

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 400 OF 2014

Shri Vilas Sadhu Mate & Ors.	...	Applicants
vs.		(Orig. accused Nos. 4, 5 & 6)
The State of Maharashtra	...	Respondent

Mr. Sachin Jadhav, Advocate, for the applicants.

Ms. A.S. Patil, APP, for the State.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 28th August, 2015.

P.C.

1. The learned counsel for the applicants submits that applicant No.3 has died on 19.1.2015. Hence, the Revision Application stands abated against him. The Death Certificate is taken on record and marked "X" for the purpose of identification.

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

3. The applicants herein question the correctness and validity of the order passed by the learned Addl. Sessions Judge, Pune, dated 15.7.2014, thereby rejecting the application below Exhibit 59, seeking discharge in Sessions Case No.321 of 2013.

4. It is the case of the prosecution that on 8.4.2011, a report was filed at the Haveli Police Station, Pune, alleging therein that on 8.4.2011 at about 5.45 p.m., the accused persons namely Vijay Mate, Kailash Mate, Dattatray Mate and Sachin Prakash Mate i.e. applicant No.2 had coerced the complainant to transfer Survey No.18/1/2 situated at Khadkawasla in favour of Vilas Mate. That the complainant was assaulted with stick, weighing machine. That Kailash Mate had snatched the chain from the neck of the complainant. That accused No.4 Dattatray Mate was in Flora Hotel armed with sword and he had assaulted the complainant on his head. That he had sustained grievous injuries. N.C. No.93 of 2011 was registered on the basis of the said report.

5. On the same day, at about 5.45 p.m., the complainant Sachin Mate had lodged a report at the police station about the same incident. He has alleged that on 8.4.2011 at about 5.45 p.m., he had been to the shop of Santosh Mate and thereafter he was returning home. When he was passing in front of Flora Hotel, he was accosted by Dattatray Mate, Sachin, Kailash, Kunal, Vijay Mate and Kunal had mounted assault upon him with sticks and weighing machine. Kailash had snatched two tolas chain from his neck and Dattatray was brandishing his sword which had struck him. According to the complainant, the motive for the said assault was that they were

coercing the complainant to transfer the agricultural land in favour of Vilas Mate. On the basis of his report, Crime No.197 of 2011 was registered against all the accused for offence punishable under Section 395 of Indian Penal Code. In fact, in respect of the same incident, non-cognizable case was already registered. The charge sheet was filed.

6. After investigation, the Investigating Officer i.e. P.I. of Haveli Police Station had filed a report before the Superintendent of Police, Pune Rural, contending therein that it had transpired in the course of investigation that the dispute was between the distant relatives and the reason was that they were insisting upon transfer of the land. According to the Investigating Officer, he had recorded the statement of several witnesses who had disclosed that the present applicant Nos. 1 and 2 were not present at the scene of offence. That there are several trifling disputes between both the groups. It was specifically contended that the present applicant Nos. 1 and 2 were not present at the time of incident. According to the I.O., it had also further transpired that the complainant was not wearing the golden chain on that day. There is a station diary entry to that effect. It is also specifically contended that no offence under Section 395 is made out.

7. On 16.4.2011, the P.I. of Haveli Police Station filed a report contending therein that there is evidence only against Kailash, Kunal and

Vijay as far as assault on the complainant is concerned. It is also contended that no other person was present. It is further contended that only because the member of one group was looking at the other group in defiance the alleged incident has occurred. It was specifically contended that Sec. 395 of IPC be deleted and instead accused be tried under Section 326 read with Section 34 of IPC. The P.I. had then filed a report stating therein that the complainant happens to be an Advocate and was taking undue advantage of the said qualification and profession. There is evidence to the effect that the said golden chain was lost and was not snatched.

8. Perused the injury report which shows that the complainant had sustained one contused lacerated wound over right temporo-parietal region i.e. 3 x 2 cm. and abrasion over right shoulder region, blunt trauma with swelling over right eye.

9. The learned counsel for the applicants on the basis of the papers of investigation, submits that the allegations levelled by the complainant do not inspire confidence as far as the present applicants are concerned for the simple reason that there is direct evidence in the nature of statements of the eye-witnesses. They have specifically stated that at the time of incident, the present applicant Nos. 1 and 2 were not present at the scene of offence. According to the complainant, the land was to be

transferred in the name of applicant No.1 and that was the real motive for the alleged incident.

10. The learned counsel for the applicant further submits that the first information report also gives the name of the person who had allegedly snatched the gold chain from the complainant in the alleged incident. It cannot be said that the other accused persons, although were present, had shared the common intention or object for the purpose of snatching of the chain.

11. Section 395 of Indian Penal Code contemplates thus :-

“395. Punishment for dacoity - Whoever commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

Section 391 of IPC defines “Dacoity” as follows :-

“When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”

12. In the facts of the present case, it appears that assault was mounted upon the complainant by some persons. On the basis of occurrence report, a non-cognizable case was registered and on the basis of

the same set of circumstances, cognizable case was also registered for an offence punishable under Section 395 of Indian Penal Code. The Investigating Officer, in the fitness of circumstances, had filed a report on the basis of the conclusion drawn by him that Section 395 of IPC is not attracted in the present case and that the accused deserve to be tried for the offence punishable under Section 326 read with Section 34 of IPC. It is true that the charge is to be framed on the basis of the material collected by the Investigating officer in the course of investigation and more particularly on the conclusion drawn by the Investigating officer. The Court cannot replace its own opinion for the conclusion drawn by the investigating officer, unless there is need to do so in the interest of justice. In view of this, the order passed by the learned Sessions Judge rejecting the application seeking discharge for offence punishable under Section 395 of IPC deserves to be quashed and set aside.

13. The learned Sessions Judge shall consider the conclusion drawn by the investigating officer vide reports dated 13.4.2011 and 16.4.2011 before framing of charge. The learned Sessions Judge shall call for draft charge from the prosecution and consider the observations made by this Court before framing of charge.

14. In view of this, Revision Application is allowed. The

Judgment and order dated 15.7.2014 is hereby quashed and set aside. The Revision Application is allowed in the above terms.

(SMT.SADHANA S.JADHAV, J.)