

(2013) 01 GUJ CK 0023
In the Gujarat High Court

Case No : Criminal Revision Application No. 620 of 2012

Urvesh Vinodbhai Thakkar and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) 3 GLR 2167

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Vipul S. Modi Nos. 1 to 3, for the Appellant;

Judgement

N.V. Anjaria, J.—The present revision application is directed against order dated 5th October, 2012 passed below Exh. 10 in Sessions Case No. 135 of 2012 by learned 4th Additional Sessions Judge, Deesa, whereby the learned Judge has dismissed the application of the present applicant for discharge.

1.1. The facts in the backdrop are as follows: On 12th April, 2012, one Sundarlal alias Babulal Sagalchand Thakkar, brother of Kantaben, who died on 23rd March, 2010 out of burns suffered, filed a complaint with Deesa City Police Station, which was registered at Crime Register No. 1-82 of 2010. It alleged offences under Secs. 306, 498A and 114 of Indian Penal Code, 1860 against the present applicants. In the complaint, accused No. 1 was husband, accused No. 2 was mother-in-law and accused No. 3 was son of the deceased Kantaben, who are the applicant Nos. 3, 2 and 1 respectively in the present revision application.

1.2. It was alleged in the complaint that Kantaben burnt herself by pouring kerosene because of harassment from the accused persons. It was stated that deceased used to tell about harassment to her brother-complainant. Whenever she used to come to her parental house at Radhanpur pursuant to quarrel at the matrimonial house, she used to narrate about the mental torture and harassment in connection with demand for dowry. It was further stated that on 23rd March, 2010 complainant had gone with his elder brother and sister-in-law to a nearby

village for attending religious ceremony of Havan and at around 1-30 he was informed about his sister having been burnt at her matrimonial house at Deesa, Thereupon, they all left for Deesa and knew that Kantaben was taken to Palanpur for further treatment. They reached Palanpur. Kantaben was being taken to Ahmedabad because of her serious condition, and at that time, upon being asked about the incident, she told that as she could not tolerate the harassment by accused persons, she poured kerosene on her. It was alleged that at Ahmedabad, the accused persons did not permit the complainant to meet his sister Kantaben and Kantaben died on 28th March, 2010. It was alleged further that accused No. 1-husband and accused No. 3-son did not even attend the cremation of Kantaben.

The police took out preliminary investigation, recorded statements as well as drew panchnama. The accused persons were arrested and the investigating officer submitted charge-sheet before the Court of Additional Chief Judicial Magistrate, who committed the case before the competent Sessions Court, where Sessions Case No. 135 of 2010 was registered against the accused-applicants. In the said proceedings, application below Exh. 10 under Sec. 227 of the Code of Criminal Procedure, 1973 came to be filed.

2. The learned Magistrate dismissed the application on the basis of the statements of the witnesses recorded, the inconsistent facts revealed from the history given and in the statement of the deceased and other material on record, the learned Magistrate come to conclusion that there were prima facie material to be gone into by trying the case and the charge was required to be framed.

3. Learned Advocate Mr. Vipul S. Modi submitted that learned Judge committed serious error in dismissing the application for discharge. It was submitted by him that there was no evidence worth the name for framing the charge. He submitted that when the deceased was admitted to hospital, in the history given by her, she had clearly stated that incident occurred when she was preparing meals and at that time, she caught fire from the gas stove. The statements of the deceased recorded before the Doctor and the Executive Magistrate were relied on to emphasise that it was never a case of suicidal death. It was highlighted that marriage span was about 25 years and there was nothing to suggest that husband and the son had done anything to instigate her for suicide or that there was any harassment. There was no material to conclude or infer about the allegation of harassment, learned Advocate submitted. It was further submitted that when the deceased had not committed suicide, there was no question of anyone abetting the alleged act of suicide and that there was no offence was made out under Sec. 306, I.P.C. He also submitted that there was nothing to show the ingredients of offence under Sec. 498A, I.P.C. to be present, and there was no showing of cruelty or harassment necessary for alleging the offence. He relied on the parts of judgments and material gathered as evidence accompanied the charge-sheet submitted by the police, and submitted that there was no sufficient ground for the learned Magistrate to proceed against the accused-applicants.

3.1. Learned Advocate for the applicants in support of his submissions relied on the decisions in--

- Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra,
- Wazir Chand and Another Vs. State of Haryana,
- State of Gujarat Vs. Bharatbhai Balubhai Lad and Others,
- Bhaskar Lal Sharma and Another Vs. Monica,
- Pashaura Singh Vs. State of Punjab and Another,
- Preeti Gupta and Another Vs. State of Jharkhand and Another,
- State of Bihar Vs. Ramesh Singh,
- Gopal Vs. State of Rajasthan,
- Sushil Kumar Sharma Vs. Union of India (UOI) and Others,
- Indrasing M. Raol Vs. State of Gujarat,
- Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others,
- Kanhaiya Vs. Kashi Nath Tewari and Others,
- Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh,

3.2. Learned Assistant Public Prosecutor Mr. L.R. Pujari on the other hand submitted that there were strong circumstances warranting the framing of charge. It was submitted that at the stage of framing of charge, the prima facie aspects about the probability of commission of offences alleged need to be examined without going deep into the evidence. There were serious inconsistencies in the statements made by the deceased Kantaben after the incident of burning when she was taken to hospital. Further, the facts disclosed in the Panchnama and in the Forensic Science Laboratory's report were also pointers that the death was not natural and there was all the possibility that it was suicidal. It was submitted that there was primary evidence about the harassment and the strained relationship between the deceased and not only her in-laws, but with her son as well.

