

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26th DAY OF SEPTEMBER, 2019

BEFORE

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

CRIMINAL REVISION PETITION No.945/2019

BETWEEN:

Suresha
S/o late Thammannagowda
Aged about 47 years
Residing near Siddeshwara ITI College
Thanneruhalla, Hassan City-573 201.

...Petitioner

(By Sri A.V.Gangadharappa, Advocate)

AND:

State of Karnataka
by Pension Mohalla Police Station
Hassan City-573 201,
Represented by State Public Prosecutor
High Court Building, Bengaluru-560 001.

...Respondent

(By Sri Thejesh P., HCGP)

This Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C praying to set aside the order dated 04.04.2019 passed by the III Additional District and Sessions Judge, Hassan in S.C.No.95/2018 and be pleased to discharge the petitioner from the allegations made against him for the offences punishable under Sections 498(A), 302 and 201 of Indian Penal Code.

This Criminal Revision Petition coming on for Dictating Orders, this day the Court made the following:-

ORDER

This petition has been filed by the petitioner/accused challenging the order passed by III Additional District and Sessions Judge, Hassan, in S.C.No.95/2018 dated 4.4.2019.

2. I have heard the learned counsel Sri.Gangadharappa, for the petitioner-accused and Sri.Thejesh P., learned High Court Government Pleader for respondent-State.

3. The gist of the complaint is that the marriage of the deceased was solemnized with the accused about 16 years back. The said marriage is a love marriage and it is further alleged that they constructed a house at Shanthinagar and let out the said house to tenants and the deceased was owning a car bearing Registration No.KA.13 B.0543 and also having Life Insurance Policy worth Rs.6 Lakhs and deceased was serving as a teacher in

Government School, the accused and the deceased have led their happy marital life for about 4 years and out of the said wedlock they gave birth to a male child and thereafter accused started subjecting the deceased to cruelty, insisted her to give money and also to make nomination to the records of the LIC. In that light, on 22.3.2007 at about 6.30 p.m. accused assaulted the deceased with club and a complaint was registered in Pension Mohalla Police Station on 24.3.2007 and a case was registered in Crime No.28/2007 for the offence punishable under Sections, 324, 506 of IPC and charge sheet was also led against the accused. It is further alleged that on 23.3.2014 again accused assaulted the deceased and a complaint was also registered in this behalf. The matter was referred to District Cell in PLC No.16/2014 and the matter was amicably settled. Again on 4.3.2017 at about 8.00 a.m. accused assaulted the deceased with weapon on her back and other parts of the body and caused the injuries and she also obtained the treatment at Government Hospital, Hassan.

On 28.12.2017 at 9.30 p.m. in the house the accused picked up a quarrel with the deceased in respect of transfer of house property and a car and other financial documents into his name and in that light he assaulted with an intention to commit the murder and because of the injuries she succumbed to the said injuries. When that fact was noticed by the brother of the deceased, he filed a complaint. On the basis of the complaint, UDR case has been registered. It is further noticed that the Medical Officer opined that the death was due to Hemorrhagic shock as a result of blunt abdominal injuries. Therefore, Investigating Officer has investigated the crime and filed the charge sheet. Thereafter, the said case was committed to the Sessions Court. The Sessions Court took the cognizance and when the matter was posted for hearing before charge, the application came to be filed for discharge under Section 227 of Cr.P.C. By the impugned order, the said application came to be dismissed.

4. It is the contention of the learned counsel for the petitioner-accused that the marriage of the accused and the deceased was a love marriage and they have led happy marital life for a period of 16 years and there is no serious allegations made with regard to ill-treatment and harassment caused by the accused. It is his further submission that in the post mortem report though contained 14 injuries, all the injuries are contusion and abrasions and no serious injuries have been caused over the body of the deceased and it is not a direct cause for the death of the deceased. It is his further submission that the complaint filed by the brother of the accused does not contend the said allegation about the ill-treatment and harassment. Only on suspicion the said complaint has been registered. It is his further submission that the Court below without looking into the factual situation has come to a wrong conclusion and has wrongly dismissed the application, it ought to have discharge the petitioner-accused. He further submitted that there is a delay of 37

days in registering the FIR. He further submitted that *prima facie* there is no material to connect the accused to the alleged crime. On these grounds he prayed to allow the petition and to discharge the accused by setting aside the impugned order of the trial Court.

