

(2015) 03 BOM CK 0032

In the Bombay High Court

Case No : Criminal Revision Application No. 31 of 2015

Caetaninho Julio Barreto

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113-B
Penal Code, 1860 (IPC) — Section 304-B, 306, 498-A

Citation : (2015) 03 BOM CK 0032

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : C.A. Ferreira and R. Almeida, for the Appellant; M. Amonkar, APP,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.V. Bhadang, J.—Admit.

2. The learned Additional Public Prosecutor waives notice on behalf of the respondents.

3. Heard finally, with the consent of the learned Counsel for the parties.

4. By this Criminal Revision Application, the original accused is challenging the order dated 01/12/2014, by which, the learned Additional Sessions Judge, Panaji has directed a charge under Sections 306, 304-B and 498-A of Indian Penal Code (I.P.C., for short) to be framed against the applicant.

5. The brief facts, necessary for the disposal of the Revision Application, may be stated thus :

That the applicant was married with now deceased Fatima Pereira on 20/09/2008. It is said that the deceased was highly educated and was working

as a Lecturer in Mathematics. According to the prosecution, the marriage ran into rough weather shortly thereafter and the parties started staying separately from 27/11/2008. While the deceased Fatima was staying with her father Thomas Pereira, she committed suicide by hanging. The incident occurred on 06/04/2009. On the basis of the complaint lodged by Thomas Pereira, an offence came to be registered with the concerned police station and on investigation, a chargesheet was filed against the applicant for the offences punishable under Sections 306, 498-A and 304-B of I.P.C. before the learned Sessions Court at Panaji. It appears that the learned Sessions Judge heard the parties on the point of framing of charge and by the impugned order dated 01/12/2014, has directed the charge to be framed under offences punishable under Sections 306, 498-A and 304-B of I.P.C. The applicant, in particular, is aggrieved by the framing of the charge under Section 304-B of I.P.C. That is how the applicant is before this Court. 6. I have heard Shri C.A. Ferreira, learned Counsel for the applicant and Shri Amonkar, learned Additional Public Prosecutor for the respondents. With the assistance of the learned Counsel for the parties, I have perused the copy of the chargesheet and the statements of the witnesses annexed thereto as also the impugned order.

7. It is submitted by Shri C.A. Ferreira, learned Counsel for the applicant that the statements of the witnesses, in this case, in particular that of Thomas Pereira, who is father of the deceased and Jose Pereira, the elder brother of the deceased, do not make out any case of ill-treatment being meted out to the deceased "in connection with the demand of dowry". It is submitted that for the offence of commission of "dowry death", as defined under Section 304-B of I.P.C., unnatural death of the wife within 7 years of marriage and evidence about ill-treatment in connection with non satisfaction of demand of dowry, is a sine qua non. It is submitted that in the present case, this essential ingredient is lacking. The learned Counsel has taken me through the statements of the witnesses as recorded by the Investigating Officer, in order to point out that there are no allegations of any ill-treatment to the deceased arising out of a demand for dowry.

8. The learned Counsel submitted that the deceased was an educated lady and earning for herself as she was Lecturer in Mathematics. It is submitted that the deceased had, in fact, filed a petition for divorce, as also proceedings under the Domestic Violence Act. It is submitted that the unfortunate incident occurred a day before, the matter under domestic violence act was fixed before the learned Magistrate, in which the deceased was under cross-examination. The learned Counsel has also taken me through the complaint filed by the deceased under Domestic Violence Act as also her evidence in the said proceedings, in order to show that there are no allegations of demand of dowry as such or ill-treatment in connection thereto. The learned Counsel has placed reliance on the decision in the case of L. Krishna Reddy Vs. State by Station House Officer and Others, , in order to submit that the Court is neither a substitute nor an adjunct of the prosecution and once a case is presented to it by the prosecution, its bounden

duty is to sift through the material to ascertain whether prima facie case has been established which would justify and merit prosecution of a person. It is submitted that interest of a person wrongly arraigned as accused must also be kept in perspective lest, on basis of flippant and vague or vindictive accusations, bereft of probative evidence, the accused would be required to suffer the ordeal of trial. Reliance is also placed on the decision in the case of Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, and P. Vijayan Vs. State of Kerala and Another, in support of the statement that at the stage of Section 227 of the Code of Criminal Procedure (Cr.P.C., for short), the Judge has merely to sift through the evidence, in order to find out whether or not there is sufficient ground for proceeding against the accused. It is submitted that at this stage, sufficiency of ground would take within its fold the nature of evidence recorded by the police or the documents produced before the Court, which ex-facie disclose that there are suspicious circumstances against the accused, so as to frame a charge against him. The learned Counsel would submit that what would be required, is strong suspicion.

