

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 497 OF 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Smt. Anamika Malhotra, APP. for the State.

Mr. Ayaz Khan for the Respondent.

CORAM : A.S.GADKARI, J.

DATE : 26th April, 2016

P.C.

The present revision under Section 397 of the Code of Criminal Procedure is preferred for challenging the order dated 19.1.2015 passed below Exhibit 3 by the learned Special Judge under the N.D.P.S. Act, Greater Mumbai in Special Case No.202 of 2014 thereby allowing the application filed under Section-227 of the Criminal Procedure Code filed by the respondent (original accused No.3). The respondent was accused in CR No.557/2014 registered with Anti Narcotic Cell, Mumbai under Section 8(c) and 9 (a), 25(a) read with 29 of the N.D.P.S. Act and was arrested 3.11.2014 after he surrendered before Court. After completion of investigation the police have filed charge sheet before the Special Court.

As per the record the respondent thereafter moved an application under Section 227 of the Cr.P. C. for discharge and after taking into consideration the material collected by the police during the course of investigation the learned Special Judge was pleased to

discharge him from the charges levelled against him by allowing the application of the applicant. Feeling aggrieved by the said order dated 19.1.2015 passed below Exh.3 in NDPS Case NO.202/2014 the applicant State of Maharashtra through the Anti Narcotic Cell, Mumbai has preferred the present application.

2) The learned Trial Court while discharging the respondent has held that there is no material available on record against the respondent to frame charge which could be transformer in the evidence during the trial. The only material on which the prosecution has placed reliance for framing charge is confession of the co-accused made before the police officer during the course of investigation when he was in custody involving the respondent and the name of the respondent was reflected in the information received by the police under Section 42 of the said Act prior to conducting the raid and no contraband was recovered at the instance of the respondent. The learned Trial Court after relying on the Judgment passed by this Court in the case of (i) Ramesh Singh @ Chauhan vs. The State of Maharashtra (Criminal Revision No.185/2004) dated 23.3.2005 and (ii) Salim Babu Shaikh @ Aitun vs. The State of Maharashtra (Criminal Application No. 1338/2012) dated 21.1.2013 has recorded a finding that the aforesaid two circumstances relied upon by the prosecution against the respondent are treated as no legal evidence against the respondent on the basis of which charge can be framed.

3) The learned APP submitted that the learned Trial Court ought to have granted an opportunity to the prosecution to prove its case at the time of trial after leading the cogent evidence. The learned

APP. however, fairly admitted that, apart from the afore stated circumstances, there is no other material available on record to frame charge against the respondent.

The view taken by this Court in the aforesaid two cases, leads to the conclusion that the reliance placed by the prosecution on the material on record is not sufficient to frame charge and to proceed against the respondent in the trial. As per the view taken by this Court in the aforesaid two cases, the said two circumstances have no legal sanctity in the eyes of law.

4) In view of the above, I find that the Trial Court has not committed any error either in law or on facts while allowing the discharge application. The present revision application being devoid of any merits is accordingly dismissed.

(A.S. GADKARI, J.)