

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2209 OF 2016

Dr.Jayesh Arjun Katira

... Petitioner

Vs.

The State of Maharashtra

... Respondent

Mr.Samir A. Vaidya for the Petitioner

Ms.P.P. Shinde, APP, for Respondent – State

Mr.R.B. Jadhav, P.I, Mulund police station - present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **DECEMBER 19, 2016**

P.C.:

1. Rule. Rule made returnable forthwith and heard by consent at the stage of admission.
2. This Writ Petition is directed against the order of framing charge by the learned Special Judge, on 13.4.2016 for the offences punishable under sections 328, 376, 506 of the Indian Penal Code and u/s 66A and 66E of the Information Technology Act, 2000. The learned Counsel for the petitioner has made three-fold submissions viz., that when the charges were framed under Information Technology Act and u/s 328 of the IPC, the report of the forensic

department was not before the Court and the said report was not furnished to the accused at the time of framing of charge and, therefore, the process of framing charge is vitiated; that at the time of framing charge, he was not heard; and that the learned Judge has framed the charge without application of mind and he was biased.

3. Learned Prosecutor has submitted that the report of the forensic department was not available at the time of framing of the charge, however, the report is submitted to the Court and a copy of the same is also furnished to the accused. She further submitted that the prosecutrix was put in the witness box on 16.6.2016 and her examination-in-chief is partly recorded. Thereafter, this Court stayed the proceedings and still, her examination in chief is pending.

4. Perused the FIR. Prima facie, there are allegations under the relevant sections of the Information Technology Act. The report of the forensic expert is always a corroborative evidence and if that corroborative evidence was not available to the Court at the time of framing of charge, this cannot prevent the Court to discern its opinion on the basis of other material on record in respect of the ingredients of the section for which the accused is going to be charged. If the corroboration is material and if not produced by the prosecution in

respect of charge framed, then, at the most, the prosecution may fail to prove that particular charge at the end. However, at this stage, if at all, there are certain allegations made orally in the FIR and considering the nature of the allegations and the circumstances which reveal from the FIR or the documents of the chargesheet, the learned Judge can frame the charge under the Information Technology Act. I accept the statement of the learned Counsel for the petitioner that on the date of framing of the charge i.e., on 13.4.2016, he was not heard. If the learned Counsel for the accused wants to argue at the stage of the charge and he was not heard, then, he should place the application on record on the same day to show that he wanted to argue but it was not considered. Such application was not filed at any stage till today. However, an application for alteration of charge was moved on 2.5.2016 and it is still pending. Therefore, the first and second point raised by the petitioner fail. As regards the third submission, there is no material on record to hold that the learned Judge has not applied his mind or he was biased. Thus, the third submission also fails.

5. In view of the above, I am of the view that there is material to frame the charge. The petition, therefore, fails and is dismissed

accordingly. Interim relief is vacated and the trial shall proceed in accordance with law.

6. Rule stands discharged.

(MRS.MRIDULA BHATKAR, J.)