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**(2015) 01 GUJ CK 0044**

**In the Gujarat High Court**

**Case No :** Criminal Revision Application No. 788 of 2004

Sudhaben Gopalbhai Darji — APPELLANT

Vs

State of Gujarat — RESPONDENT

**Date of Decision :** 21-01-2015

**Acts Referred:**
Bombay Police Act, 1951 — Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Penal Code, 1860 (IPC) — Section 114, 302, 498(A), 506(2)

**Citation :** (2015) 01 GUJ CK 0044

**Hon'ble Judges :** S.G. Shah, J.

**Bench :** Single Bench

**Advocate :** A.D. Shah, for the Appellant; J.D. Jhaveri, APP, Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

S.G. Shah, J.—Rule. Learned APP Ms. Jhaveri waives service of notice of rule for the respondent - State.

2. The applicant has challenged the impugned judgment and order dated 25.10.2004 below Exh.3 in Sessions Case No. 101 of 2004 by the Additional Sessions Judge, Fast Track Court No. 4 of Ahmedabad (Rural). By such impugned judgment and order, application by the present applicant to discharge her for the alleged offences punishable under Sections 302, 498(A), 506(2) and 114 of I.P.C. read with Section 135(1) of B.P. Act. has been rejected.

3. I have heard Mr. A.D. Shah, learned advocate for the applicant and Ms. J.D. Jhaveri, learned APP for the respondent-State and perused the record and considered the rival submissions.

4. The applicant has produced the chargesheet and Police papers forming part of the chargesheet.

5. The sum and substance of the application is to the effect that even if

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chargesheet papers are considered as it is, as an evidence before the Court, practically, there is no evidence or allegation in any of the statements by any of the witnesses not only to confirm the commission of offence by the present applicant, but even to allege that she is involved in alleged offences in any manner whatsoever. Since such discharge application is governed by Section 227 of Code of Criminal Procedure, 1973, it would be appropriate to recollect such provision.

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 not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

6. On bare perusal of the provision of law, it is clear that while deciding such discharge application and, thereby, practically while framing the charge, the Court has to consider the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution, the Judge has to consider whether there is sufficient ground for proceeding against the accused or not. If provision of Section 227 is read with provision of Section 228 providing the powers to the Court to frame charge, it would be clear that even if Judge is of the opinion that there is ground for presuming that accused has committed an offence. If there is no sufficient ground for proceeding against the accused, the Court shall discharge the accused and record his reasons for doing so.

7. Therefore, it is not the law that only because chargesheet is filed, the charge must be framed since framing of the charge is not mere technicality but it requires the scrutiny of the record of the case and documents submitted therewith for coming to a prima-facie conclusion that accused has committed an offence as alleged in the chargesheet and if there is no sufficient ground in the record of the case or the documents submitted therewith, then the verb used in Section 227 is "shall" makes it clear that the Judge shall discharge the accused and record his reasons for so doing. Therefore, in absence of sufficient ground, it is not the discretion of the Judge but right of the accused to get discharge. The only discretion extended under Section 228 is regarding presumption, but even for presumption, there should be proper and legal ground to support such presumption.

8. Before proceeding further to scrutinize the evidence following two cases are material to be referred herein;

(i) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. The judge is not a mere Post Office to frame the

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charge, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the Court which ex-facie disclosed that there was suspicious circumstances against the accused; P. Vijayan Vs. State of Kerala and Another, .

(ii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Magistrate will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal; Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, .

9. Therefore, the Hon''ble Supreme Court has made it clear that Court has not to see the end of the trial whether acquittal or conviction but Court has to look into the chargesheet papers before framing the charge and before deciding the application for discharge.

10. In light of above settled legal position, we have to examine the factual details of this case. The scrutiny of record transpires that present applicant is a mother-in-law of the victim, who was murdered by her own husband, who is not only charge-sheeted alongwith the applicant but during pendency of present Revision Application, he was tried by the Sessions Court and convicted. It is also disclosed by the learned advocate Mr. A.D. Shah for the applicant that his conviction was even confirmed in appeal also and, therefore, at present, we are concerned only with present applicant who is shown as accused No. 2 in the same chargesheet.

