

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2672 OF 2015

Shafique Lala Majid @ Jafar Hussain & anr. ... Petitioners..

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. Chetan S. Damre i/b. Mr. Aniket U. Nikam. Advocate for petitioners.

Mr. Sachin Dhakephalkar, advocate for respondent No. 2.

Mrs. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JUNE 6, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The learned Counsel for the Petitioner submits that the Petitioner is the original complainant in R.C.C. No. 4503 of 2002 the charge was framed against the accused-respondent on 13/2/2012. The charge was framed against the accused for the offence punishable under section 406, 409, 418, 465, 468 of the Indian Penal Code.

4 The accused had challenged the order of framing of charge by filing revision application No. 172 of 2002. The revision was filed mainly on the ground that prima facie case was not made out at the time of framing of charge and that the original complainant had failed to demonstrate any ingredients which would attract an offence punishable under Section 406, 409, 418, 465, 168 of the India Penal Code. The Revisional Court had gone into the merits of the matter. The Revisional Court had observed that the learned Court has not mentioned the reason for framing charge under Section 406, 409, 418, 465, 468 of the Indian Penal Code.

5 According to the Revisional Court, the Magistrate Court ought to have given detailed reason as to how the terminology used and defined under different provisions of IPC made out for which charge is framed but he failed to do so. In that view, the Revisional Court had partly allowed the revision. The impugned order of framing of charge was set aside. The matter was remanded to trial Court for passing fresh order in accordance with law.

6 Perused the charge framed on 13/2/2012. It prima facie appears that at the stage of framing of charge, the learned Magistrate had not given the particulars of charge i.e. the date, place and time or the manner in which the offence was committed.

7 Section 212 of the Code of Criminal Procedure, 1973 reads as under :

“212. Particulars as to time, place and person

1. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any)

against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

2. When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:”

That Section 212 of the Code of Criminal Procedure, 1973 mandates the particulars in respect of time and place of the alleged offence. It is true that Section 212 Sub-clause -2 contemplates that in case of criminal breach of trust or dishonest misappropriation of money. It shall be sufficient to specify the gross sum or describe the movable property in respect of which a breach of trust has been committed. The rider to Section 212 of the Code reads as follows :

“Provided that the time included between the first and last of such dates shall not exceed one year.”

8 In the present case, the learned Magistrate has only stated as above “date, place and time”. However, the said date, place and time is not incorporated in any of the clause of the charge and only stated as follows : “during the lifetime of the father of the complainant till the date of filing of the complaint. This would be a gross irregularity.

9 In any case, it only amounts to irregularity. The Revisional Court has remanded the matter vide order dated 25/2/2014. The matter is pending before the learned Magistrate. The matter was kept in abeyance since the learned Counsel for the respondent had made a statement before this Court that he would not insist upon proceeding with the matter before the trial court. In any case, since the matter is remanded and charge would be framed afresh, there is no case for interference. However, it is specifically made clear that at the stage of framing of charge afresh, the learned Magistrate shall not be influenced by any of the observations made by the learned Sessions Court on the merits of the matter. In view of the fact that the matter

was pending before this Court for more than 2 years and that the impugned order was passed, the learned Magistrate shall make an endeavour to frame charge afresh within 8 weeks from the date of receipt of this order.

10 The rule is discharged. The Writ Petition stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)