

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 4279 OF 2015

Nathubhai Gomanbhai Patel

.....Petitioner

V/s.

Union Territory of Dadra and Nagar Haveli Silvassa
and another

....Respondents

Mr. Mahesh Jethmalani Senior counsel

i/b Ms. Chaitra R. Pawar, advocate for Petitioner

Ms. P. H. Kantaria and Mrs. A. A. Mane, APP for the State

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 28, 2015.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of parties.
- 3) Petitioner herein is facing the charges under section 143, 147, 148, 149, 427, 452, 504, 506 of Indian Penal Code in R.C.C. No. 45 of 2000 pending before Chief Judicial Magistrate, Dadra and Nagar Haveli at Silvassa. Learned senior counsel for the petitioner submits that the charge is not framed inconsonance with the scheme under section 218 of Code of Criminal Procedure, 1973. Learned senior counsel submits that on 21/10/2015, charge was framed and recording of evidence has commenced on 23/10/2015.

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Learned senior counsel further fairly submits that the irregularity in framing the charge was never brought to the notice of learned Chief Judicial Magistrate who has framed the charge. Instead, petitioner had filed a transfer application before Sessions Court. The said transfer application has been rejected and the petitioner being aggrieved by the said order has approached this Court by filing writ petition st no. 710 of 2015.

4) After arguing for sometime, learned senior counsel for the petitioner submits that petitioner seeks liberty to withdraw the petition with further liberty to file an appropriate application before Chief Judicial Magistrate, demonstrating the irregularity in framing of the charge and request the court to frame the charge inconsonance with the scheme under section 218 of Code of Criminal Procedure, 1973, within one week from today.

5) Liberty as prayed for is granted in the interest of justice. Learned Chief Judicial Magistrate shall consider the application on its own merits and decide the same within 2 weeks thereafter. Learned Magistrate is further directed to frame the charge in accordance with the mandate of section 218 of Code of Criminal Procedure, 1973. Learned Chief Judicial Magistrate shall not proceed with recording of evidence till application seeking modification of

the framing of charge is decided and the charge is framed in accordance with law.

- 6) Rule is discharged.
- 7) Writ petition stands disposed of as withdrawn.
- 8) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)