

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.14 OF 2015

Brig.(Retd) Asil Singh ... Applicant

Versus

The State of Maharashtra &Anr. ...Respondents

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Brig.(Retd) Asil Singh for the Applicant.

Mr. V.B.K. Deshmukh, APP for Respondent No.1-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : -25th JUNE, 2015.

P.C.

Admitted. Heard finally.

2. Heard the Applicant in-person and learned APP for Respondent No.1-State.

3. The Applicant is aggrieved by the order passed by learned Additional Sessions Judge in Criminal Appeal No.423 of 2009 decided under section 341 of the Criminal Procedure Code. The Applicant had made an application before the Magistrate for initiating enquiry against Respondent No.2 under section 340 of the Criminal Procedure Code. The learned Magistrate took the view that the said application will be decided at the conclusion of trial in

Summary Criminal Case No.2067 of 2009.

4. The Applicant was facing trial for the offence punishable under section 504 of the IPC. In the said summary case his wife was also prosecuted for the offence punishable under sections 323, 504 and 427 r/w section 34 of the IPC. The wife of the Applicant was discharged in revision application filed by the Applicant and his wife. After conclusion of revision application the case against the Applicant under section 504 of the IPC continued.

5. During the pendency of the said summary criminal case, the Applicant had made an application under section 340 of Criminal Procedure Code for initiating enquiry against Respondent No.2 to determine as to whether she can be prosecuted for the offences punishable under sections 193 and 211 of the IPC. Learned Magistrate took the view that since the case was pending, issue could be decided at the conclusion of trial of Summary Criminal Case No.2067 of 2009. The Appellate Court confirmed the view of the Magistrate under section 341 of the Criminal Procedure Code.

6. I have heard the Applicant in-person and learned APP for Respondent No.1-State. Respondent No.2 has chosen to remain

absent though served. After the hearing, I have come to the conclusion that view taken by the Magistrate was not incorrect. Section 340 of Criminal Procedure Code says that enquiry can be initiated when the Court is of the opinion that it is expedient in the interest of justice to initiate the enquiry. In my opinion, the learned Magistrate would have been in better position to decide as to whether it was expedient in the interest of justice to initiate enquiry under section 340 of the Criminal Procedure Code only after conclusion of trial. I, therefore, do not find anything wrong in his order. There is nothing wrong in the order of the Appellate Court also. This application needs to be dismissed.

7. At this stage it is brought to my notice that case against the Applicant for the offence punishable under section 504 of the IPC has also been disposed of by the Magistrate under section 256 of the Criminal Procedure Code and it, therefore, follows that the Applicant must have been acquitted of the offence punishable under section 504 of the IPC. Learned Magistrate however, has not given any finding as to whether an enquiry under section 340 of the Criminal Procedure Code could be initiated.

8. The present application is dismissed. The Applicant is at liberty to move the Trial Magistrate for initiating enquiry under section 340 of the Criminal Procedure Code in view of his acquittal of the offence punishable under section 504 of the IPC under section 256 of Criminal Procedure Code.

(JUDGE)