

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A. PATIL

CRIMINAL REVISION PETITION NO.38/2019

BETWEEN:

1. Harish T.R.
S/o late Rangaswamy
Aged about 34 years
2. Smt. Nalluramma
W/o late Rangaswamy
Aged about 58 years
3. Mr. Rajeev S/o late Rangaswamy
Aged about 37 years
4. Smt. Mamatha W/o Rajeev
Aged about 32 years

Petitioners 1 to 4 are
R/o at No.33, 7th Main,
9th Cross, Srinivasanagar,
Bengaluru-560 050.

5. Smt. Sumana @ Sumathi
W/o Somashekara
Aged about 30 years
R/o. at No.1160/A,
Nagarabhavi II Stage, 9th Block,
Bengaluru-560 072.

6. Venkatesh
S/o late Rangaswamy
Aged about 36 years
R/at No.152, Paduka mandir Road,
B.H.C.S. layout, Uttarahally,
Bengaluru-560 061.

7. Somashekar @ Somanna
S/o Rangaiah
Aged about 38 years
R/o at No.1160/A,
Nagarabhavi II Stage, 9th Block,
Bengaluru-560 072.

...Petitioners

(By Smt.Gayathri M., Advocate)

AND:

The State of Karnataka
by Hanumanthanagar Police,
Bengaluru City
Represented by State Public Prosecutor
High Court Buildings
Bengaluru-560 001.

...Respondent

(By Sri M.Divakar Maddur, HCGP)

This Criminal Revision Petition is filed under Section 397 r/w. 401 of Cr.P.C praying to set aside the order dated 26.09.2018 in the said case and discharge the petitioners from the offences punishable under Sections 498(A) and 304(B) of IPC and Sections 3, 4 and 6 of Dowry Prohibition Act, alleged against them.

This Criminal Revision Petition coming on for *Admission*, this day, the Court made the following:

ORDER

This petition has been filed by the petitioners/accused Nos.1 to 7 challenging the order passed by the Court of the XLV Additional City Civil and Sessions Judge, Bengaluru City (CCH-46) in S.C. No.1034/2014 dated 26.09.2018 where under the application filed under Section 227 of Cr.P.C. came to be dismissed.

2. I have heard the learned counsel for petitioners/accused and the learned High Court Government Pleader for respondent – State.

3. Though this case is listed for admission, with the consent of learned counsel appearing for both the parties, the same is taken up for final disposal.

4. The factual matrix of the case is that the marriage of the deceased was got performed with petitioner No.1 on 30.11.2011. At that time, cash of

Rs.2,00,000/- and other gold ornaments were given. It is further alleged that whatever the amount and gold which has been given was not sufficient in that context subsequently, in the matrimonial home the ill-treatment and harassment was continued and the same was used to be informed by the deceased to her parents and her sister and they have also advised the deceased in this behalf. Further again, it is informed that there is demand for more dowry by the accused persons. When the said harassment was continued frequently, the complainant gave Rs.60,000/- to the first accused and subsequently, she became pregnant and delivered twin two female children. For that also, the harassment continued for having given birth to female children and again, they demanded a sum of Rs.1,30,000/- towards medical expenses, which he had spent on the delivery of the deceased. As accused No.1 was in the habit of IPL betting, he lost Rs.7,00,000/- and started to insist the deceased to get money from her parental house. It is

further alleged that on the intervening night of 03.01.2014 at about 8.40 p.m., accused No.1 called the complainant and told that it is not possible for him to manage with his sister in respect of matrimonial dispute and requested the complainant to come and solve the issue by advising his sister. In turn, the wife of the complainant called the deceased and advised that there will be small issues in between the husband and wife and told her to settle. At that time, she told that her husband is using vulgar words and told her that she herself would deal with the situation. On 04.01.2013, the complainant received a call from his Aunt that the deceased has committed suicide along with her two children. Immediately, they went and informed the same to the police. On the basis of the complaint, a case has been registered and after investigation, the chargesheet has been filed.

5. The committal Court has committed the case. Thereafter, the Sessions Court took cognizance. At the time of hearing before the charge, an application came to be filed under Section 227 of Cr.P.C. for discharge of the accused. The same was seriously objected by the prosecutor by filing his detailed objections. After hearing the both the counsel, the application came to be dismissed. Challenging the same, the petitioners/accused are before this Court.

