IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1335 OF 2015

1. Sow. Chayabai W/o. Venkat Panale,
   Age : 47 years, Occu. Household.

2. Venkat S/o. Dnyanoba Panale,
   Age : 53 years, Occu. Agriculture,
   At present Nil,
   Both permanent resident of
   Harangul (Budruk), Tq. & Dist. Latur. .. Petitioners

Vs.

The State of Maharashtra. .. Respondent

.....

Mr Kishor Sant, Advocate for the petitioners
Mr A. R. Kale, APP for respondent/State
Mr R. N. Dhorde, Sr. Advocate i/b Mr V. R. Dhorde, to assist PP.

.....

CORAM : M.T. JOSHI, J.
DATE : 19/01/2016

ORAL JUDGMENT:

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

2. Being aggrieved by the order dt. 05.09.2015 passed by the learned Additional Sessions Judge, Latur in Sessions Case No. 22 of 2014, thereby rejecting the application of the present petitioners at Exh. 39 for

their discharge from the Sessions Case, the present writ petition is filed.

3. Upon hearing both the sides and perusal of charge-sheet would reveal that, there was a financial dispute between three sons of Dnyanoba Panale. Present petitioner No. 2 is eldest brother amongst three. The complainant is second and deceased - Yuvraj was youngest brother of the complainant.

. FIR was lodged by brother of the deceased namely; Harischandra on 4th December, 2012. He had communicated the police that, on 4th December, 2012 he received a message from his sister-in-law Rupali that deceased-Yuvraj was attacked, therefore he went to the spot. He inquired with Rupali in regard to the said incident. She told him that, seven persons including petitioner No. 2 - Venkat assaulted the deceased causing his death in her presence. Similar statement was recorded during the investigation on 6th December, 2012.

4. Mr Sant, learned counsel for the petitioners submits that, in fact, on the date of the incident, petitioner No. 2 - Venkat was very well at Tirupati

along with petitioner No. 1 - Chhayabai and, therefore, there is no material against him. He further submits that, so far as petitioner No. 1 — Chayabai is concerned, there is also no material against her on record.

5. The statement of the eye-witness coupled with the statement of the other witnesses like the daughter of petitioner No. 2 — Asha and his son-in-law Vishal Tokale, would reveal that, earlier to the incident, a meeting had taken place at their house at Pune, wherein the present petitioner No. 2 - Venkat had said that, if the deceased Yuvraj would remain alive, he would cause headache in future and as such, had hatched conspiracy to commit his murder.

6. In the circumstances, as there is material against petitioner No. 2 - Venkat, the order of the learned Additional Sessions Judge rejecting his plea for discharge is proper.

. As regards petitioner No. 1 - Chhayabai, statement of Rupali and the statements of Dnyanoba Narsappa Panhale along with Sunanda More are the part of

charge-sheet. The statements, however, would show that, it is the opinion of all these witnesses that present petitioner No. 1 – Chayabai had also participated in hatching the conspiracy and instigated the assailants. Perusal of the record would show that, except the opinion of all these witnesses, no other material is there on record showing Chayabai's participation in the conspiracy.

7. While dealing with the application for discharge, it is the cardinal principle that in case the material on record would go unchallenged, still the person who is accused of the offence, would not be convicted for the same. In the present case, what we find on record is the only opinion of three witnesses that petitioner No. 1 – Chayabai is also one of the conspirator. In the circumstances, the order of the learned Sessions Judge refusing to discharge petitioner No. 1, cannot be accepted. In the result, the following order.

ORDER

(i) The Criminal Writ Petition is partly allowed.

(ii) So far as petitioner No. 2 – Venkat s/o Dnyanoba Panhale, is concerned, the Criminal Writ Petition is dismissed

(iii) The Criminal Writ petition is allowed to the extent of petitioner No. 1 – Chayabai W/o. Venkat Panale.

(iv) The order of the learned Additional Sessions Judge dt. 05.09.2015 is hereby partly set aside. Instead the petitioner No. 1 - Sow. Chayabai W/o. Venkat Panale is discharged from the offence in Sessions Case No. 22 of 2014.

8. Rule is accordingly made absolute in the aforesaid terms.

[M.T. JOSHI]
JUDGE

sgp