
(2023) 01 BOM CK 0116

In the Bombay High Court

Case No : Criminal Application No. 649, 651 Of 2019

Chetan And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 107, 304B, 306, 498A
Code Of Criminal Procedure, 1973 — Section 227, 228, 482

Citation : (2023) 01 BOM CK 0116

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : P.A. Abhyankar, H.D. Dubey, Shweta D. Wankhede

Final Decision : Dismissed

Judgement

G. A. Sanap, J

01] Applicant in Criminal Application No.649 of 2019 is the accused No.4 and applicant in Criminal Application No.651 of 2019 is the accused No.6 in Sessions Trial No.512 of 2016. They applied for discharge in Sessions Trial No.512 of 2016 arising out of Crime bearing No.103/2016 for the offences punishable under sections 304-B, 306, 498-A read with Section 34 of the Indian Penal Code, 1860 (for short "IPC"). In view of this, both these applications are being disposed of by the common judgment. The learned Additional Sessions Judge, Nagpur vide order dated 12th April, 2019 rejected the applications made by the applicants for their discharge.

02] The facts relevant for decision of the applications can be summarized as follows:

Deceased Ekta and accused No.5 Alop were married on 29th January, 2015. Applicants/accused Nos.4 and 6 are the brothers of accused No.5 Alop. Accused No.1, in the case, is the mother of the applicants. Accused No.2 is the father of the applicants. Accused No.3 is the wife of the accused No.6.

03] The crime came to be registered on the report lodged by brother of the deceased on 24th February, 2016. Deceased committed suicide on 24th February, 2016. It is the case of the prosecution that after marriage, for some time, the deceased stayed with the accused persons at their house at Nagpur. Accused No.5 Alop and accused No.6 Anup are serving in Army. Deceased Ekta and accused No.5 Alop went to Jammu and Kashmir at the place of posting of Alop. They stayed there till December, 2015. It is stated that after 2-3 months of the marriage, the accused started ill-treating the deceased. They were alleging that the deceased was not able to do the household work. The deceased was also forced to do the extra household work. The accused demanded money of the share of the deceased from the informant and his mother. The deceased did not agree for the same. She did not pay any heed to their demand. On that count, the accused tortured and ill-treated the deceased.

04] In January, 2016, accused No.5 Alop was transferred from Jammu and Kashmir to Allahabad. The deceased insisted to join him at the place of his posting. The family members did not allow the deceased to accompany him. It is stated that the accused No.6 and the family members had gone to the residence of the accused No.5 at the place of his posting in Jammu and Kashmir. They all made a demand of money from the deceased. The accused No.6 would always insist the deceased to observe the family tradition of taking Ghunghat. On that count also, the deceased was ill-treated. The informant stated in his report that the deceased narrated about this ill-treatment and torture meted out to her, to him and other family members. At once, they had decided to lodge the report with the police, however, the deceased insisted not to lodge the report, because at the time the accused No.2 had sustained the Paralytic Stroke. It is stated that the deceased was subjected to ill-treatment and torture on account of failure to meet the demand of money. She was also ill-treated and tortured on other counts. When the ill-treatment became unbearable, the deceased committed suicide by hanging from the ceiling fan.

05] On the basis of the report, the Crime bearing No.103/2016 was registered against the accused persons. The investigation conducted in the crime revealed the involvement of the accused No.1 to 6 in the commission of crime. Therefore, the charge-sheet came to be filed against all the accused.

06] In the discharge applications, it is the case of the applicants that no specific role has been attributed to them. The allegations made against them are vague and general in nature. Their names have not been specifically mentioned by all the witnesses. No specific role has been attributed to them by the witnesses. The material compiled in the charge-sheet is not sufficient to form a prima facie opinion about their involvement in the commission of crime. The applicants, therefore, prayed for their discharge.

07] The main contention of the prosecution while opposing the applications for discharge is, that the material compiled in the charge-sheet is cogent and concrete. At this stage, the said material is sufficient to form a prima facie

opinion with regard to the involvement of the accused in the commission of crime. The evidence, which has been compiled in the charge-sheet, cannot be tested on merit at this stage. No case has been made out for discharge.

08] Learned Additional Sessions Judge, on consideration of the material placed on record in the charge-sheet, found that a specific role has been attributed to the applicants. The learned Additional Sessions Judge found that the material placed on record is sufficient to frame the charge and, therefore, rejected the applications. The applicants are before this Court against the said order.