11. The Sessions Case No. 101 of 2004 has been initiated in connection with Satellite police station Ist CR No. 137 of 2004 dated 16.2.2004, wherein, complainant Himanshu Pravinbhai Vyas, CMO of Jivraj Mehta Hospital, Ahmedabad has conveyed the police authority that on 16.2.2004 at about 3.10 a.m. i.e. early in the morning, victim was brought to his hospital by present applicant being her mother-in-law and she has disclosed that victim is her daughter-in-law and she was injured because of disturbance between her son Dhaval and her daughter-in-law - the victim. Thereupon, complainant has examined and treated the victim and found that she was sustained serious injuries on different parts of her body due to which she has succumbed at about 4.30 a.m. on the same day. Thereupon, complainant has lodged a complaint about killing of the victim by knife by her husband Dhaval, son of the present applicant. After investigation, police has filed chargesheet against said Dhaval Govindbhai Darji being husband of the victim and his mother i.e. present applicant being mother-in-law of the victim. From the police papers, it is revealed that present applicant was practically residing at Surat with her husband, whereas, his son was residing at Ahmedabad with his wife - victim and at the time of incident, applicant was at Ahmedabad for couple of days with a view to resolve the dispute between both of them. However, either on 15.2.2004 or in early morning on 16.2.2004, Dhaval has stabbed his own wife in his own

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house by knife and killed her as aforesaid, and, thereafter, he ran away from the place of incident. Thereupon, present applicant has, on listening the cries of victim rushed to her and when found that she is seriously injured, called the neighbors who have, in turn, managed to shift the victim in a private car to V.S. Hospital, Ahmedabad, where ultimately she died due to severe injuries.

12. So far as immediate reaction of the incident is concerned, all the witnesses, who are neighbors of the victim of her convicted husband namely; [a] Vashisht Jashvantlal Pathak, [b] Himanshu Kunjbihari Trivedi, [c] Anish Virendrabhai Shah, [d] Nitaben Shreyasbhai Dalal, [e] Urvashi Anishbhai Shah, [f] Gemarbhai Lallubhai Desai, [g] Manishaben Jayeshbhai Patel, [h] Laliben Gemarbhai Desai and [i] Bharatbhai Indulal Bhatt etc. have categorically stated before the Investigating Officer in their respective statements about the quarrel and disturbance between the victim and her husband Dhaval Darji, who is already convicted but none of them have stated anything about the quarrel between the victim and the present applicant.

13. Several statements of the relative of victim were recorded thereafter, who have though stated about the disturbance between the husband and wife i.e. victim and the convict and though some of them have stated that they have heard about the cruelty to the victim from her husband as well as the present applicant, the most material and important disclosure is in the statement by the mother of the victim namely; Kalaben Widow of Pravinchandra Topivala. In her statement dated 16.2.2004, the only allegation against the present applicant is to the effect that as and when there was a quarrel between the victim and her husband, present applicant was supporting her son without scolding him and allowing him to be a vagabond by providing full pocket money. However, so far as incident is concerned; she has also admitted that in-fact applicant has repeatedly discussed the issue regarding dispute between the victim and her husband with her and tried to resolve it and in-fact, at the relevant time, it was suggested by the applicant that both of them should stay at Ahmedabad with the couple for some time so as to resolve the problem between husband and wife and with such understanding, she had been to Ahmedabad at the relevant time when such unpleasant incident has occurred where victim has lost her life and her husband has been convicted for killing her. Similarly, though statement of the accused is not admissible in evidence, when Investigating Officer has disclosed the name of the present accused as one of the accused even though, she is disclosed as a witness also in the same chargesheet and her statement has been annexed with the chargesheet, may be because there is an evidence against accused No. 1. Now such statement cannot be ignored, more particularly, when disclosure in such statement seems to be more probable considering the over all documents i.e. all the statements of all the witnesses. In her statement, the applicant has explained the incident in detail, wherein, she has categorically disclosed that on that day, in the evening, her son was crying before her disclosing that now victim does not want to stay with him and, thereafter, he went out of the house with the extra key of the house and when he returned

