

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 379 OF 2014

Rajesh Abhichand Doshi and anotherApplicants
V/s.
Poornima Prakash Dahiya and othersRespondents

Mr. Vijay Waghela Advocate for Applicants
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : SEPTEMBER 21, 2015.

PC :

Applicants herein are questioning the correctness and validity of the order dated 28/10/2014 passed by Sessions Judge, Mumbai thereby rejecting the application challenging the framing of charge below Exhibit 19. Application was filed contending therein that on 27/10/2014 accused had learnt that the alleged place of incidence date and time are beyond the jurisdiction of the Sessions Court i.e. Bhayander. A prayer was made not proceed with the trial since the Sessions Court had no jurisdiction. The said application was rejected with cost.

2) The facts of the case are that applicants herein are accused in crime no. 515 of 2010 registered at Andheri Police Station at the behest of Mrs. 'X' for offence punishable under section 366, 376, 420, 506 r/w 34 of Indian Penal

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Code. Investigation is completed and charge-sheet is filed. Case is committed to the court of sessions and registered as sessions case no. 170 of 2011. Accused/applicants had filed an application for discharge. Accused had contended that no offence, exclusively triable by court of sessions, is made out and therefore had prayed that matter be transferred to the court of Chief Judicial Magistrate or any other Court. The said application was rejected by the Additional Sessions Judge, Sewree vide order dated 14/07/2011. The said order was challenged before High Court by filing Criminal Application No. 935 of 2011. On 14/03/2012 application was withdrawn.

3) On 30/06/2012, Additional Sessions Judge had passed an order below exhibit 1 that the accused are liable to be charged for offence under section 366 and 420 of Indian Penal Code and that no case is made out for framing of charge under section 376 of Indian Penal Code. The said order is challenged before Hon'ble High Court by filing revision application no. 283 of 2012. The said revision application was disposed of by this Court (Coram: M. L. Tahaliyani, J.) vide order dated 19/08/2014. This Court had observed :

“06. I do not agree with the learned counsel for the respondent No.1. In my opinion, the learned Sessions Court has not considered as to whether, prima facie, the consent appeared to be given under

misconception of fact. The FIR is absolutely clear that the complainant did not want to give consent for the physical intimacy. Whether the complainant's consent was free consent or otherwise will have to be decided by the trial court after appreciation of evidence. It is not permissible for this Court to evaluate the material collected by the police at this stage.

07. Since the prima facie case is made out, the learned trial court is directed to frame charge u/s. 376 of I.P.C. also. In view thereof, the order of the Session Court dated 30/06/2012 in Sessions Case No. 170 of 2011 is set aside and charge u/s. 376 shall be framed against the respondent No.1.”

4) Pursuant to the order dated 19/08/2014 by this Court, charge was framed against accused on 01/09/2014 for offence punishable under section 506 (II) of Indian Penal Code. Plea of the accused was recorded on 01/09/2014 i.e. on the same day. Accused had pleaded not guilty and claimed to be tried.

5) Accused had filed an application below exhibit 14 seeking relief of re-framing of charge. Application was filed on the ground that Hon'ble High Court has directed to frame the charge under section 376 of Indian Penal Code against respondent no. 1 and therefore prayed for recalling the charge framed against accused no. 2 and that charge against no. 1 be recalled as the

only charge shall be framed against accused no. 1 would be under section 376 of Indian Penal Code. The said application below Exhibit 14 was rejected vide order dated 17/09/2014. Learned Sessions Judge had rightly observed the merits of the matter and had directed to frame charge under section 376 of Indian Penal Code. Learned Sessions Court had on the earlier occasion arrived at a conclusion that offence punishable under section 366 & 420 of Indian Penal Code was made out. Learned Sessions Court had therefore rightly rejected the application. It is pertinent to note that thereafter another application was filed below exhibit 18 challenging the jurisdiction of the case for trial on the ground that the charge framed indicates that place of offence of rape is shown as Dahisar which is in the jurisdiction of Thane Court and therefore Sessions Court Greater Bombay had no jurisdiction to frame the charge. Learned Sessions Judge had considered the merits of the matter. Learned Sessions Court had observed that the victim was taken from one place to another and finally she was taken to Bhayander and she was forced to stay in a rented room with accused no. 1 where he had forcible sexual relations with her from 01/04/2009 till August 2009. Learned Sessions Court had rightly observed that it was a continuing offence which had occurred in more than one local areas. Offence comprised of several acts done in different

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local areas and therefore any of the court would have jurisdiction to try the offence. It was rightly observed that under section 181 of Code of Criminal Procedure, 1973, the court within whose local jurisdiction, the person was kidnapped or abducted also has jurisdiction to try the offence. Hence, application was rejected with fine of Rs. 1000/-. It is pertinent to note that thereafter another application was filed under exhibit 19 again challenging the jurisdiction of the court. Hence, Sessions Court had rejected the application below exhibit 19.

6) It is a matter of record that revision application filed by the original complainant was allowed by this Court on merits. This Court had specifically observed that an offence under section 376 was made out. That pursuant to the observations made by this Court, sessions court had framed the charge under section 376 of Indian Penal Code against both the accused. Once the charge is framed, the trial would commence and trial has to be taken to its logical end. There was no question of deciding jurisdiction of the court to try the offence. Earlier, application was withdrawn before (Coram: Ranjit More, J.). Learned Sessions Court had rightly rejected the subsequent application and has recorded a finding that accused has made futile efforts to protract the
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proceedings as far as possible. Learned sessions court has recorded justifiable reasons for rejecting the said application. Hence, application, being sans merits, deserves to be rejected.

ORDER

- (i) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)