

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL WRIT PETITION NO. 895 OF 2015.

SHIVDAS S/O MADHAVRAO BARSE.
VERSUS
THE STATE OF MAHARASHTRA & OTHERS.

Appearance =>

Mr. G.N. Chincholkar, Advocate for the Petitioner.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 30th July, 2015.

Per Court :-

By the present Writ Petition, the petitioner is challenging the order dated 24th September, 2014 passed by the learned Additional Sessions Judge, Hingoli below application Exhibit – 119 in Sessions Case No.65 Of 2011, by which the learned court below rejected the application filed on behalf of the prosecution for framing of the additional charge under Section 302 of the Indian Penal Code against original accused Nos. 2,3 and 5.

After the rejection of the application, the State has not challenged the same. Original Complainant has approached before this court by filing present Writ Petition.

[2] Heard Mr. G.N. Chincholkar, learned counsel for the Petitioner. With his able assistance, I have gone through the order impugned.

From the said order, it is clear that, Accused No.1 is languishing in jail and trial is already commenced. The application filed by the State is one of the most cryptic application. No grounds are mentioned in the application as to why the charge under Section 302 of the Indian Penal Code should be framed against the remaining accused. Passing reference is that the Investigating Officer has filed the supplementary charge sheet for the offence punishable under Section 302 of the Indian Penal Code however, from the order impugned, it is clear that, such is not a case. In that behalf, I would like to reproduce herein below the observations made by the learned trial court in the impugned order :-

“The Supplementary charge sheet which is filed by the I.O. on record also does not disclose that it is filed for offence under Sec.302 of the I.P.C against accused No.2 to 5.”

Except this passing reference there is nothing in the application. The charge cannot be framed mechanically. Before framing the charge, sufficient material has to be placed before the court, so as to reach to the prima facie conclusion to frame the charge. Further the learned trial court has also observed that, while framing the original charge, it was noticed that, there is no direct evidence against accused Nos. 2 to 5 and, therefore, originally charge for the offence punishable under Section 302 of the Indian Penal Code was not framed against them but only against accused No.1.

[3] In my view, the learned trial court has considered all the aspects in the order impugned. According to the learned trial court, in view of absence of any material, charge for the offence punishable

under Section 302 of the Indian Penal Code cannot be framed against Accused Nos. 2 to 5. In my view, the trial court has correctly rejected the application. It was argued before the trial court that the complainant party intends to prolong the trial in view of the fact that accused No.1 is in jail. That aspect is also considered by the trial court. I see no reason to interfere with. Hence, I pass the following order :-

ORDER

Writ Petition is dismissed.

(V.M. DESHPANDE, J.)