4. The Court has carefully considered the facts of the case and material/ documents which are taken into account and made basis by the learned Sessions Judge while passing the impugned order. The question posed is whether the accused-applicants are required to be discharged of the offence alleged against them. It may be noted that stage is one prior to framing of charge. Section 227 of the Code contemplate circumstances whereunder there could be discharge of accused persons at a stage which is interior in point of time before the charge is actually framed under Sec. 228 of the Code. Therefore, whether the charge is required to be framed against the present applicants, and whether there is prima

facie material on record to make out sufficient ground to proceed against them are the issues in focus for consideration. The impugned order is required to be examined in the context of the parameters by law applicable at the stage of Sec. 227 of the Code.

4.1. The procedure for trial before the Sessions Court is contained in Chapter XVII of the Code. Section 227 deals with discharge. It provides that upon consideration of the record of the case, averments submitted with police report and after hearing the submissions of the accused and the prosecution, the Court has to decide whether there is sufficient ground to proceed against accused, and consequently, whether the accused has to be proceeded against by framing of charge against him or is required to be discharged. It is useful to refer Sec. 227 of the Code of Criminal Procedure, 1973, which reads as under:

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.

4.2. The scope of Sec. 227 of the Code was considered by this Court in the case of State of Bihar Vs. Ramesh Singh, wherein this Court observed as follows:

.....Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.

4.3. The Supreme Court in above decision has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the trial Judge in order to frame a charge against the accused, where the material before the Court raise such grounds. In a subsequent decision i.e. in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the Supreme Court enunciated the following principles:

(1) That the Judge while considering the question of framing the charges under Sec. 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully

justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult 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 while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Sec. 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider, the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

4.4. Also the following observations of the Apex Court in *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, deserves to be noticed.

It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate, had therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in *State of Bihar Vs. Ramesh Singh*, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Secs. 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion of founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

4.5. Applying the above principles of law with regard to considering the plea discharge of the applicants, the material available in the present case reveal the following significant aspects. On a cumulative reading of history given by the deceased before the Doctor who treated her, her statement before the Executive Magistrate, the statements of other persons and the neighbours recorded in course of investigation and the panchnamas recorded, reveal the following:

(i) In the history given to the Medical Officer, Government Hospital, Deesa where the deceased was taken first after the incident, it was stated by her that she caught burns because of flame coming out from gas stove while she was cooking. Before the Medical Officer, Government Hospital, Palanpur where she was subsequently taken, she stated that when she was cooking rotis, the gas stove

got switched off and while she was trying to restart it with lighter, a sudden flame came out.

(ii) In statement given before the Executive Magistrate by the deceased, it was stated that her Saree touched the gas stove and since it was polyester, she caught fire and suffered burns.

(iii) In dying declaration recorded on 25th March, 2010 before the Police Sub-Inspector, Deesa Police Station, story told was still different. What was stated by the victim was that at around 12-00 O'clock she lighted the gas stove for cooking and at that time, it burst into flames all of a sudden. She stated that there was leakage of gas from gas pipe, which lead to catching of fire.

(iv) In the panchnama, it was revealed that there was no gas leakage. The gas leakage was alleged, as stated above by the deceased in her statement while giving history of the incident.

(v) The injuries noted on die body of the deceased, as recorded by the Medical Officer, Deesa, immediately after incident was as under:

(a) Superficial to deep burn on head, face, neck, some part of hair burnt;

(b) Superficial to deep burn on exterior aspect of chest and abdomen;

(c) Superficial to deep burn on both upper limbs;

(d) Superficial to deep burn on some part of back region;

(e) Superficial to deep burn on some part of thighs and legs.

(vi) From the heap of garbage near the matrimonial house of the deceased, a piece of polyester saree having design in green, red and blue was recovered, which was in the burnt condition. A sky-blue coloured jacket with red coloured with liquid thereon were also recovered. The pieces of saree were found jammed thereon. Those clothes showed that there was pouring of kerosene and they were smelling kerosene.

(vii) The samples of cloth as above were sent and tested by the Forensic Science Laboratory and the analysis result indicated that on those samples, presence of petroleum hydrocarbons was found.

