

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 876 OF 2015

Juber Iqbal Shaikh & anr. ... Petitioners.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Nagma Tandan, advocate for Petitioners.

Mrs. G.P. Mulekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 25, 2015

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned
APP for State. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioners herein are charge-sheeted for offence
punishable under Section 302, 201 read with Section 34 of the Indian

Penal Code in C.R. No. 444 of 2014. The case is committed to the Court of Sessions and is registered as Sessions Case No. 810 of 2014. The Petitioners were arrested on 25/8/2014. Charge was framed on 29/1/2015. The Petitioners herein are challenging the framing of charge against the present Petitioners for offence punishable under Section 302 read with Section 34 of Indian Penal Code.

4 It is a matter of record that after filing of the charge-sheet, the Petitioners had not filed any application seeking discharge. Similarly, the Petitioners herein had also not availed of any opportunity to file an application under Section 227 of the Code of Criminal Procedure, 1973. However, what has been challenged today is the very framing of charge under Section 302 read with Section 34 of the Indian Penal Code.

5 The learned Counsel for the Petitioners has vehemently argued that there is no material on record for the Court to arrive at a conclusion that it is a fit case for framing of charge. It is submitted

that the learned Sessions Court has not considered the material in the charge-sheet and has arrived at a wrong conclusion that it is a fit case for framing of charge.

6 The learned Counsel for the Petitioners submits that initially, offence was registered against unknown persons. That no test identification parade has been conducted to prove the identity of the accused persons. That the investigation is not fair and therefore, according to the learned Counsel, continuation of the proceedings in Sessions Case No. 810/2014 would be an abuse of process of law and that the Petitioners would have to go through the ordeal of the trial and therefore, has prayed that the charge framed against the accused/petitioners be quashed and set aside.

7 Section 228 of the Code of Criminal Procedure, 1973 reads thus:

“228. Framing of charge. -[\(1\)](#) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is

ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8 The learned Counsel submits that after framing of charge, plea of the accused has also been recorded. Although the accused has pleaded not guilty, the very fact that the learned Sessions Court upon perusal of the compilation of the charge-sheet has arrived at a conclusion that by considering fair and justifiable opinion that it is a fit case for framing of charge-sheet, there is no reason for quashing

the charge. Once charge is framed, charge has to be taken to its logical end by adducing substantive evidence of the witnesses.

9 The learned Counsel for the Petitioners submits that after filing of this Writ Petition, this Court by an order dated 30th March, 2015 had stayed further proceedings. The said stay was continued from time to time. On 20th April, 2015, this Court (Coram : M.L. Tahaliyani, J) had observed that “Ad-interim order to continue. It is made clear that there should not be any bar on hearing the bail applications of any of the accused pending before the trial Court.” In view of these observations, the learned Sessions Court had allowed the bail applications and the accused were enlarged on bail.

10 Taking into consideration the very fact that the charge has been framed against the accused, this Court is not inclined to extend the stay. It is a fit case for giving an opportunity to the prosecution to adduce substantive evidence. The accused have an opportunity under Section 313 of Code of Criminal Procedure to refute the charges and

also examine defence witnesses. The case rests upon the circumstantial evidence and the prosecution deserves to lead evidence to that effect to prove the charges against the accused persons. The Petition being sans merit stands rejected.

11 Needless to state that the interim relief granted vide order dated 30th March, 2015 stands vacated. The learned Sessions Court shall proceed with the trial in accordance with law.

12 Office to communicate this order to the concerned Court.

(SMT. SADHANA S. JADHAV,J)