9. Reliance is placed on the decision in the case of Ramaiah Vs. State of Karnataka, and K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, , in order to submit that where the demand for dowry is not proved, the question of drawing presumption under Section 113-B of the Indian Evidence Act, would not arise. He, therefore, submitted that the impugned order, to the extent of directing framing of charge under Section 304-B of I.P.C., cannot be sustained and deserves to be set aside.

10. On the contrary, Shri Amonkar, learned Additional Public Prosecutor has supported the impugned order. It is submitted that at the stage of framing of charge, a Sessions Judge is not expected to embark into a detailed appreciation of the material/ evidence on record. It is submitted that what Section 227 of Cr.P.C. requires is only whether or not there are sufficient grounds for proceeding against the accused. The learned Additional Public Prosecutor has submitted that there are statements of Thomas Pereira and Jose Pereira, which would show that the applicant was insisting for the details of the fixed deposits/ salary of the deceased since prior to the marriage i.e. since the deceased was employed and was also insisting for transferring the fixed deposit receipts in his own name. It is submitted that if this prima facie material is considered in conjunction with the allegations of ill-treatment, it would be sufficient at this stage to hold that there are sufficient grounds for proceeding against the accused as required under Section 227 of Cr.P.C. The learned Additional Public Prosecutor has submitted that Section 304-B imports the definition of dowry as contained in the Dowry Prohibition Act, 1961 (the Act of 1961, for short). The learned Additional Public Prosecutor has submitted that the definition of "dowry", as contained in Section 2 of the Act of 1961 was amended twice i.e. by Act No. 63 of 1984 and thereafter, by Act No. 43/1986. It is submitted that by the amendment effected in the year 1986, any demand of property or valuable security even after the marriage is brought into the ambit of dowry provided it is in connection with the marriage of

the parties. It is submitted that such a demand would also include the demand from one party to the marriage to the other party to the marriage. The learned Additional Public Prosecutor has placed reliance on the decision in the case of Pawan Kumar and Others Vs. State of Haryana, , in order to submit that such a demand by the very nature of things does not conceive any agreement for dowry and that has to be inferred from the circumstances. He, therefore, urged that the Revision Application be dismissed.

11. On hearing the learned Counsel for the parties and on perusal of the statements of the relevant witnesses and the impugned order, I do not find that any case for interference is made out. There cannot be any manner of dispute that at the stage of framing of charge, the Court is only required to see whether there are sufficient grounds for proceedings against the accused within the meaning of Section 227 of the Cr.P.C.

12. In the case of Yogesh (supra), the Hon"ble Supreme Court was concerned with the application for discharge by the Juvenile Justice Board. The following observations in paragraph 16 may be reproduced with profit -

"16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material 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 a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [See: State of Bihar Vs. Ramesh Singh, and Prafulla Kumar Samal; (1977)4 SCC 39." 13. In the case of P Vijayan (supra), the Hon"ble Apex Court has observed thus :

"11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

25. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that "there is not sufficient ground" for

proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure."

14. In the present case, there is no evidence in the form of any statement/ dying declaration of the deceased. The statements, mainly relied upon on behalf of the prosecution, are that of Thomas Pereira and Jose Pereira, respectively, the father and the elder brother of the deceased. They prima facie show that the applicant had started demanding the information as to the total savings of the deceased and asked her to list the Fixed Deposits, National Savings Certificate, etc. He also demanded an explanation why the savings of the deceased are less than his expectation, as calculated taking into account the total number of her service tenure and he was asking the deceased to bring back the monies spent on the maternal house at Ribandar. In this case, admittedly, the death has occurred within 7 months of the marriage and in unnatural circumstances and there is prima facie material to show that there was a demand in respect of the Fixed Deposits/ monies representing the earnings of the deceased, prior to the marriage and ill-treatment. The definition of dowry as contained in Section 2 of the Act of 1961 would show that such a demand by one party to the marriage to the other party to the marriage, would also come within the ambit of the said definition. In such circumstances, in my considered view, no exception can be taken to the impugned order as passed. I would hasten to add that having regard to the stage at which the trial stands, the observations are essentially prima facie in nature and the learned Sessions Judge would not be influenced by the same at the trial. Subject to this, Criminal Revision Application is dismissed, with no order as to costs.