09] I have heard Mr. P.A. Abhayankar, learned advocate for the applicants, Mr. H.D. Dubey, learned Additional Public Prosecutor for the non-applicant No.1/State and Ms. Shweta Wankhede, learned advocate for the non-applicant No.2/informant. Perused the record and proceedings.

10] Learned advocate for the applicants submitted that the accused No.6 did not stay with the accused No.5 and the deceased at any time. He is a soldier in the Army and at the relevant time, he was posted at Delhi. Learned advocate further submitted that the names of the applicants were not initially mentioned in the First Information Report (for short "FIR"). Their names were stated in the subsequent statement of the informant and in the statements of some of the witnesses. Learned advocate submitted that even in the statements of the witnesses, no specific role has been attributed to them. In order to substantiate his submission, learned advocate took me through the contents of the FIR and the statements of the witnesses, relied upon by the prosecution. Learned advocate submitted that the allegations made by the witnesses are vague and general in nature. In the statements, the omnibus allegations have been made against all the accused. Learned advocate submitted that on the basis of the material compiled in the charge-sheet, the ingredients of the offences mentioned above have not been made out. Learned advocate, therefore, submitted that the applicants deserve to be discharged from this case. It is submitted that the learned Additional Sessions Judge has not taken all these aspects into consideration.

11] In order to substantiate his submissions, learned advocate for the applicants has relied upon the following decisions:

- 1) Somnath s/o. Ashok Darekar Vs. The State of Maharashtra & Anr. [2018 ALL MR (Cri) 290].
- 2) Kahkashan Kausar Alias Sonam Vs. State of Bihar and Others [(2022) 6 SCC 599].
- 3) Ramesh Kumar Vs. State of Chhattisgarh [(2001) 9 SCC
- 4) Randhir Singh and Another Vs. State of Punjab [(2004) 13 SCC 129.
- 5) Sanjay Kumar K. Shinde Vs. The State of Maharashtra [2015 ALL MR (Cri) 1085].

6) Mahendra Madhavdas Mundada & Ors. Vs. State of Maharashtra [2015 ALL MR (Cri) 868].

7) Gangula Mohan Reddy Vs. State of Andhra Pradesh [(2010) 1 SCC 750].

12] Learned Additional Public Prosecutor submitted that at the stage of framing of charge or decision on the application for discharge, threadbare analysis and appreciation of evidence is not warranted. Learned Additional Public Prosecutor submitted that the evidence, relied upon by the prosecution, cannot be tested on merit at the stage of framing of charge. Learned Additional Public Prosecutor submitted that the FIR is not an encyclopedia of the case on the prosecution. Learned Additional Public Prosecutor submitted that the basic facts stated in the FIR and the evidence collected during the course of investigation together have to be taken into consideration to find out whether the involvement of the accused has been made out or not. Learned Additional Public Prosecutor submitted that the decisions, relied upon by the learned advocate for the applicants, cannot be made applicable at this stage of the proceeding. Learned Additional Public Prosecutor submitted that there is sufficient evidence on record to attribute a specific role to the accused persons and particularly these applicants. Learned Additional Public Prosecutor submitted that the facts stated in the discharge applications and the submissions advanced consistent with the applications are in the form of defence of the accused. Learned Additional Public Prosecutor, therefore, submitted that no error has been committed by the learned Additional Sessions Judge while rejecting the applications.

13] Learned advocate for the non-applicant No.2/ informant adopted the submissions advanced by the learned Additional Public Prosecutor. Learned advocate submitted that in the statement of the informant recorded on 27th February, 2016, he has categorically stated that the accused did not attend the funeral of the deceased, which was held on 25th February, 2016. Learned advocate pointed out from the statement of the informant recorded on 27th February, 2016 that the funeral was performed on 25th February, 2016 at 11:00 a.m. Learned advocate pointed out that the FIR was registered on 24th February, 2016 at 15:03 hrs. Learned advocate, therefore, submitted that the report against the accused persons was lodged before performing the funeral of the deceased by the informant. Learned advocate submitted that, therefore, this fact is required to be borne in mind, while appreciating the facts stated in the FIR.

