
(2014) 08 BOM CK 0099

In the Bombay High Court

Case No : Criminal Revision Application No. 26 of 2014

State

APPELLANT

Vs

Muktanand Bicholkar,(Major)

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 226
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2014) 08 BOM CK 0099

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

**Advocate : S. R. Rivankar, Public Prosecutor, Advocate for the Appellant;
Sidhesh Shet, Advocate for the Respondent**

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival submissions for some time on this Criminal Revision application preferred by the State challenging the order of discharging the present respondents/original accused from the Sessions Case No. 16/2013.

2. The impugned order of discharge was passed by the Additional Sessions Judge, Mapusa on 21/1/2014 thereby discharging all the three accused/present respondents of the offence punishable u/s 306 read with section 34 of Indian Penal Code.

3. Being aggrieved by the said order of discharge present criminal revision application is preferred by the State. During the arguments learned Public Prosecutor took the Court to the contents of the First Information Report and the Dying Declaration given by the victim girl. He submitted that the conduct on the part of mainly the original accused nos. 2 and 3 i.e. the mother and the sister of accused no. 1 is such so as to drive the victim girl to end her life by consuming sleeping pills. In order to appreciate this argument the factual position as narrated in the First Information Report can be mentioned.

4. According to the case of the prosecution the victim girl had a love affair with the original accused no. 1 for about 8 to 10 years. Prior to the incident the said girl took sleeping pills on 5/5/2012. Apparently this love affair was known to the persons in the locality. About 15 days prior to 5/5/2012, the girl had insisted the accused no. 1 for marriage and that time he told her that she should approach his mother with a proposal. On this the girl insisted that accused no. 1 should first talk to his mother and then things can be set right. However, accused no. 1 insisted that the girl or her mother and other relatives shall initiate the things and meet his mother. As such, the mother and other near relative of the girl met accused nos. 2 and 3 along with the victim girl. This happened on 5/5/2012 and that time accused nos. 2 and 3 refused the said proposal and on the contrary uttered the words that the victim girl was on her own insisting the accused no. 1 to get married as she was interested in his wealth and was influenced by the new motorcar he had purchased. Thus, feeling insulted the girl and her mother and the other relatives came back in dejected condition as their proposal for marriage was refused. After this episode the girl after her mother left the house took about 20 sleeping pills so as to end her life. She remained in unconscious condition till evening and when the relatives came and the victim girl was taken to the hospital for treatment.

5. The victim was in hospital for about two days and all along this time she was apparently unconscious. According to the prosecution only at about 10.00 a.m. on 7/5/2012 the victim girl while undergoing treatment regained some what consciousness and narrated the entire story to her relatives and also to her brother. Said brother then lodged the F.I.R. on 7/5/2012 after the death of the girl which occurred at 5.30 p.m. on that day. It is a factual position that the said statement of the victim girl was recorded by the police having signatures purported to be that of the victim. Apparently there is no endorsement of the attending doctor as to the orientation and consciousness of the girl and the condition whether she was able to give the statement. Even the said statement does not mention at what time it was recorded by the police.

6. On the above factual position when the matter came up before the Trial Court for framing of the charge the prosecution case was opened by the Public Prosecutor and the case papers were placed before the Court. The trial Sessions Court applied its mind and by referring to various decisions of the Hon'ble Supreme Court on the aspect of framing of charge u/s 226 of Cr. P.C. came to the conclusion that prima facie the material placed before the Court is not sufficient to frame the charge for abetment to commit suicide against all the three accused. This Court has gone through the reasoning given by the trial Court. Mainly what influenced the trial court apparently is that there was no endorsement of the medical officer on the statement of the victim and lack of the any positive action on the part of the accused persons to lead the victim girl to end her life and to take such a drastic decision. In the considered opinion of this Court if there is any material to give rise of suspicion only and not grave suspicion then in that event the trial Court Judge is definitely empowered to

discharge the accused and not to send him for trial.

7. In the opinion of this Court considering the material available with the prosecution by way of the statements of the witnesses and the statement of the victim girl without there being any authenticity to the same by way of medical officer's endorsement, it cannot be said that the trial Court had come to a wrong finding. In other words, it is not a case in which interference in the impugned order of discharge is warranted. Hence, present criminal revision application is accordingly dismissed and disposed off.