

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No.114 OF 2016

Ankit Rajendra Kumar Tiwari .Applicants
& anr.

Vs.

The State of Maharashtra .Respondent

Mr.Nilesh Pawaskar with Ms Geetanjali Shinde &
Mrs.Sangeeta Pawaskar i/b. Maharashtra Law
Associates, Advocate, for the Applicants
Mrs.Geeta Mulyekar, APP, for the Respondent –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 20.04.2016

P.C.

. At the outset, learned counsel for the
Applicants seeks leave to amend. Leave granted.
Amendment to be carried out forthwith.

2. Heard learned counsel for the
Applicants and the learned APP for the
Respondent – State.

3. By this Application, the Applicants seek quashing and setting aside of the order dated 19.12.2015 passed by the learned Additional Sessions Judge in S.C.No.299 of 2015 as well as the order framing charge dated 19.12.2015.

4. The Applicants are facing prosecution for the offence punishable under Section 376 and other offences of the Indian Penal Code. It appears that after lodging of the FIR and before filing of the charge-sheet, the Applicants filed W.P.No.4610 of 2014 before the Division Bench of this Court seeking quashing of the FIR. It was contended that the parties have amicably settled their grievances. Learned counsel for the Applicants contended that during the pendency of the aforesaid W.P.No.4610 of 2014, as the Apex Court in the case of ***State of Madhya Pradesh vs. Madanlal*** deprecated the practice of compromise in rape cases, the Applicants withdrew the

aforesaid Writ Petition with liberty to file a fresh Application seeking their discharge before the trial Court. He submitted that the Division Bench of this Court vide order dated 18.12.2015 passed the following order.

"1. Learned counsel for the Petitioners seeks leave to withdraw the writ petition with liberty to file application for discharge before the trial Court **within two weeks**. Leave with liberty as prayed for is granted. Petition is allowed to be withdrawn and is dismissed as such."

(Emphasis supplied)

Learned counsel for the Applicants submitted that despite the High Court granting the Applicants two weeks to file their discharge Application before the learned Sessions Judge, the learned Sessions Judge instead of adjourning the matter on 19.12.2015, rejected the Applicants' Application for adjournment and proceeded to frame charge as against the Applicants. He submitted that the learned

Sessions Judge observed in the order dated 19.12.2015 that the Application was filed only to prolong the matter. After observing that no discharge Application was filed, the learned Sessions Judge proceeded to frame charge as against the Applicants on the very same day i.e. 19.12.201. Learned counsel for the Applicants submitted that the said period of two weeks as granted by the Division Bench of this Court had not expired and as such there was no great urgency for the learned Sessions Judge to proceed with the matter and to frame charge on 19.12.2015.

5. Learned APP does not dispute the aforesaid facts.

6. Perused the papers.

7. It is not in dispute, that the Division Bench vide order dated 18.12.2015 in W.P.No.4610

of 2014, granted liberty to the Applicants to file a discharge Application before the trial Court, within two weeks. It is also not in dispute that on 19.12.2015, without waiting for the said period of two weeks as granted by the Division Bench of this Court, the learned Sessions Judge proceeded to frame charge on the very next date i.e. 19.12.2015. In view of the order passed by the Division Bench of this Court, the learned Sessions Judge ought to have given time to the Applicants of two weeks to file an Application seeking their discharge from the said case.

8. Considering the peculiar facts of this case, the impugned order dated 19.12.2015 passed by the learned Sessions Judge below Exh.14 as well as the order framing charge dated 19.12.2015 are quashed & set aside. The Applicants shall file their discharge Application within a period of one week from

today. If such an Application is filed, the learned Sessions Judge shall decide the same on its own merits, in accordance with law.

9. Accordingly, the Application is allowed & disposed of.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)