

(2016) 12 GUJ CK 0011
In the Gujarat High Court

Case No : Criminal Revision Application No. 473 of 2016

Maheshbhai Babubhai (Kodi) Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, Section 397, Section 401
Dowry Prohibition Act, 1961 — Section 3, Section 7
Evidence Act, 1872 — Section 8
Penal Code, 1860 (IPC) — Section 114, Section 306, Section 323, Sect

Citation : (2017) 2 Crimes 444 : (2017) 1 DMC 557

Hon'ble Judges : Mr. Z.K. Saiyed, J.

Bench : Single Bench

Advocate : Ms. Samata V. Patel and Vrajlal C. Patel, Advocates, for the Applicant Nos. 1 and 2; Mr. N.J. Shah, APP, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Mr. Z.K. Saiyed, J.—Rule. Learned APP Mr. N.J. Shah waives service of Rule on behalf of the respondent - State.

Present Criminal Revision Application preferred under Section 397 read with Section 401 of the Code of Criminal Procedure, by the applicants against the order passed by the learned 4th Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, in Sessions Case No.224 of 2014 below Exhibit 9 dated 2.6.2016, whereby the learned Sessions Judge dismissed the application of the applicants for discharge them as an accused from the charge-sheet filed by the Investigating Officer in connection complaint being I CR No.111 of 2013 registered with Bawla Police Station.

2. Facts of the prosecution case are brief as under:

Present applicants - original accused Nos.3 and 5 are of I CR No.111 of 2013 filed by the respondent No.2 - original complainant on for the offences

punishable under Sections 306, 498(A), 323 and 114 of the Indian Penal Code and for the offence under Sections 3 and 7 of Dowry Prohibition Act and the applicants surrendered and now they are on bail. It is also the case of the applicants that the respondent No.2, who is complainant lodged the said FIR stating that he is father of the deceased, who married with the original accused No.1 before ten years and there is one minor son of aged about 7 years. After two/three years of the marriage, the applicants along with accused started to demand money from the deceased and caused harassment to the deceased. It is also the case of the prosecution that because of physical and mental harassment, the deceased committed suicide by pouring kerosene on herself at home on 13.8.2013 between 10:00 to 10:30 a.m. and at that time, none of the accused were present in the house. It is also the case of the prosecution that the said complaint is lodged late by 28 years. In connection of the aforesaid complaint, charge-sheet came to be filed and as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Session Court, where it is numbered as Sessions Case No.224 of 2014. In the said Sessions Case, the applicants herein filed application under Section 227 of the Code of the Criminal Procedure, to discharge them as an accused persons from the charge-sheet submitted by the Investigating Officer and same was rejected by the learned Sessions Judge vide order dated 2.6.2016, which is impugned in this Revision Application. Hence, present Criminal Revision Application is filed by the applicants.

3. Learned advocate Ms. Samta Patel appearing for the applicants submitted that the present applicants have not committed any alleged offences and therefore, they are required to be discharged from the charge-sheet. She further submitted that in the said complaint, the complainant - father of the deceased has not disclosed that at what point of time and how much amount was demanded and at what point of time, the accused persons have harassed the deceased physically and mentally. She further submitted that during the ten years of marriage life, there was no complaint of any cruelty, harassment and any other complaint regarding demanding dowry and since long time, the present applicants are residing separately from the deceased. She also submitted that on 13.8.2014, when the accident took place, the present applicant No.1 went to market to purchase grocery for his grocery shop and the applicant No.2 herein was at the grocery shop to attend the customer. She, therefore, submitted that from the entire incident, the role on the part of the present applicants is not reflected and therefore, discharge application of the applicant ought to have been considered by the learned trial Judge. She drew the attention to the provisions of Section 306 of the Indian Penal Code and stated that the provisions of the said Section pertains to abet in the commission of the suicide by the persons. But herein this case, there is no abetment on the part of the applicants and therefore, offence pertains to Section 306 is not applicable in this case. Even as per the provisions of Section 107 of Indian Penal Code, there is no instigation or conspiracy on the part of the applicants and therefore, as per the provisions of

