

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

CRI. REVISION APPLICATION NO. 307 OF 2015

Miten Kumar Bhanudas Pandya ... Applicant/Petitioner.

V/s.

The State of Maharashtra ... Respondent.

WITH

CRI. REVISION APPLICATION NO. 284 OF 2015

Dharmendra Laxmishankar Tiwari
& others ... Applicants/Petitioners.

V/s.

The State of Maharashtra ... Respondent.

Mr. M.S. Mohite i/by Pankaj J. Das, Advocate for the Applicant
/ Petitioner in Revn.No.307/2015.

Mr. Bhavesh Thakur i/by Rahul Arote, Advocate for the
Applicants / Petitioners.

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

CORAM : M.L.TAHALIYANI,J.

DATE : 27th JULY, 2015

P.C. :

1 Admit. Heard finally. Heard learned counsel for
the parties.

2 These two revision applications challenge the
common order of the 5th Additional Sessions Judge, Thane
passed below Exhs. 4 and 8 in Sessions Case No.230 of 2012.

3 There are four accused in the sessions case no. 230 of 2012 and they are facing trial for the offences punishable under sections 304 (II) and 338 read with section 34 of the Indian Penal Code.

4 The incident in question had occurred on 08.07.2011 within the jurisdiction of the Kashmir Police Station Dist. Thane in which 10 persons had died. One old wall constructed some where in the year 1966 had collapsed due to heavy rains and ten persons had lost their lives due to falling of debris upon their hut. The huts were constructed near the construction site of M/s. Kashmir Ceramic Products. The Kashmir Ceramic Products had been in the process of building 7 buildings at the place of the incident. The piling work was assigned to M/s. J. Kumar Infraprojects Ltd.. The workers working at the site were accommodated in the said huts.

5 The applicants/petitioners in criminal revision application no. 284 of 2015 were the Engineers, working under the J. Kumar Infraprojects Ltd..

6 The applicant, Mr. Miten Kumar Bhanudas Pandya, in Revision Application No.307 of 2015 was working as Supervisor in the Kashmir Ceramic Products.

7 The police reached the spot of incident. A fire-brigade had also reached the spot. The injured were moved to the hospital. Ten of them had died. The FIR for the said offence was registered. After completion of investigation, a charge-sheet was filed. It is the case of the State/prosecution that the applicant(s) knew that the wall was old and dilapidated one and that it may fall at any time and, therefore, the applicant (s) had the knowledge that the workers at the site would die due to the fall of the wall during the rainy season.

8 As far as the order of the learned Additional Sessions Judge, rejecting the applications for discharge is concerned, I cannot comment anything on the said order because there is nothing in the said order. The order runs into 10 pages. First two pages deal with the facts of the case in which even date of the incident and place of the incident is also not mentioned. Rest of the eight pages are devoted by the learned Additional Sessions Judge for reproduction of various sections of Indian Penal Code. As such no reasons have been recorded for rejecting the applications of the applicant(s).

9 In fact, the learned Additional Sessions Judge was under the obligation to look into the facts of the case, particularly, the location of huts and their distance from the wall. The learned Judge was also under the obligation to take

into consideration that the wall was not under the control of the applicant(s). The wall belonged to one Vispute, who has a plot behind the said wall. The learned Additional Sessions Judge was, however, under the obligation to examine whether in such circumstances the knowledge or culpability can be attributed to the applicant (s).

10 In the circumstances, the order of the learned Additional Sessions Judge will have to be set aside and he will have to be directed to hear the applications afresh and decide the applications by passing a reasoned order, after examining the issues mentioned by this court in the present order.

11 The common order of the learned Sessions Judge below Exhs. 4 and 8 in Sessions Case No. 230 of 2012 is hereby set aside.

12 The learned Additional Sessions Judge is directed to hear the applicant(s) afresh and decide their prayer by passing a reasoned order. The learned Judge should avoid reproduction of sections after sections of IPC including illustrations.

13 The present revision applications are disposed of in the above terms.

(JUDGE)