14] In order to appreciate the rival submissions, I have minutely gone through the record and proceedings and particularly to the facts stated in the FIR as well as in the statements of the witnesses. The report was lodged immediately. The ground of delay in lodging the report is, therefore, not available to the applicants. The promptness in lodging the FIR is the relevant fact. The fundamental object of the FIR is to act as a safeguard against, "embellishment, exaggeration and forgetfulness". The promptness displayed in lodging FIR can rule out the possibility of a false implication in connivance and afterthought. After report, the investigation in the crime was conducted. The statements of the

witnesses were recorded. The Investigating Officer found the collected evidence sufficient to establish the complicity of the accused in the commission of crime and, therefore, he filed the charge-sheet against all the accused.

15] I have gone through the FIR and the statements of the witnesses. Perusal of the FIR would show that all the facts disclosed during further investigation through the witnesses have not been stated in detail in the FIR. Certain facts with regard to the torture and ill-treatment and the reasons for the ill-treatment, which ultimately led the deceased to commit the suicide, have come on record in the statements of the witnesses. In my view, one has to keep in mind the mental condition of the informant, when he lodged the report. The dead body of his sister was lying in the hospital. The accused did not take a lead role in the matter and particularly in the funeral of the deceased. In the backdrop of the facts prima facie revealed during the course of investigation, one can easily visualise the mental condition of the informant after the death of his sister. In my view, this fact would be relevant in this proceeding all throughout and will have to be taken into consideration, while appreciating the submission on this point.

16] Before proceeding to look into the material relied upon by the prosecution to frame the charge against the accused, it would be necessary to consider the settled legal position required to be applied, while deciding the application for discharge or at the stage of framing of charge. In this respect, three decisions of the Hon'ble Apex Court can be made applicable. The decisions are in the cases of Tarun Jit Tejpal Vs. State of Goa and Another [(2020) 17 SCC 556], Niranjana Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijaya and Others [(1990) 4 SCC 76] and Sajjan Kumar Vs. Central Bureau of Investigation [(2010) 9 SCC 368].

17] The earlier decisions in the cases of Niranjana Singh and Sajjan Kumar (supra) have been followed in the case of Tarun Jit Tejpal (supra). It is held in these decisions that appreciation of evidence at the time of framing of charge under Section 228 of Cr.P.C. or while considering discharge application filed under Section 227 of Cr.P.C. is not permissible. The Court is not permitted to analyse all the material touching the pros and cons, reliability or acceptability of the evidence. In Tarun Jit Tejpal's case (supra), it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouth piece 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 held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by 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, the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that 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 accused has been made out. It is further held that the law does not permit a mini trial at the stage of deciding the discharge application or at the time of framing of charge.

18] In my view, in order to resolve the limited controversy at this stage and to decide the applicability of the law laid down in the judicial pronouncement (supra), it would be necessary to go through the record and proceedings and particularly the material compiled in the charge-sheet. The FIR was registered on 24th February, 2016. In the FIR, the informant stated about the specific role of the accused persons and ill-treatment meted out to deceased by the accused persons named in the FIR. In the FIR, the names of husband, mother-in-law, father-in-law and sister-in-law Shraddha were specifically mentioned. The names of the applicants were not mentioned. The names of the applicants and the specific role attributed to them can be seen from the statement of the informant recorded on 27th February, 2016 and the statements of the remaining witnesses namely Neha friend of the deceased, Deepali sister of the deceased, Lata mother of the deceased, Krupali wife of the informant and Ankush husband of Krupali. Perusal of the statements would show that with names, the role attributed to each one of the accused has been stated. It is to be noted, at this stage, that simply because of the absence of the names of the applicants in the FIR and the specific role attributed to them in the FIR would not be a ground to discharge them from this crime.

19] In the above context, I may make a useful reference to the decision of the Hon'ble Apex Court in the case of Superintendent of Police, CBI and Others Vs. Tapan Kumar Singh [(2003) 6 SCC 175]. In this case, it is observed that the law does not require the mentioning of all the ingredients of the offence in the FIR. It is observed that it is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency. It is further held that an FIR is not an encyclopedia, which must disclose all the facts and details relating to the offence reported. If one were to search for all the ingredients of an offence in the FIR, which is only a mere report about the commission of cognizable offence, the chances are that very often all those ingredients may be absent. The details of the crime and the accused unravelled during the investigation undertaken by the police has to be taken into consideration.

