

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Revision [REVN] No.49 of 2015

(Naeem @ Nammu Khan s/o Salim Khan

vs.

The State of Maharashtra, through P.S.O. Ramnagar, Gondia)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. R.M. Daga, Advocate for the Applicant.
Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 16, 2015.

Heard the learned Counsel for the applicant and
the learned A.P.P. for the State.

This Court while issuing notice on 8th April, 2015
referred to the controversy involved in the present revision
application. A report was lodged at Ramnagar Police Station,
Gondia at the instance of one Vilas Gajbhiye and an offence
was registered as Crime No.88/2012 against the accused
persons for committing the offence under Sections 302, 307,
147, 148, 149, 109, 120-B and 212 of the Indian Penal Code
read with Section 3(2)(v) of the Scheduled Castes and the
Scheduled Tribes (Prevention of Atrocities) Act, 1989 and
read with Sections 2, 4, 25 and 27 of the Arms Act.

The sum and substance of the report was, on
09/10/2012 when the informant/complainant while returning

to his home found his acquaintance one Dharam Davne at Shakti Square. He approached Dharam and while the exchanges between them going on, a vehicle i.e. Tata Sumo reached the spot and gave dash to Dharam. Chotu Khan, Annu Katiyar, Golu Tiwari, Raju Tiwari, Akki Aghuri and other 5-6 persons alighted from the vehicle. Chotu opened fire from the country made revolver and the other accused person, who were armed with iron rods, sticks and swords, assaulted Dharam. In that process, the informant/complainant also received blows of sticks and iron rods. He was successful in fleeing away from the spot saving his life. The applicant approached the learned District and Sessions Judge, Gondia by filing application for seeking discharge. It was the submission of the applicant that there was some rivalry between the accused persons and Dharam referred to in the report. It was further submitted that though the investigation concluded in filing the charge-sheet, there is no material to connect with commission of crime. Moreover, there is absolutely no material to show that the applicant played any active role in the alleged murder of the deceased. It was submitted that even there is no material to attract the charge against the applicant for committing the offence under Section 212 of the Indian Penal Code. As it is submitted that

there is no material against the applicant, compelling the applicant to face charge would be unjustified. The learned Sessions Judge rejected the application seeking discharge.

The learned Counsel for the applicant submits that the learned Sessions Judge ought to have decided the application considering the merits of the application and the grounds raised by the applicant. The learned Counsel, by inviting my attention to the order passed by the learned Sessions Judge, submits that the learned Judge decided the application even by not affording any opportunity to the State and this is reflected with the reference that the learned A.P.P. was absent when the application was decided. The learned Counsel for the applicant further submits that the learned Sessions Judge, by only referring to the order passed by the Division Bench of this Court and observing that it is an attempt of the applicant to protract trial, rejected the application. It is the submission of the learned Counsel for the applicant that such a course adopted by the learned Sessions Judge is neither acceptable nor tenable.

The learned A.P.P. vehemently opposes the application.

On the backdrop of the submission of the learned Counsel for the applicant and the learned A.P.P., I have gone

through the material placed on record. The perusal of the order passed by the learned Sessions Judge shows that the learned Sessions Judge referred in detail to the order passed by the Division Bench of this Court and observed that the directions of the Division Bench of this Court were time bound directions of framing charge. The learned Sessions Judge further observed that the order of the Division Bench was challenged by filing special leave petition and the same also rejected by the Hon'ble the Apex Court. Thus, it is clear that the learned Sessions Judge passed the order concentrating on the directions of this Court and at the same time the learned Sessions Judge failed to assign any reason on merits for rejection of the application. The applicant was before the learned Sessions Judge raising ground that the material collected by the investigating agency is wholly insufficient to establish any case against the applicant much less the allegation of harbouring accused. In the application, it was also submitted that the material against the applicant is in the form of statement of co-accused. The so called recovery of incriminating article is attributed against the other accused and this recovery itself is a doubtful piece of material. The learned Sessions Judge was expected to apply his mind on the grounds raised in the application seeking discharge on the

backdrop of the submission that there is no material against the applicant. The learned Sessions Judge would have also afforded an opportunity to the learned A.P.P. for countering the submission of the applicant. The learned Sessions Judge, without taking up these exercise and giving a much emphasis on the order passed by this Court, rejected the application. Though it was necessary for the learned Sessions Judge to follow the directions of the Division Bench of this Court, at the same time, the learned Sessions Judge could not have kept himself away from assigning the reasons on merits while rejecting the application.

Considering these facts, in my opinion, the ends of justice would be met by remitting the matter back to the learned Sessions Judge with direction to decide the application filed by the applicant seeking discharge afresh with a reasoned order. This exercise is to be completed within three weeks from today by giving opportunity of hearing to the State also.

With these directions, the revision application is disposed of.

JUDGE

**sdw*