

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

CRI. REVISION APPLICATION NO. 279 OF 2014

Smt. Shanta Raj Shekhar & Anr. ...Petitioners/Applicants.

V/s.

State of Maharashtra ... Respondent.

Mr. Sushrut Jadhwar, Advocate for the Petitioners/Applicants.
Mr. V.B.Konde-Deshmukh, APP for the State.

CORAM : M.L.TAHALIYANI, J.

DATE : 13 JANUARY, 2015

P.C. :

1 Heard the learned counsel for the applicants and learned APP for the State.

2 Admit.

3 By consent, the revision application is taken up for final hearing. Heard finally.

4 The Applicants are accused nos. 3 and 4 in sessions case no. 609 of 2013, pending in the court of Additional Sessions Judge, Greater Mumbai. They are facing trial for the offence punishable under sections 120-B, 354 and 376 read with 34 of the Indian Penal Code.

5 Accused no.1 Nagesh and accused no. 2 Suresh are brothers. They are staying together. They have third brother by name Ramesh, who is also staying with them. The victim is the wife of Ramesh. She was married to Ramesh in the year 1989. The FIR has been registered on the complaint made by the victim lady by name Kani Ramesh Nadar. It is alleged that the accused no. 1 Nagesh used to have sexual intercourse with her without her consent in the absence of her husband Ramesh Nadar. It is further alleged that his fact was brought to the notice of the applicants, who are brother and sister respectively of the husband of victim Kani. This fact was also brought to the notice of the mother of the accused nos. 1 & 2 also. It is alleged that they ignored allegations made by the victim. There are no other allegations against the applicants except the allegations mentioned herein above. It may be noted that omission on the part of the applicants by itself may not make them liable with help of Section 34. Even if the allegations are looked into, keeping in view section 109 of IPC, it may not be possible to say that the applicants had abated the offence committed by the accused no.1 Nagesh. In fact, there is no evidence that there was a conspiracy between the applicants and other accused to commit rape on the victim. The acts of Nagesh were independent. There is no material on record to say that the applicants had shared intention of the accused Nagesh Nadar.

6 Since there is no material to prima facie conclude that the applicants and others had entered into a conspiracy to commit rape on the victim and since there is no material to show that the applicants had shared the intention of the accused Nagesh Nadar, it follows that the applicants are entitled to be discharged of the charges leveled against them. The Application of the applicants for discharge should not have been rejected by the trial court. In view thereof, I pass the following order :

7 The Revision Application is allowed. The order passed by the Sessions Court below Exh. 6 in Sessions Case No. 609 of 2013, refusing to discharge the applicants is set aside.

8 The applicants are hereby discharged of the offence punishable under sections 120-B, 354 read with 34 of the IPC and under section 376 read with 34 of the Indian Penal Code. Their bail bonds, if any, stand cancelled. Revision Application stands disposed of accordingly.

(JUDGE)

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