6. The main grounds urged by the learned counsel for the petitioners/accused are that there is no material to attract the provisions of Section 304B of IPC. In order to attract the provision of Section 304B of IPC, soon before the death, there must be ill-treatment and harassment caused to the deceased for demand of dowry. It is her further submission that the statement of the witnesses recorded during the course of investigation indicates that no such demand of dowry

and harassment was there soon before the death. It is her further submission that on the intervening night of the alleged incident, the matter was reiterated to the brother of the deceased and has informed that it is not possible for the accused to manage with his sister in respect of matrimonial dispute and the same has been advised by consoling that in between the husband and wife, small issues will be there. That itself clearly goes to show that the ingredients of Section 304B of IPC were not present at the time when the alleged incident has taken place. When the ingredients of Section 304B of IPC were conspicuously absent, then under such circumstance, the petitioners/accused are entitled to be discharged for the said offences. Alternatively, it is her further submission that at the most, there is some material as against the accused under Section 498A of IPC and at the most, it may attract the provisions of Section 306 of IPC but there is no material to frame the charge under Section 304B of IPC. It is her further

submission that the trial Court without looking to the said aspect has come to the wrong conclusion and has wrongly held that there is prima facie material as against the petitioners/accused. On these grounds, she prayed to set aside the impugned order and prays to discharge the accused.

7. *Per contra*, learned High Court Government Pleader vehemently argued and submitted that the charge sheet material clearly goes to show that at the time of marriage, there was a demand of dowry in the form of cash, gold and silver. Subsequently also, there was ill-treatment and harassment for demand of dowry and as the accused has lost Rs.7,00,000/- in IPL betting, he demanded to bring Rs.7,00,000/-. It is his further submission that the said ill-treatment was continued for having been given birth to two female twin babies. It is further submitted that CWs.7, 8, 9 and other witnesses have categorically deposed about the ill-

treatment and harassment made out by the accused persons in that light, there is prima facie material as against the petitioners/accused. It is his further submission that by going through the materials placed on record, it clearly goes to show that the trial Court after considering all these aspects has come to a right conclusion and has rightly dismissed the application.

8. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for both the parties and have carefully and cautiously gone through the charge sheet material and the statement of the witnesses, which is made available by the learned counsel for the petitioners/accused during the course of arguments.

9. The Hon'ble Apex Court in catena of decisions has laid down certain guidelines. What are the criteria, which have to be seen while considering the question of framing of charge. It has also been observed

that the Court below having undoubted power to sift and weigh the evidence for limited purpose of finding out whether there is a prima facie case made out as against the accused or not? The test determination prima facie case would naturally depend upon the facts of each case and no straight jacket formula or universal law can be made in this behalf. It is well settled proposition of law has been laid down in catena of decisions.

10. The Hon'ble Apex Court in the case of **UNION OF INDIA Vs. PRAFULLA KUMAR SAMAL AND ANOTHER** reported in **(1979) 3 SCC 4** therein, it has been observed that whether the material placed before the Court discloses suspicion as against the accused without there being any grave suspicion, under such circumstance, the Court is justified in discharging the accused. If the material placed before the Court discloses grave suspicion against the accused then, the

Court will be fully justified in framing the charge and proceeding with the trial. For the purpose of brevity, I quote paragraph No.10 of the said decision, which reads as under:

“Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (1) *That the Judge while considering the question of framing the charges under Section 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 Section 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.”

11. The said proposition of law as stated above has been reiterated by the Hon'ble Apex Court in the case of **Asim Shariff Vs. National Investigation Agency** reported in **(2019) 7 SCC 148** at paragraph Nos.18 it has been observed as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record.”

12. Keeping in view, the principle laid down in the decisions quoted supra, the factual matrix if they are looked into, though it is contended by the learned

counsel for petitioners/accused that conspicuously the ingredients of Section 304 B of IPC are not existing and as such, the accused persons are entitled to be discharge. It is further submission that even as per the version of the complainant, soon before the death, there was no ill-treatment and harassment caused to the deceased.

13. I have carefully and cautiously gone through the statement of the witnesses and the charge sheet material.

14. Without expressing anything on the merits of the case, I am of the considered opinion that the word used under Section 304B of IPC, though it is used soon before the death.

15. The Hon'ble Apex Court has interpreted the soon before the death not prior to the death immediately even it has to be taken into consideration depending

upon the facts and circumstances of each case and the entire statement of the witnesses and charge sheet material has to be looked into in this behalf. On going through the statement of the witnesses and charge sheet material there appears to be some material about ill-treatment and harassment meted out by the accused for the purpose of demand of dowry.

16. Be that as it may. Even there is a presumption in law with regard to the said offence is concerned. That has to be seen with reference to the factual matrix of the case. In that light, if the entire material is looked into, there appears to be a *prima facie* material as against the accused to frame the charge.

17. Be that as it may. It is well settled proposition of law that while discharging the accused the Court has to keep in mind the aspect that even if the entire material is accepted as it is without there being any rebuttal on the part of the accused, if there is no

material to frame the charge, then under such circumstances, the accused is entitled for discharge. But on going through the factual matrix of the case there arises a doubt in the case of the accused and if there are two views on a similar factual situation, at this juncture it is not a fit case to discharge the accused. So in that light also the contentions which have been raised by the learned counsel for the petitioner-accused are not acceptable.

The petition is devoid of merits. The same is liable to be dismissed and accordingly it is ***dismissed***.

IA No.2/2019 does not survive for consideration, the same is also dismissed.

**Sd/-
JUDGE**

AP/VBS