

(2019) 07 BOM CK 0212

In the Bombay High Court

Case No : Criminal Revision Application No. 73 Of 2018

Shrivina

APPELLANT

Vs

State Of Goa Through Officer Incharge And Others

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227, 319, 397, 482
Indian Penal Code, 1860 — Section 34, 306, 498A
Constitution Of India, 1950 — Article 21

Citation : (2019) 07 BOM CK 0212

Hon'ble Judges : Prithviraj K. Chavan, J

Bench : Single Bench

Advocate : Pavithran A.V, Mahesh Amonkar

Final Decision : Disposed Off

Judgement

Prithviraj K. Chavan, J

1. Admit.

2. Heard Mr. Pavithran, the learned Counsel for the petitioner and Mr. S.R. Rivankar, learned Public Prosecutor for the State.

3. By this revision application under Section 397 read with 482 of Cr.P.C., the petitioner who is an advocate and original accused No. 3 has challenged an order of framing charge by the Addl. Sessions Judge, Margao in Sessions Case No. 1/2018 under Section 498-A, 306 read with 34 of I.P.C.

4. Deceased Vaibhavi alias Bhakti Prabhu Velgekar is the third daughter of the complainant Shoba. She was married to accused Vinod Prabhu Velgekar in the month of February 2008. There are three issues out of the wedlock. It is alleged that ever since her marriage, Vaibhavi was subjected to harassment, assault and ill-treated by her in-laws, her husband Vinod, his father Pradeep Velgekar and sister Shrivina alias Deepa Kamat i.e. the petitioner. Attempts were made to settle the dispute between the deceased and her husband as well as in-laws in

the month of April, 2012 by another son-in-law of the complainant namely Arvind Pai and others, however, when they had been to the house of the accused, they were insulted and asked to get lost. Thus, several attempts were made to convince the accused including the petitioner, but in vain. There was no communication between the deceased and the complainant for a considerable long time.

5. On 27.10.2016, complainant had been to her house at Khandepar for Palki. At around 8.30 hrs. she was informed by one policeman that her daughter had set herself on fire and admitted in G.M.C. Bambolim. When the complainant visited the hospital, the petitioner who was present over there, informed that Vaibhavi had poured turpentine on herself and set on fire. The complainant, therefore, lodged a complaint against the accused with the Quepem police station.

6. FIR No. 76/2016 came to be registered on 27.10.2016 under Section 498-A read with 34 of I.P.C. in which subsequently Section 306 was added.

7. The investigating officer has recorded the statement of the witnesses. He drew a scene of offence panchanama. Many attempts were made to record the dying declaration of the deceased but it could not be recorded as the deceased was not in a fit state of mind.

8. The post mortem report reveals that the cause of death was due to Septicaemic shock consequent to body surface burn injuries. It is the case of the prosecution that the deceased, after pouring turpentine on her, set herself on fire.

9. It is submitted by the learned Counsel for the petitioner that the petitioner being an advocate by profession lives with her family consisting of husband and son at Malwada, Madkai, Ponda, Goa for the last 14 years. She has absolutely no role to play in the present crime nor there is direct or indirect involvement of the petitioner in the alleged harassment to the victim. She was staying far away from the house of her brother - accused No. 1. It is also submitted that the petitioner practices in a Court at Ponda.

10. Even from the statements, it is clear that no role is attributed to the petitioner and there is no suspicion. She has been implicated merely because she attended the hospital where deceased was admitted after sustaining burn injuries.

11. It is further contended by the learned Counsel Mr. Pavithran that the impugned order has resulted in failure of justice as much as the petitioner has been prosecuted in an offence which she has never committed. There is violation of her fundamental rights under Article 21 of the Constitution of India, in as much as, she has been deprived of her right of personal liberty.

12. On the other hand, Mr. M. Amonkar, learned Addl. Public Prosecutor contended that there is an involvement of the petitioner, however, despite six attempts, dying declaration of the deceased could not be recorded for want of her mental fitness as per the medical reports.

