

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

CRI. REVISION APPLICATION NO. 134 OF 2015

Shri Prabhakar Bapurao Gawade ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Jaydeep Deo, Advocate for the Applicant.

Mr. Ajay R. Patil, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 09th APRIL, 2015

P.C. :

1 Admit. By consent, heard finally at the admission stage.

2 Heard learned counsel Mr. Jaydeep Deo for the Applicant and learned APP for the State.

3 The applicant is facing trial for the offences punishable under sections 120B read with 143, 147, 148, 149 r/w. 307 of the Indian Penal Code along with the other accused. The incident in question had occurred on 11th April, 2011 in front of Hotel Malaganga situated at village Takalji Haji, District Pune. There was unlawful assembly of about 12 persons whose names are mentioned in the charge-sheet. They

had assaulted the complainant Subhash and others and they were shouting and were questioning as to how and why the names of the applicant and Rama Gavade were not mentioned in the handbills in the local fair (Jatra). The persons who took part in the unlawful assembly and assaulted the complainant - Santosh and others, were arrested. The applicant was released on bail under section 438 of the Cr.P.C.. After completion of investigation, a charge-sheet has been filed against the applicant - Prabhakar Gawade and others for the above stated offences.

4 The applicant is at serial no. 10 in the charge-sheet. He is accused of the offence of the conspiracy. It was the case of the prosecution before the learned trial Judge that the applicant had entered into conspiracy with the persons who were part of the unlawful assembly on 11th April, 2011.

5 Admittedly, the applicant was not present on the spot and he did not take part in the unlawful assembly. As such, as already stated, he is accused of the offence of the conspiracy.

6 The learned counsel for the applicant submitted that there is no material at all in the charge-sheet to hold, prima facie, that the applicant was part of the conspiracy, if

any. The application filed by the applicant for discharge has been rejected by the learned trial Judge.

7 I have gone through the order of the learned trial Magistrate. The learned trial Magistrate has refused to grant discharge on the ground that the statements of Subhash, Sandeep and Baban indicate that the applicant was part of the conspiracy and, therefore, the charge should be framed against the applicant. I have gone through the statements of the complainant Subhash and two others witnesses. It can be seen that the statements of the other two witnesses are hear-say. They had come to know that the applicant was instrumental for the alleged unlawful assembly. This obviously is not a sufficient evidence to frame charge.

8 The learned additional public prosecutor has invited my attention to the statement of Santosh who has stated that there was an incident of 10th April, 2011 where verbal quarrel took place with some of the accused on one hand and Ram Gawade and the applicant on the other hand. It is brought to my notice that Ram Gawade had threatened the complainant and others on 10th April, 2011. It is submitted by the learned APP Mr. Patil that there is sufficient material to hold that the applicant was part of the conspiracy and the Applicant was present in the meeting dated 10th April, 2011 when the accused/applicant -Prabhakar Gawade had extended

the threats to the persons / group belonging to the complainant.

9 If one goes through the statement of Subhash Gawade, it can be seen that the threats were given by the accused- Ram Gawade and not by the applicant - Prabhakar Gawade. No role has been attributed to the applicant in the meeting dated 10th April, 2011. It appears to be the conclusion of the investigating officer that the incident of unlawful assembly had taken place because the names of the applicant and Ram Gawade were not mentioned in the handbills of the local fair (jatra). This conclusion is based on the evidence of three witnesses mentioned herein above. It may be stated here that the statements of the witnesses viz. Sandeep and Baban do not help the prosecution in any manner. So far as the statement of Subhash is concerned, it can only prove the presence of the applicant in the meeting dated 10th April, 2011 and nothing beyond that. Even if the case as per the record in the charge-sheet is proved, the material will not be sufficient to convict the applicant for the offences punishable under sections 120B of the Indian Penal Code.

10 No doubt it is difficult to get direct evidence of conspiracy in most of the cases. However, the evidence in the form of circumstantial evidence also should be sufficient enough to raise at least a strong suspicion which may be

sufficient to frame a charge. In the present case, it is possible that the persons belonging to the group of the applicant felt hurt because of the non-mentioning of the name of the applicant in the handbills. That does not lead one to the conclusion that the applicant was a party to the conspiracy.

11 In my opinion, the order passed by the learned trial Judge needs to be set aside.

12 The order passed by the trial court is hereby set aside. The applicant is discharged of the offences punishable under sections 120B, 143, 147, 148, 149 read with section 307 of the India Penal Code in sessions court case no. 769 of 2012, pending on the file of the additional Sessions Judge, Pune.

13 Revision application stands disposed of accordingly.

(JUDGE)

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