

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

CRIMINAL REVISION APPLICATION NO.64 OF 2016

Suvarnasingh @ Shrirang s/o
Kishansing Thakur ... APPLICANT

VERSUS

The Criminal Investigation Department
Maharashtra State, Pune and another ... RESPONDENTS

.....
Shri A.D. Ostwal, Advocate for applicant
Shri C.V. Dharurkar, A.P.P. for State
.....

WITH

CRIMINAL REVISION APPLICATION NO.204 OF 2016

Swarnsinha @ Srirang s/o
Kisansinha Thakur ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri Satej S. Jadhav, Advocate for applicant
Shri C.V. Dharurkar, A.P.P. for State
.....

CORAM: N.W. SAMBRE, J.

DATED: 25th October, 2016.

ORDER :

1. Since the parties to the revisions and the proceedings thereto are arising out of the same Sessions Trial, are heard together and disposed of by this common order.

2. The facts as are necessary for deciding the present proceedings, are as under :

On March 27, 2014, an F.I.R. came to be lodged with Police Station, Latur by one Mangal Giri, alleging that his daughter Kalpana was murdered. Based on the same, Crime No.80/2014 punishable under Sections 302, 364, 354, 376(2)(g), 201, 203, 120-B read with Section 34 of the Indian Penal Code came to be registered.

3. After the charge sheet came to be filed, the learned Sessions Judge, Latur, vide an order dated 4.8.2016, framed charge against all the accused persons, in number 6, for the

above referred offences.

4. Before the charge was framed, the present applicant moved an application for discharge pursuant to the provisions of Section 227 of the Criminal Procedure Code, alleging that, even if the contents of the charge sheet are taken to be true at its face value, according to him, no charge could be framed against him as no offence could be made out. The said application Exh.66 was objected by the prosecution vide reply Exh.75, and the learned Sessions Judge, vide order passed below Exh.66 in Sessions Case No.78/2014, was pleased to reject the same by a detailed order dated February 17, 2016. As such, the Revision No.64/2016. It is also required to be noted that, in the said revision, the petitioner has tried to question the very proceedings and sought quashing.

5. So far as the Criminal Revision No.204/2016 is concerned, it is required to be noted that, after the charge was framed against the present petitioner, vide order dated 4.8.2016, in the above referred background, the said order was questioned by the petitioner accused on the same ground on which the

discharge was sought.

6. While considering both these revisions, if the prayer for discharge pursuant to the provisions of Section 227 of the Criminal Procedure Code is appreciated, it is required to be noted that the right to claim discharge to accused is available prior to the framing of charge under Section 228 of the Criminal Procedure Code. In that view of the matter, the claim of the petitioner seeking discharge under Section 227 of the Criminal Procedure Code, in my opinion, has rendered infructuous though the matter was argued by the learned counsel for the applicant at length. As such, Criminal Revision No.64/2016 is disposed of as infructuous.

It is also worth to observe that, it will not be open for this Court once the present proceedings are rejected as revision proceedings, to exercise powers under Section 482 of the Criminal Procedure Code for quashing and the prayer of the petitioner to that effect is not gone into and examined on merits. As such, with above observations, the Criminal Revision No.64/2016 stands disposed of as infructuous.

7. So far as Criminal Revision No.204/2016 is concerned, heard Shri Jadhav, learned counsel for the applicant at length. According to him, the charge as is framed under Section 228 of the Criminal Procedure Code is not sustainable particularly in the light of the fact that, even if the prosecution story is taken to be true at its face value, still the applicant cannot be claimed to be involving in alleged homicidal death of deceased Kalpana Giri. According to him, the applicant admits his relation with other co-accused as cousin brother and at the most he could be charged in the given set of factual matrix, for an offence punishable under Sections 201, 120-B for the later part of the crime in question. According to him, the applicant cannot be charged for an offence punishable under Section 120-B. The applicant is admittedly not involved in the crime in question.

8. He would also harp upon the statements of witnesses Khandu Magar, Umakant Todkar, Govind Rathod and Vivekanand, whose statements were also recorded under Section 164 of the Criminal Procedure Code.

9. The learned A.P.P. opposed the claim on the ground that the statement of Khandu Magar speaks of the conspiracy angle of the matter in which the present applicant is specifically named. He would then urge that the C.D.R. reports of the mobile phone of the applicant, which are placed on record, in clear terms speak of the interaction of the co-accused Mahendra. In addition, the learned A.P.P. submits that, the charge as is framed against the present applicant for the various offences is based on the material brought on the record and particularly the provisions of Section 120-B of the Indian Penal Code. He would submit that, the application needs to be rejected.

10. Having considered the rival submissions of the parties, it is required to be noted that, the witness Vicky Sarkale has specifically named the present accused as one of the important linked in the commission of the crime in question. His statement under Section 164 speaks of aggravated role played by the present applicant in the commission of the crime in question. The other witness Khandu Magar has also named the present applicant. So did the witnesses Umakant Todkar and

Govind Rathod.

11. In the background of the statements of these witnesses, the charge, in my opinion, as is framed, does not call for any interference.

12. Apart from the above, if we look into the scheme of Section 221 of the Criminal Procedure Code, which provides for framing of a charge when it is doubtful what offence has been committed.

13. True it is that, Shri Jadhav has urged that, the involvement of the present applicant in the crime qua offence punishable under Sections 302, 364, 201, 203 cannot be inferred based on the evidence available on record to be taken to be true at its face value and as such, there is a serious doubt so as to accept the case of the prosecution qua involvement of the applicant in the crime. However, in my opinion, the answer to this submission can be read in Section 221 of the Criminal Procedure Code. The said Section provides for framing of a charge against an accused in case if it is doubtful that which of

the several offences the accused could be charged with. The Section contemplates that the facts which can be proved at the time of the trial will be considered and taken into account for the purpose of convicting the accused provided he has to be charged of committing all or any of the offences and such number of charges may be tried at once.

14. The submission of the learned counsel Shri Jadhav that there is no prima facie case as against the applicant and reliance to that effect in the matter of **State of Maharashtra & ors. Vs. Somnathappa & ors.** reported in **(1996) 4 SCC 659**, particularly paragraphs 30, 31 and 32 will be of hardly any consequence as the material on the record is rightly sift i.e. to say carefully analysed and the charges ordered to be framed.

15. In this background, no case for interference is made out. The Revision as such fails. Dismissed.

(N.W. SAMBRE, J.)