Section 107, it can be said that the prosecution has not established the case against the applicants. She also submitted that upon consideration of the record of the case and the documents produced on record along with charge-sheet, there is no sufficient ground for proceedings against the accused. She also submitted that as per the provisions of Section 227 of the Code of Criminal Procedure, the word "Sufficient Ground" is used instead of ground, which shows that there should be a sufficient ground and not simply unreasonable ground. She also submitted that there must be a very strong suspicion to form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged. She also submitted that there may be proof of commission of any offence, since there is no categorical and specific evidence in the charge-sheet, which even prima facie show the involvement of the applicants in the commission of the offence. There is no reason to ask the applicants to face the trial for couple of years. She also submitted that though there is certain that any accused cannot be discharged if there is any prima facie evidence against him and it is also certain that thereby presence of minimum and prima facie evidence must to frame charge. She also submitted that the application for discharge has to be decided on the basis of material on record and not on the basis of material, which may come on record at a subsequent stage. In this regard, learned advocate for the applicants relied upon the decision rendered by this Court in Criminal Revision Application Nos.726 of 2008 and 744 of 2008, wherein the accused persons have been discharged from all the charges levelled against them. She further submitted that in the said decision, this Court has observed that at best it can be said that the evidence adduced by the prosecution gives rise to some suspicion, but that by itself is not sufficient to frame charge against the accused in absence of any legally admissible evidence having been brought on record. She therefore, submitted that here in present case, there is no evidence against the present applicants and therefore, they are required to be considered for discharge from the charges levelled against them.

4. Learned advocate Ms. Samta Patel appearing for the applicants has also relied upon the decision in the case of Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra reported in 2008 (2) GLH 596, more particularly paras 13 to 15 and submitted that in the aforesaid case, the Court has discussed in detail about the powers of the trial Judge under Section 227 of the Code of Criminal Procedure, and observed that there is no sufficient ground for proceeding against the accused and therefore, the accused was discharged from the charges levelled against him in the charge-sheet.

5. Learned advocate Ms. Samta Patel relied upon the decision in the case of S.S. Chheena v. Vijay Kumar Mahajan and Another reported in (2010) 12 Supreme Court Cases 190, wherein the Hon'ble Supreme Court quashed the charge framed under Section 306 of Indian Penal Code against the accused of that case.

6. Learned advocate Ms. Samta Patel for the applicants drew the attention of the Court of the provisions of Section 498(A) of the Indian Penal Code and Section 3

and 7 of Dowry Prohibition Act and submitted that so far as the allegations of cruelty and demand of dowry are concerned, the span of marriage life of the deceased and the accused was of 10 years and during that 10 years, there was no complaint against the accused either for cruelty or demand of dowry. Even no amount towards dowry demanded by the accused, is stated by the prosecution. Therefore, as per her submission, there is no case made out for the offence under Section 498 (A) of the Indian Penal Code as well as Section 3 and 7 of the Dowry Prohibition Act. She also submitted that as per the complaint, after 2 or 3 years of marriage, the accused started to demand money, but in spite of more than 7 years are passed, no complaint of specific incident regarding demand of money or cruelty was registered against the accused. She therefore, submitted that the prosecution has not produced any cogent or direct evidence against the applicants, which can link the applicants with the commission of the offence and therefore, the order impugned is required to be quashed and set aside by allowing present Criminal Revision Application.

7. As against, the learned APP Mr. N.J. Shah appearing for the respondent - State supported the impugned order passed by the trial Court and submitted that the trial Court after considering the facts and circumstances of the case and evidence on record, rightly rejected the application for discharge of the applicants from the alleged offence. He further submitted that the applicants herein are very well involved in the offence as alleged and therefore, it cannot be said that they have not committed such offence. He also submitted that due to cruelty on the part of the accused including present applicants, meted out upon the deceased, the deceased was compelled to commit the suicide. He also submitted that from the statements of the witnesses, it clearly transpires that father-in-law, mother-in-law, brother-in-law (Devar) and sister-in-law (Derani) of the deceased were frequently demanding the dowry from the deceased and they meted out cruelty upon the deceased and therefore, there is no reason to disbelieve the version of the prosecution for ill-treatment given by the in-laws upon the deceased. He, therefore, submitted that no interference is required to be called for by this Court as the learned trial Judge has rightly passed the order impugned. He prayed to dismiss the Criminal Revision Application.

