

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2353 OF 2005

1. Ajitsingh s/o Babusingh
Age 30 years, Occ. Agriculture
and business,
R/o. Gurudwara Road,
Nanded
 2. Manjit Kaur w/o Babusingh
Age 53 years, Occ. Household
R/o. As above
- ...Applicants
- versus
1. State of Maharashtra
(Copy to be served on the
Public prosecutor, High Court
Bench at Aurangabad)
 2. Lotu Atkare (deceased)
CIDCO, Nanded
- ...Respondents

...
Advocate for Applicant : Mr Hemantkumar Pawar
APP for Respondent No.1 : Mr A.R. Kale
.....

CORAM : V. K. JADHAV, J.
DATED : 19th SEPTEMBER, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the order dated 21.7.2005 passed below
Exh.17 in Special Case (Atrocity) No. 8 of 2004, by Additional
Sessions Judge, Kandhar, the applicants original accused preferred
this criminal application.

2. Brief facts, giving rise to the present criminal application are as follows:-

a) The respondent No.2 complainant, who is no more, lodged a complaint at police station Sonkhed against the applicants and on the basis of said complaint, crime No. 55 of 1998 came to be registered for the offences punishable under Sections 420, 406, 506 of I.P.C., Section 7(1) (d) of Protection of Civil Rights Act and under Section 3(1) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter for the sake of brevity referred to as the "Atrocities Act"). After due investigation, charge sheet came to be submitted before the J.M.F.C. Loha and the case is registered as R.C.C. No. 629 of 1999. However, subsequently, the learned C.J.M. called upon the record and proceedings and said case is accordingly registered before learned C.J.M. as R.C.C. No. 846 of 1999. The applicants accused appeared in the said case and filed an application for discharge. The learned C.J.M. by order dated 1.1.2000 below Exh.9 discharged both the applicants-accused.

b) Being aggrieved by the same, the State had preferred criminal revision application No. 75 of 2003 before the Sessions Court, Nanded. The learned 2nd Adhoc Additional Sessions Judge, Nanded by judgment and order dated 19.8.2003 allowed the application and

thereby quashed and set aside the order passed by the learned C.J.M. discharging the applicants accused and further directed the learned C.J.M. that after receiving record and proceeding back, take suitable steps in the matter in accordance with law so as to proceed with the trial expeditiously. In view of said directions, learned C.J.M. has committed case to the Special Court since the offence, particularly under the provisions of Atrocities Act, is exclusively triable by the Special Court. The said case is registered as Special Case (Atrocity) No. 8 of 2004 and in that case the present applicants filed an application Exh.17 for discharge. The learned Additional Sessions Judge, Kandhar by its order dated 21.7.2005, rejected the said application. Hence, this criminal application.

3. Learned counsel for the applicants submits that 2nd Adhoc Additional Sessions Judge, Nanded in criminal revision application No. 75 of 2003 has observed that since the offence is exclusively triable by the Court of Sessions, the Magistrate has no power to discharge the accused and further observed that learned C.J.M. has no jurisdiction to consider whether the offence under the provisions of Atrocities Act is made out or not. Accordingly, the order of discharge passed by the learned C.J.M. was quashed and set aside. In the said criminal revision No. 75 of 2003 and as per the directives while disposing of the said criminal application, the learned C.J.M.

has committed/transferred the case to the Special Court. Learned counsel submits that the Special Court instead of deciding application Exh.17 for discharge, filed by the present applicants accused on its own merits, rejected the said application only on the ground that he is not sitting in appeal to review or revise the order passed by the 2nd Adhoc Additional Sessions Judge, Nanded in criminal revision No. 75 of 2003. Learned counsel submits that this approach of the Special Court is improper, incorrect and illegal and the matter is thus fit to be remanded for deciding the application Exh.17 afresh.

4. I have also heard learned A.P.P. for the State.

5. On careful perusal of the order passed by the 2nd Adhoc Additional Sessions Judge, Nanded in criminal revision No. 75 of 2003, it appears that the order of discharge passed by the learned C.J.M. came to be quashed and set aside only for the reason that the Magistrate has no jurisdiction to consider whether the offence under the provisions of Atrocities Act made out or not and the learned C.J.M. has no power to discharge the accused when the offence is exclusively triable by the Court of Sessions. It further appears that the said criminal revision No. 75 of 2003 was preferred by the State and after setting aside the order passed by C.J.M. in the said criminal

revision, present applicants accused have not challenged the said order. Thus, the order passed by 2nd Adhoc Additional Sessions Judge, Nanded in Criminal Revision No. 75 of 2003 has attained finality to the extent that the order of discharge passed by the Magistrate in favour of the applicants accused is without jurisdiction.

6. It further appears from the impugned order below Exh.17 passed by the Additional Sessions Judge, Kandhar in said Special Case No. 8 of 2004 that application Exh.17 came to be rejected mainly on the ground that the order passed by the 2nd Adhoc Additional Sessions Judge, Nanded in Criminal revision No. 75 of 2003 cannot be reviewed or revised by the Special Court. The learned Judge of Special Court has also given unnecessary weightage to the previous applications filed by the applicants accused for discharge, which were not pressed by them subsequently. It further appears from the judgment and order passed in criminal revision No. 75 of 2003 that the learned Sessions Judge has not taken into consideration the other grounds for discharge, for the reason that the learned C.J.M. has no power to discharge the accused since the offence is exclusively triable by the court of Sessions/Special Court. Thus, it appears that the learned Judge of the Special Court has not decided the application Exh.17 on its own merits. In view of this, there is no other alternate but to remand the

matter to the Special Court for deciding the application Exh.17 afresh on its own merits. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby partly allowed.
- II. The order passed below Exh.17 dated 21.7.2005 passed by the Additional Sessions Judge, Kandhar in Special Case (Atrocity) No. 8 of 2004 is quashed and aside aside.
- III. The matter is remanded to the Special Court with following direction;-

“The learned Judge of the Special Court shall decide application Exh.17 afresh on its own merits in accordance with law”.
- IV. The applicants accused shall appear before the Special Court on 19.10.2016.
- V. Criminal application is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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