(viii) The statements of neighbour one Prabhulal Maganlal recorded by the Investigating Officer mentioned inter alia that quarrels used to take place between husband-Vinodbhai and wife-Kantaben at the house and that he was witnessed to the incidents of quarrels when he used to pass-by. He stated that he had himself once separated the quarrelling spouses.

(ix) The material along with the charge-sheet filed further revealed that the relations between the mother-Kantaben and the son-applicant No. 1-accused No. 3 were seriously strained on the issue of breaking of marriage of the son for which son and the in-laws of Kantaben were holding Kantaben to be responsible.

(x) The applicants-the husband, mother-in-law and son did not attend the cremation of the deceased.

4.6. Above highlighted are some of the aspects, facets and dimensions emerging from the materials obtained and the facts gathered in the investigation up to the stage. Thus, conflicting circumstances and contradictory aspects have come out. In the statements of deceased herself recorded at different times, the unity in the story has been absent and there are inconsistencies which cannot be overlooked. Initially it was sought to be stated that due to catching of fire from gas stove, she suffered burns; later it was sought to be conveyed that while restarting the gas stove, she caught fire. In the third, it was suggested that there was leakage in the gas stove due to which the flame burst and she suffered burns. In the investigation when the panchnama was recorded, it was found that there was no leakage in the gas stove. This was coupled with another aspect that the pieces of clothes were recovered near the house where the incident took place, which had kerosene smell. The Forensic Science Laboratory test confirmed that it had particles of Petroleum Hydrocarbons on them. The statements of neighbours recorded prima facie indicated that relationship was strained and the quarrels were taking place. A cause for sour relation between the son and the deceased-mother was also brought out, viz., that the marriage of son was broken due to deceased-mother. It had generated hatred towards the deceased and more including the son attended the last rites of the deceased. Therefore, it cannot be said that the requirements for framing the charge are not satisfied and it cannot be there is no material to substantiate the requirement of framing of the charge.

5. In *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra*, which is referred by the learned Judge in the impugned order it is observed that it is trite that the words any sufficient ground for proceedings against accused appearing in the Section postulate exerciser of judicial mind on the part of a Judge to the facts of the case on the basis of which he would determine whether the case for trial has been made out by the prosecution. For that purpose, Judge could sift and weigh with the material for limited purpose of finding out whether or not prima facie case against the accused has been made out.

5.1. In a recent decision, in the case of *Soma Chakravarty Vs. State* through CBI, the Supreme Court has held that the settled legal position is that if on the basis of material on record, the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. Before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the

trial.

5.2. Referring to the various decision relied on by the learned Advocate for the applicants, in Wazir Chand (supra) and Bharatbhai Balubhai Lad (supra), the Courts were concerned with the ingredients to be satisfied in respect of offences under Secs. 307 and 306 read with Sec. 498A respectively. In Bhaskar Lal Sharma (supra), also, the Court highlighted has to what are the necessary ingredients for presumption of offence under Secs. 498A and 406 and it was held that harassment should be proved to the extent so as to coerce the person to meet any unlawful demand of dowry and such willful conduct should lead to committing of suicide. The decision in Preeti Gupta (supra) as well as in Sushil Kumar Sharma (supra), it also dealt with distinction between offence under Secs. 498A and 306, I.P.C. In Indrasing M. Raol (supra), the decision of this Court, which was relied on, held that solitary incident cannot be considered in sufficient evidence to cruelty or harassment to attract Sec. 498A. Sanju alias Sanjay Singh Sengar (supra), was on the aspect as to what would constitute offence under Sec. 306 on the facts of the case. Devinder @ Kala Ram (supra), dealt with principles relating to provisions of rebuttal of presumption under Sec. 113B of the Evidence Act in the context of making out of offence under Secs. 304B and 498A. The reliance placed on the above judgments are misconceived inasmuch as, as already discussed, at this stage, scope of inquiry for the Court is limited.

6. As noted, at this stage, the Court is not to satisfy itself delving deep as to whether there is a commission of offence or not or the accused are guilty or not. The same will be tested in course of trial. The test to be applied at this stage is whether the prosecution has gathered sufficient material which prima facie demonstrate the grounds for proceeding against the accused by framing a charge. The defence versions or probable defences are not the relevant considerations unless the prosecution case is shown to be totally preposterous or frivolous. Here, it cannot be said that there is no basis of presumptive material, as distinguished from barefoot presumption only, for not proceeding against the accused and that the facts and aspects attending the incident make out that prima facie case for framing the charge. The totality of circumstances brought out and the material gathered in investigation upto the stage of submission of charge-sheet can be said to be raising grave suspicion as against mere suspicion.

7. The learned Judge has taken into consideration all the aspects. It has to be held that the learned Judge has applied his judicial mind to come to conclusion that the trial is required. The findings and conclusions recorded by the learned Judge are eminently just, proper and legal. The impugned order, therefore does not require any interference in the revisional jurisdiction of this Court. For the foregoing reasons and discussions, the present revision application is liable to be summarily dismissed and accordingly the same is dismissed.