5. *Per contra*, the learned High Court Government Pleader vehemently argued and submitted that the material produced entirely goes to show that it is because of ill-treatment and harassment caused by the accused she suffered with injuries and subsequently she died because of the injuries. Even the Doctor who conducted the post mortem has clearly opined that death is due to Hemorrhagic shock as a result of blunt abdominal injuries sustained and even the final opinion is also confirmed in this behalf. It is his further submission that if there is *prima facie* case made out, then under such circumstances it is a fit case to frame the charge and the trial Court after considering the said facts and circumstances has rightly come to the conclusion and rightly dismissed the

application. On these grounds he prayed to dismiss the petition.

6. I have carefully and cautiously gone through the submission of the learned counsel appearing for the parties and perused the records.

7. Though it is the contention of the learned counsel for the petitioner-accused that there was no ill-treatment and harassment caused by the accused and there is no material to frame the charge, on going through the material which has been made available before this Court, the record indicates that, earlier to the incident dated 28.12.2017 two more incidents have taken place i.e. on 22.3.2007 and subsequently on 23.3.2014, whereunder the accused has assaulted the deceased with club and caused the grievous injuries and it is the specific contention of the complainant that the accused used to demand for transfer of the house, car and financial documents pertaining to her and standing in her name and

as the deceased was not willing to transfer he assaulted and as a result of the ill-treatment and harassment the deceased died. Even it is contended during the course of argument that the accused has also accompanied the deceased and taken to hospital for getting her treated, but as could be seen from the post mortem report, it is noticed that she has sustained 14 injuries and she has taken to the hospital with dead. Under such circumstance it is the accused who accompanied the deceased has to explain under what circumstances and whether the said injuries have been sustained by the deceased. In the absence of any such material it creates a doubt in the case of the accused and an adverse inference can be drawn against him.

8. While considering the question of framing of a charge, the Court has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case as against the accused has been made out or not. In this behalf it is well proposed

principle of law by the Hon'ble Apex Court in the case of **Union of India Vs. Prafulla Kumar Samal and Another**, reported in **1979(3) SCC 4**, wherein, it has been observed that 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. It is further observed that if there is grave suspicion then under such circumstances the Court can discharge the accused. At paragraph 10 of the said decision it has been observed as under:

“10. 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.”

9. Keeping in view the principle laid down in the above decision, in the factual matrix if they are looked into, the contention of the learned counsel for the petitioner-accused does not have any force and the same is liable to be rejected.

10. Be that as it may. Even though it is contended by the learned counsel for the petitioner that the complaint does not contain any allegation and ill-treatment and harassment. It is well proposed proposition of law that complaint is not a encyclopedia which must disclose all facts and details relating to the offence reported. It is only the basis for the Police Officer to suspect the commission of the offence. While discharging the accused, the entire

material placed before the Court has to be seen and not the single document.

11. It is well proposed proposition of law that, if entire material is taken as it is without rebuttal and if there is no material, then under such circumstances, the accused is entitled for discharge.

12. In that view, if the entire material is perused it clearly goes to show that the petitioner-accused ill-treated and harassed for demand of transfer of the documents pertaining to the house, car and the LIC record. In that light, he has assaulted the deceased and because of the injuries she died. In that light, I am of the considered opinion that the trial Court after considering the facts and circumstances, material placed on record has come to a right conclusion and there are no good grounds to interfere with the order of the trial Court.

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

The observation made above while disposing the revision petition will not come in the way while disposing the main.

IA No.1/2019 does not survive for consideration and the same is disposed.

**Sd/-
JUDGE**

*AP/-