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back at about 12.15 to 12.30 i.e. after midnight, she was watching TV by sitting on a Sofa and she conveyed him that victim has gone to bed since there is an exam of their son. However, he called the victim out of the room and both of them had a quarrel and at that time, her son was crying and gone out of the house and returned back within 10-15 minutes and she tried to cool both of them and conveyed her son that he should go with his father to Surat and she as well as victim will come to Surat after the examination of their minor son. Thereafter, though she has advised both of them to sleep in different rooms, her son went in a bed room of the victim and at about 2.30 a.m., she heard or she listened a voice from the victim and, therefore, she rushed to their room and at that time, victim has told her that her son has given knife blow to the victim. Thereupon, she became afraid and called upon the neighbors since her son ran out of the house. While narrating all such stories, she has categorically stated before the Investigating Officer and now, Investigating Officer denying such fact that at such time, it was the say of the present applicant that she saw her own son with knife which he has simply thrown at the place of the incident and that victim was bleeding because of such injuries. Thereafter, she has narrated attempts to save the victim as she has managed to take her to the emergency ward of Jivraj Mehta Hospital and how she was treated there. Therefore, this part of the evidence coupled with the evidence of the mother of victim makes it clear that there is no evidence on record to book the applicant for committing an offence under Section 302 of the IPC. It is clear and obvious that the incident is of murder of wife by husband and it is not the case of suicide by a wife because of ill-treatment or cruelty. However, surprisingly the Police has filed a chargesheet both under Sections 498(A) and 302.

14. If we recollect the provision of Section 498(A), which reads as under, it becomes clear that there must be any willful conduct which is of such a nature that likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health.

"Section 498(A):

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."

Therefore, charges under Section 498(A) is applicable only when there is a case of suicide or committing self injuries by the woman and not in the case of murder of a woman even if it is by near relative, in the present case, as it is by her own husband. Therefore, when factual details makes it clear that the main accused who is already now convicted namely; Dhaval Govindbhai Darji - husband of the victim under Section 302 of I.P.C., since he was also charged with Section 302 and when factual details is also very much clear that, injuries to the victim was inflicted by her husband by knife and when there is no dispute to such fact, practically, there is no reason or ground to charge the applicant with Section

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498(A) irrespective of few statements of relatives of the victim alleging their knowledge about some cruelty by the applicant upon the victim. It cannot be ignored that such knowledge is also not much reliable since it is also based upon hear say and not as a cogent and reliable evidence.

15. Therefore, there is substance in the submission of the learned advocate Mr. A.D. Shah for the applicant that there is no evidence of any of the witnesses directly connecting the present applicant in committing the offence punishable under Section 302 of I.P.C. and, thereby, when statement of the witnesses annexed with the chargesheet does not implicate the present applicant with the murder of the deceased, there is no ground either to presume the commission of offence by the applicant and, thereby, to frame charge against her. Similarly, so far as allegations under Section 498(A) is concerned, as discussed hereinabove that the incident of a murder and not suicide, there is no reason or there is no ground for any presumption to frame a charge either under Section 498(A) or 302, when there is no evidence regarding involvement of the applicant in commission of an offence punishable under Section 302.

16. Therefore, considering the provision of Section 227, the Court has to discharge the accused. However, the Sessions Court has, by impugned judgment, rejected such request of the applicant, and therefore, at-least the reasons for such dismissal needs to be scrutinized.

17. On perusal of the impugned judgment, it becomes clear that the Sessions Court has, mainly relied upon the principle that it is a subject matter of the evidence only that whether the present applicant has committed an offence under Section 302 or not and, therefore, when charges are under both the Sections, the accused should not get the benefit of technicalities in the chargesheet. If we peruse the application Exh.3 requesting for discharge, it becomes clear that the applicant has pleaded each and every issue in detail and listed decisions which are relied upon by her for such an application. However, unfortunately, the Sessions Court has summarily rejected the application without discussing all such grounds and deciding all such issues which were raised by the applicant in her application and even without scrutinizing the decisions referred by the applicant in such application. Therefore, there is substance in the Revision Application. However, though some citations are also listed in the Revision Memo before this Court, I do not think it necessary to discuss all such citations since I have already relied upon relevant decisions hereinabove and since I am allowing the application.

18. In view of above facts and circumstances, present Revision Application is allowed as prayed for. Thereby, the applicant is discharged from the charges levelled against her pursuant to FIR being Ist C.R. No. 137 of 2004 dated 16th February, 2004 registered before the Satellite police station and thereby, to discharge her from the Sessions Case No. 101 of 2004 or the concerned case since the trial is stagnated because of pendency of this Revision Application, where interim relief against further proceeding of trial so far as present applicant

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is concerned, was granted as long as on 17th December, 2004.

19. The Criminal Revision Application is allowed and disposed of in the afore-stated terms. Rule is made absolute accordingly.

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