

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 2370 OF 2014

Ramesh Babulal Panjri & Anr.

... Petitioners.

V/s.

The State of Maharashtra

... Respondent.

Mr. Siddharth L. Kamble, Advocate for the Petitioners.

Mr. V.B.Konde-Deshmukh, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 27 JANUARY, 2015

P.C. :

1 Heard learned Advocate appearing for the Petitioners and learned additional public prosecutor for the State.

2 The Petitioners are facing trial for the offences punishable under sections 364 r/w 34 of the IPC and 365, 394 r/w.34 of the IPC for having allegedly abducted one Balasaheb Dharmaji Shinde from his native place viz. village Limb, Tal. & Dist. Satara, State of Maharashtra.

3 It is the case of the prosecution that there was a dispute between the victim Balasaheb Dharmaji Shinde on one hand, and Petitioner No.1-Ramesh B. Panjri (Org. Accused No.

6) in respect of some property deal. It is alleged that the victim owed certain amount to petitioner no.1/accused no. 6-Ramesh Panjri. It is further alleged that as the payment was not coming forth, the petitioner no.1 and his manager-petitioner no.2, who are accused nos. 6 and 5 respectively, had directed the other accused to abduct the victim so that the money could be recovered. It is alleged that other accused, who were physically present on the spot at village Limb have committed the offence in furtherance of common object of the accused and the petitioners.

4 Learned Advocate Mr. Kamble appearing on behalf of the Petitioners has submitted that even if the prosecution case as a whole, on the basis of the charge-sheet and documents, is accepted to be true and correct, it is impossible for the respondent / prosecution to prove the charges against the Petitioners.

5 Learned additional public prosecutor Mr. Konde-Deshmukh has submitted that the incident in question had occurred in the afternoon and that the victim was initially taken in a Tavera vehicle by five persons, who are accused nos. 1 to 4 and 7 in the charge-sheet. After the victim was taken away from his house, accused nos. 1 to 4 and 7 changed their vehicle. It appears that the other vehicle was a hired one. Accused no.7-Pravin Kadam took away the Tavera

vehicle. Rest of the four persons were traveling in the another car viz. Maruti Omni. The driver of the said car suspected some foul-play and therefore, he sent intimation to the concerned police station viz. Koregaon Police Station. The victim was rescued by the police and accused nos. 1 to 3 and 7 were arrested. Accused no. 4 was also later on arrested. As such it is the case of the prosecution that accused nos. 1 to 4 and 7 had taken part in the alleged abduction of the victim. It is also the case of the prosecution that abduction was done in furtherance of common object of petitioner nos.1 and 2 (accused nos. 6 and 5) and other accused. The learned additional public prosecutor has invited my attention to the call data record of mobile number of petitioner no.1-Ramesh Babulal Panjri (accused no. 6) and petitioner no.2-Adil Sarosh Master (accused no.5). He also invited my attention to the call data record of accused no.1-Dattatray @ Bapu Thombre. From the call data records, it appears that there was a call from accused no.1 to accused no.6 at about 15.26 hours and it had lasted for a very short while. Thereafter, there was a call from the mobile number of accused no. 5-Adil Sarosh Master to the mobile number of accused no.6-Ramesh Babulal Panjri. It is submitted by learned additional public prosecutor Mr. Konde-Deshmukh that these two calls indicate that accused nos. 6 and 5 were in touch with the other accused and the alleged abduction was at the instance of accused nos. 6 and 5. My attention was drawn further to the calls exchanged by accused

no.1-Thombre and Petitioner No.2 -Adil Sarosh Master (original accused no.5) which indicate that there were about 5 calls during the period between 15.26 to 16.53 hours. Mr. Konde - Deshmukh has submitted that there was a motive on the part of accused no.1 and accused no.6 as the victim owed money to accused no.6. In his submission the presence of the motive and the telephonic conversation exactly at the time of the incident could be a very strong circumstance against the Petitioners (accused nos. 6 and 5).

6 It is possible to argue that this material may not be sufficient to draw a conviction for accused nos. 6 and 5. However at the time of framing of charge, the court is not supposed to precisely find out whether the evidence will be sufficient to draw a conviction. What the court is required to do, is to see whether there is a strong suspicion that the accused might have committed the offence.

7 Learned Advocate Mr. Kamble on behalf of petitioner nos. 1 and 2 (accused nos. 6 and 5 respectively) has submitted that it was not explained why there was a call from accused no.1 to petitioner no.1/accused no.6. It was also pointed out that the victim in his own statement has stated that though accused no.1 had asked the victim to speak on telephone to petitioner no. 1/accused no. 6, the accused no. 6 was not on phone. The victim had stated that the person,

calling was talking in Marathi and has further stated that accused no.6 did not know Marathi. Therefore, it is obvious that accused no. 6 must not have spoken to accused no.1. However, what is pertinent to note is that the call was from the cell number of accused no.1. It is also pertinent to note that within a very short time, there was a call from accused no. 5 to accused no. 6 and there were number of calls between accused no. 6 and accused no. 1 thereafter.

8 Had it been the case of only call data record, the situation would have been different. Here there appears to be acquaintance between the petitioner and other accused and their appears to be a motive also. Petitioner No.2 was admittedly working as Manager of Petitioner No.1. Therefore, there are few circumstances which are within knowledge of the Petitioners and they are under the obligation to explain the same at the time of trial. As already stated, in such cases though the prosecution is under obligation to prove its case as a matter of rule, the burden of proof of certain facts lies upon the person who has special knowledge about those facts. It could be an accused also.

9 For all these reasons, I am of the view that the Petitioners will have to face trial on the basis of the material collected by the police and will have to prove their innocence during the course of the trial.

10 Writ Petition stands dismissed.

(JUDGE)

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