8. Perused the application along with documents and considered the submissions made by the learned advocates appearing for the respective parties. It appears that on 13.8.2013 at about 10 to 10:30 a.m. the deceased committed suicide due to cruelty meted out by the accused persons. It also appears that the accused persons demanded dowry and therefore, they were harassing the deceased mentally and physically. The complaint is registered on 14.8.2013 for the offence punishable under Sections 306, 498(A), 323 and 114 of the Indian Penal Code as well as Sections 3 and 7 of the Dowry Prohibition Act. It also appears that now there is no evidence against the present applicants, the applicants preferred application under Section 227 of the Code of Criminal Procedure, for discharge them from the alleged offence, before the trial Court, which was rejected by the trial Court vide order dated 2.6.2016. Therefore, the

present applicants preferred present Criminal Revision Application for quashing and setting aside the said impugned order passed by the trial Court. Here the provisions of Section 227 of Code of Criminal Procedure Code is required to be considered, which reads as under:

Section -227 : Discharge :

"If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceedings against the accused, he shall discharge the accused and record his reason for so doing."

9. Here the word "Sufficient Ground" is required to be taken into consideration. From the complaint lodged by the complainant, who is father of the deceased, it appears that after two years of the marriage, the deceased was harassed and beaten by the father-in-law, mother-in-law, brother-in-law (present applicant No.1) and sister-in-law (present applicant No.2) on ground of dowry and they told the deceased to take the money from her parental home and the deceased told the same to her parental home. Even from the statements of the witnesses, the role on the part of the applicants is come out about the involvement of them in the offence. Therefore, it clearly appears that there is sufficient ground against the present applicants to link them with the commission of the offence. It is not necessary that the applicants were not at home when the incident occurred. Therefore, the submission regarding "Sufficient Ground" as per the provisions of Section 227, against the applicants, is not acceptable at all. It also appears that before the death of the deceased, the harassment was given by the accused including present applicants upon the deceased and same was in the knowledge of the complainant as per the complaint. Therefore, it can be said that there is sufficient ground against the applicants. In this regard, learned advocate relied upon the decision of Yogesh @ Sachin Jagdish Joshi (Supra). This Court perused the said decision and it appears that in the charge-sheet, there is no overt act attributed to the appellant of that case. Here in this case, the role on the part of the applicants is already reflected from the complaint and the evidence against them may come on record and therefore, the cited case is not helpful the present applicants.

10. The case relied by learned advocate Ms. Samta Patel on S.S. Chheena (Supra), but looking to the facts of the present case, same is total different and distinct to the case cited by the learned advocate for the applicants. Even the decision of this Court cited by the applicants is also not helpful to the applicants.

11. This Court has perused the provisions of the Section 498(A) of the Code of Criminal Procedure and from the same, it clearly transpires that the husband and relative of the woman subjecting the woman to cruelty shall be punished. Section 498(A) reads as under:

"498A. Husband or relative of husband of a woman subjecting her to cruelty -

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. For the purposes of this section, "cruelty" means (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]"

12. Present case is in relation to suicide and the suicide was committed by the deceased due to harassment of the in-laws as per the complaint. Here in this case, the allegations are levelled against the present applicants in the complaint as well as in the charge-sheet. Even the statement of witnesses, panchnama, muddamal recovery panchnama reflect that the deceased committed suicide and in absence of evidence at this stage, it cannot be said that the present applicants have not committed the alleged offence because panchnama and FSL report support the complaint. The present applicants are real brother-in-law (Devar) and sister-in-law (Derani) of the deceased and they were residing in joint family. Therefore, the ingredients of the provisions of Section 498(A) are attracted to the present applicants and the present applicants now at this stage of discharge, prima facie cannot be said to be not involved in the commission of the alleged offence. Even the marriage span of the deceased and accused No.1 is about 10 years and there is a son of 8 years old. From the record, it is also established that the present applicants are involved in the offence alleged.

13. I have gone through the ingredients of provisions of Section 8 of the Evidence Act, which reads as under :

"8. Motive, preparation and previous or subsequent conduct Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. - The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

14. From the perusal of the provisions of Section 8 of the Evidence Act, it appears that the conduct of the applicants is very doubtful because from the record of the case, it transpires that the present applicants have played vital role in the commission of the offence and it is possible that due to instigation, abement and provocation, the deceased was compelled to commit suicide and therefore, now at this stage, to discharge the applicants from the offence, is not just and proper and the trial is pending before the concerned trial Court and therefore, it is not proper to discharge the applicants.

15. In view of the aforesaid observations, present Criminal Revision Application deserves to be dismissed and the same is dismissed. The order passed by the learned 4th Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, in Sessions Case No.224 of 2014 below Exhibit 9 dated 2.6.2016 is hereby confirmed. Rule is discharged.