

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 345 OF 2015
WITH
CRIMINAL APPLICATION NO. 379 OF 2015

Anand @ Andy Rajan Cruz	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Irfan Shaikh, Advocate for the applicant in Revn No.345/2015.
Mr. Nitin Sejpai for applicant in APPR/379/15.
Mr. Arfan Sait, APP, for the State.
Mr. R.N.Wave, PI, Kokanbhavan, Navi Mumbai.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 8th October, 2015.

P.C.

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

2. The present applicant herein happens to be an accused in C.R. No.159 of 2013 registered at Panvel City Police Station for the offences punishable under Sections 363, 364, 365, 302, 201 read with Section 34 of IPC and under Section 37(1) read with Section 135 of the Bombay Police Act.

3. The applicant herein was granted bail by this Court vide order dated 4.2.2015. At the time of grant of bail by this Court, it considered the

order passed in favour of the co-accused Nitin Bhoir, who was granted bail by a Co-ordinate Bench vide order dated 23.8.2013. Taking into consideration that it was a case of circumstantial evidence, this Court had granted bail. However, by an order dated 18.8.2015, the Hon'ble Apex Court has allowed the application filed by the original complainant and has recalled the order of grant of bail.

4. It is pertinent to note that by an order dated 12.2.2015, this Court, while considering the bail application of one of the accused Hanuman Prem Patil, had expedited the trial and had directed the Sessions Court to make an endeavour to complete the trial within a period of six months from the date of receipt of the order. The Co-ordinate Bench (Justice A.M.Thipsay) had also granted liberty to the applicant to apply afresh for bail in the event the trial is not completed within the aforesaid period. In the meanwhile, the complainant had approached the Hon'ble Apex Court. Before the Hon'ble Apex Court, a statement was made by the accused that the accused Anand had filed Criminal Revision Application No.345 of 2015 challenging the framing of charges while the investigation was still in progress. This Court (Coram: M.L.Tahaliyani, J.) by an order dated 30.7.2015, had heard the learned counsel for the applicant and had

stayed the proceedings before the trial Court in Sessions Case No.75 of 2014 pending before the Addl. Sessions Judge, Raigad. The Hon'ble Apex Court has directed this Court to take up the Revision Application No.345 of 2015 and dispose of the same within six weeks from the date of the order. In view of this, the Revision Application is taken up for final hearing.

5. The learned counsel for the applicant submits that in fact, the charge was framed on 1.4.2015. On that day, the prosecution had filed an application seeking to add Section 120B of IPC. On the same day, i.e. 1.4.2015, the learned Sessions Judge had called for a report under Section 294 of Cr.P.C. On 7.4.2015, the report was not yet received. On 12.7.2015 also the report was not received. Till 10.6.2015, the report under Section 294 was awaited. The learned counsel for the applicant submits that on that day all the documents which would substantiate the prosecution case, were not before the Sessions Court and therefore, the learned Sessions Judge ought not to have framed charge on 1.4.2015.

6. The learned counsel for the intervener submits that the complainant has been taking steps to see that the investigation is carried out in its proper perspective. The complainant had filed Writ Petition No.4270

of 2013 before this Court seeking a direction that the investigation in Crime No.59 of 2013 registered at Panvel City Police Station was carried out. According to the learned counsel for the applicant, the said petition was allowed and therefore the State CID is carrying out further investigation.

7. According to the learned counsel for the applicant, the framing of charge during the pendency of further investigation has caused grave prejudice to the accused. According to him, the procedure adopted by the learned Sessions Court is unwarranted and unjustified and therefore prays that the charge framed on 1.4.2015 be quashed. Any irregularity in framing of charge does not vitiate the trial, but is a curable irregularity. After perusing the documents pertaining to the supplementary charge sheet, the learned Sessions Court may modify, amend or alter the charge. That the trial was expedited by the orders of this Court and therefore, the learned Sessions Judge has only complied with the orders passed by this Court thereby expediting the trial. There was no reason for postponement of the stage of framing of charge.

8. The learned counsel for the intervener submits that on 30.7.2015, when the present Writ Petition was heard, the intervener was not

heard. In fact, the defacto complainant was not a party to the Revision application and therefore, without issuing notice to the intervener, this Court was pleased to stay further proceedings. According to the learned counsel for the applicant, the Hon'ble Apex Court had recalled the order granting bail subsequently on 18.8.2015 and directing this Court to dispose of the revision application within six weeks. Since this Court is of the opinion that the learned Sessions Judge has framed charge pursuant to the directions of expediting trial, it cannot be said that the learned Sessions Judge has committed an error. In any case, till the stage of 294 prosecution would be at liberty to file all documents upon which they wish to rely for prosecuting the accused. The report under Section 294 is called and is awaited.

9. The learned APP submits that further investigation would be concluded within two weeks from today. Thereafter, the prosecution would take steps under Section 294 of Cr.P.C. and the documents would be available to the accused for the purpose of admitting or denying the admissibility of the documents.

10. In view of the above, the Revision Application being sans

merits, stands rejected. Needless to say that the order dated 30.7.2015 passed by this Court thereby staying the trial, stands vacated.

11. Intervention Application is allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.