20] In my view, therefore, on this ground, the prayer for discharge made by the applicants was rightly rejected by the learned Additional Sessions Judge. Minute perusal of the statements of the witnesses and the statements of the informant would show that they have specifically named all these applicants. They have attributed a specific role to them and the reason for torture and ill-treatment to the deceased at their hands. It is not their case that during the entire investigation, the names of the applicants were not stated by the witnesses and no specific role was attributed to them. If the witnesses had not named them or

attributed any specific role to them, then they would have been justified in contending that there is no evidence at all against them and, therefore, they are entitled to be discharged. In this case, the witnesses have attributed a specific role to the applicants. It is to be noted that the material compiled in the charge-sheet has to be considered in totality to address the issue of mens rea of the accused behind the ill-treatment, which drove the deceased to take an extreme decision to end her life. If the material on record is prima facie considered by applying the above stated settled legal position, in my view, the applications made by the applicants cannot be allowed. The facts stated in the applications for discharge spell out the defence of the accused persons. In order to appreciate their defence at this stage, the exercise of the appreciation of the material on record would be required to be undertaken. At this stage, the pros and cons of the material cannot be tested on merit. No comment can be made with regard to the credibility of the material, relied upon by the prosecution against them. If it is so done, then it would cause prejudice either to the prosecution or to the accused. If the threadbare analysis of the material relied upon by the prosecution is made at this stage, then in my view, it would be nothing short of holding a mini trial. The mini trial is not permissible at the stage of discharge. I, therefore, agree with the learned Additional Sessions Judge that there is a material on record against the applicants and the said material is sufficient to prima facie establish their complicity in the commission of crime.

21] I have perused the decisions relied upon by the learned advocate for the applicants. In the case of Somnath Darekar (supra), the Division Bench of this Court found that there was no material at all to warrant the continuation of the prosecution and based on this finding, the FIR by invoking the provisions of Section 482 of the Cr.PC for the offences punishable under Sections 498-A, 306 and 304-B IPC was quashed. The Division Bench found that the material on record was not sufficient to establish the basic ingredients of Section 107 of the IPC.

22] In the case of Kahkashan Kausar (supra), the Hon'ble Apex Court has observed that the tendency of implicating the relatives of the husband in the matrimonial disputes has increased without analysing the long term ramifications of a trial on the complainant as well as the accused. It is observed that before proceeding against the relatives, the Court must be satisfied that there is a prima facie case to proceed against them. The relatives of the husband cannot be proceeded with in the absence of a prima facie case made out against them on the basis of the material.

23] In the cases of Ramesh Kumar (supra), Randhir Singh (supra) and Gangula Mohan Reddy (supra) after full-fledged trial, the evidence on record was found lacking to make out the basic ingredients of the offence of abetment of suicide. The Hon'ble Apex Court in these decisions observed that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. It is held that more active role which can be described as instigating

or aiding the doing of a thing is required before a person can be said to have abetted the commission of the offence under Section 306 of the IPC. In these cases, the evidence on record on appreciation was found not sufficient to meet these requirements. In my view, in the case on hand, the question of appreciation and threadbare analysis of the evidence would arise at the stage of decision of the case on merits.

24] The same proposition of law is laid down in the cases of Sanjay Kumar K. Shinde (supra) and Mahendra Madhavdas Mundada & Ors. (supra).

25] In my view, the proposition of law laid down in the judgments relied upon by the learned advocate for the applicants is of no help to the case of the applicants at this stage. It is to be noted that there is material and evidence on record to show that the names of the applicants have been stated by all the witnesses. Almost all the witnesses have attributed specific role to them. The prosecution has invoked Section 34 in the crime. In my view, therefore, the threadbare analysis, appreciation of evidence and the finding based on undertaking such exercise at this stage would certainly prejudice either the accused or the prosecution. Such exercise is not permissible at this stage, as held by the Hon'ble Apex Court in the decisions (supra). It is true that the applicants are serving as Soldiers in Military. They would be required to undergo the ordeal of the trial. However, solely on this ground, the material on record cannot be discarded.

26] In my view, the learned Additional Sessions Judge took all these aspects into consideration. The order passed by the learned Additional Sessions Judge is in accordance with law. No case has been made out by the applicants to allow their applications for discharge. Therefore, the applications deserve to be dismissed and are dismissed accordingly.

27] Rule is discharged. No costs.