13. However, Mr. Amonkar, learned Addl. Public Prosecutor drew my attention to the statement of one Gautam Anand Naik. He is the brother-in-law of the deceased. It reveals from his statement that on 27.10.2016 he received a phone call from his cousin brother-in-law namely Narsiv alias Abhishek Khandeparker who informed him about the fact of burns sustained by Vaibhavi. He informed his wife Arya i.e. sister of the deceased. They rushed to G.M.C. Bambolim. His statement indicates that when he asked about the incident to the husband of Vaibhavi i.e. accused Vinod, he told him that he was present in the house alongwith his father Pradeep P. Velgekar and his sister Deepa i.e. petitioner and one uncle. Vaibhavi offered coffee at around 10.30 p.m. to his uncle and after having coffee he left the house. When he was loading painting boxes in the vehicle to go to Ramnagar, Karnataka, suddenly Vaibhavi went inside and splashed turpentine on her body and came with a gas lighter and told Vinod whether to put herself on fire and put herself on fire. Thereafter, Vinod ran inside the house, got some water and poured on Vaibhavi.

14. I have also perused the statement of the sister of the deceased namely Arya. Apart from the ill-treatment meted by her in-laws, it is stated by Arya before the police that in the month of August, 2012 she had been to the house of Vaibhavi alongwith her cousin Narcsiv, when Vaibhavi informed her that her husband Vinod, father-in-law Pradeep, mother-in-law Sushma and sister-in-law i.e. petitioner torture and beat her.

15. In the supplementary statement, complainant Shoba Khandeparker has also stated that apart from Vinod, his father and sister had planned to murder her daughter and therefore, all the three children were kept in the custody of Vinod's sister i.e. the petitioner. Prima facie, it appears that the petitioner was aware of the ill-treatment and torture meted out to the deceased. However, there is no other material on record prima facie indicating that the petitioner shared a common intention with the rest of the accused in ill-treating the deceased or for that matter abetted the offence. There appears to be no direct involvement of the petitioner in the alleged crime.

16. However, if during the course of evidence it is found that the petitioner was in any way connected with the crime, from the evidence on record, then definitely the provisions under Section 319 of the Code of Criminal Procedure can be invoked. Even if the learned Addl. Public Prosecutor submits that prima facie there is no direct statement against the petitioner, yet the statements referred to herein above, though indicates some involvement of the petitioner, yet at the stage of framing of charge what is required to be seen is to whether there is prima facie case against the concerned accused who would justify on merit its prosecution.

17. From the statements tendered on record, what would be inferred is some suspicion against the petitioner which cannot be said to be a grave suspicion. It is not necessary to see whether the trial will end in to conviction of the petitioner or otherwise.

18. The learned Counsel for the petitioner has, therefore, placed reliance on the judgments of the Hon'ble Supreme Court in the case of Yogesh Alias Sachin Jagdish Joshi v. State of Maharashtra, ((2008) 10 SCC 394) and L. Krishna Reddy v. State by Station House Officer ((2014) 14 SCC 401)

19. In the case of Yogesh cited (supra) in para 16, the Hon'ble Supreme Court observed thus:

"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, make a conviction reasonably possible. (See State of Bihar v. Ramesh Singh and Prafulla Kumar Samal.)"

20. In the case of L. Krishna Reddy cited (supra), para 10 of the judgment can be referred for advantage which reads thus:-

"10. Our attention has been drawn to Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia as well as K. Narayana Rao but we are unable to appreciate any manner in which they would persuade a court to continue the prosecution of the parents of the deceased. After considering Union of India v. Prafulla Kumar Samal, this Court has expounded the law in these words: (Stree Atyachar Virodhi Parishad case, SCCp.721, para 14)

"14....In fact, Section 227, itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

21. The upshot of the discussion is that the impugned order needs to be quashed and set aside as no reasons are stated as to why a charge is required to be

framed against the petitioner alongwith other accused. Consequently, the petition is allowed.

22. The impugned order in so far as the petitioner is concerned, is quashed and set a side. The petitioner is discharged of the offences punishable under Section 498-A and 306 of I.P.C. The Trial Court is at liberty to proceed further against the rest of the accused.

23. The petition stands disposed of in the aforesaid terms.