.

Order

Application (Exh.59) stands rejected.

Date: 20-06-2024. **(S.C. Khati)**
Sessions Judge, Buldana.
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