

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

**CRIMINAL REVISION APPLICATION NO.388 OF 2016**

Umaima K. Alimuddin Chitalwala .... Applicant

versus

State of Maharashtra ... Respondent

Mr.Niranjan Mundargi i/b. Prashant Sawardekar advocate for applicant.

Mr.C.K. Talekar, Spl. P.P. a/w Mr.A.R. Kapadnis, APP for the State/respondent.

**CORAM : A.M.BADAR, J.**

**DATE : 17<sup>th</sup> NOVEMBER, 2016**

**P.C. :**

1. By this revision application, applicant/accused in Sessions Case No.193/09 is praying for quashing and setting aside the Charge framed against her on 07/06/2016 for the offence punishable u/s 304 part II and 337 part II of Indian Penal Code, by the learned Additional Sessions Judge, Greater Mumbai.

2. Heard learned counsel appearing for revision applicant/accused at great length. He took me to the chronology of events, which took place prior to filing of the instant revision

application. By taking me through the Charge framed against the applicant/accused at record page No.322, the learned counsel argued that the FIR lodged on 24/06/2007 by the police sub-Inspector of D.B. Marg Police Station, in registration of crime No.125/07 shows that there was litigation between the parties. The learned counsel argued that Writ Petition bearing No.2045/06 was filed by the applicant/accused challenging action on the part of the authorities in ordering demolition of the building. The applicant appointed Mr.Shrikhande as an Architect in the matter. The learned counsel further drew my attention to the Inspection Report on record at page No.201 as well as to the statement of Mr.Mahendra Madhusudan Desai, officer of Fire Brigade at record page No.202 and argued that on the date of incident, work of demolition of second floor of the building was going on. It is argued that the applicant had taken responsibility of demolishing third and fourth floor of the building. The learned counsel argued that the Chargesheet does not disclose that the applicant had appointed a contractor for demolishing second floor of the building or that she was negligent in carrying out the work of demolition.

3. By taking me through minutes of order dated 08/09/2006 recorded in Writ Petition No.2045/06, learned counsel argued that the applicant was permitted to occupy the ground floor of the building in question and therefore no criminal liability can be fastened to her. It was further argued that reports of Structural Engineers, Inspection Reports and notices annexed with the Chargesheet are in respect of the building known as “Laxmi Niwas”, whereas the building which was collapsed was known as “Alimohammed Mansion”. Therefore, in submission of the learned counsel for the applicant, those reports are irrelevant for inferring criminal liability of the applicant. The learned counsel for the applicant further drew my attention to the report of MHADA at page No.226 of record as well as communication of M/s. N.R. Construction to N. Lookmanji Mithaiwala Pvt. Ltd. clarifying the fact that third and fourth floor of the building is already demolished. With this, it was argued by the learned counsel for the applicant that because of heavy rains and because of storage of debris on second floor, the building collapsed and no fault can be attributed to the applicant.

4. It is argued that discharge application of all other accused persons, including the contractor and the person who was present in the structure at the time of incident, were allowed, and therefore, applicant is entitled for similar treatment.

5. The learned counsel for the applicant further argued that observations of this Court made in order dated 22/06/2012 passed in Writ Petition No.2045/06 are merely *prima facie* observations not having bearing on the issue after conducting investigation of crime in question.

6. I also heard learned Special Public Prosecutor for the State. He argued that statement of witnesses goes to show that Architects were insisting the applicant to prop up ground floor of the building which was in her occupation, but she had refused to do so on the pretext that her Architect has certified that the building is fit for occupation and there is plaster of paris work to the ceiling of ground floor portion which was in her occupation. The learned Special Public Prosecutor drew my attention to the Structural Auditor's report declaring the building's dilapidated condition as well as several notices issued by several authorities to vacate the premises.

7. I have carefully considered the rival submissions and also gone through the records and proceedings i.e. the Charge-sheet made available on record. The challenge in the instant application is to the Charge framed against the applicant on 07/06/2016 for the offence punishable u/s 304 part II and u/s 337 part II of IPC. For the sake of convenience it is apposite to reproduce provisions of section 304 as well as section 337 of IPC, which reads thus;

**“Section 304 -:**

*Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to*

*cause death, or to cause such bodily injury as is likely to cause death.*

**Section 337 -:**

*Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*

8. At the outset, it is necessary to reproduce certain chronology of events which took place prior to institution of the present application apart from some undisputed position emerging on record. It is not in dispute that Umaina K. Alimuddin Chitalwala was the occupant of the ground floor of the building known as “Alimohammed Mansion”, which collapsed on 23/06/2007. It is not in dispute that because of collapse of “Alimohammed Mansion” located at M.S. Road, Grant Road, Mumbai, two persons namely Mohommed Aslam Khan and Meher Firdous Mogrelia died and two persons namely Shabanali

Hajimulla Shaikh and Omkar Raghunath Verma sustained injuries in collapse of said building.

9. The FIR of Crime No.125/07 was lodged by police Sub-Inspector of D.B. Marg, Police Station on 24/06/2007 and accordingly offence punishable u/s 304 part II, 337, 288 r/w 34 of IPC came to be registered against accused persons including the present applicant. Investigation of this crime in question has resulted in filing the Chargesheet against accused persons and after committal of the case, the Sessions Case bearing No.193/09 came to be registered and the same is pending on the file of the learned Additional Sessions Judge, Greater Mumbai.

10. Record reveals that on 23/11/2011 the learned Ad-Hoc Sessions Judge, Sewree, Mumbai, rejected an application for discharge moved by the present applicant. That order came to be challenged by the present applicant by filing a Writ Petition bearing No.910/12. During pendency of that petition, on 08/05/2013, the learned Ad-Hoc Assistant Sessions Judge, Greater Mumbai, passed an order below Ex.1 and observed that the present applicant cannot be charged for offence u/s 304 Part II of

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IPC, but no further orders were passed because of pendency of the said Writ Petition No.910/12 on the same subject by the present applicant/accused. Ultimately, this Court on 19/07/2013 disposed of said Writ Petition No.910/12 by directing the concerned Sessions Judge to consider the question of framing of the Charge after hearing the present applicant/accused as well as the learned APP. Thus, this Court had remanded the matter for fresh consideration to the concerned Sessions Judge.

11. It is seen from the record that, then the learned Additional Sessions Judge, Greater Mumbai, heard the applicant/accused as well as the learned APP as per the provisions u/s 226 and 227 of Cr.P.C. and passed order on 17/12/2015. By this order dated 17/12/2015, the learned Additional Sessions Judge came to the conclusion that there is sufficient material to proceed against the applicant and accordingly Charge for offence punishable u/s 304 Part II and 337 was ordered to be framed against the present applicant.

12. It is seen that the said order dated 17/12/2015 passed u/s 227 and 228 of Cr.P.C. holding that there are sufficient

grounds to proceed against the present applicant and framing of Charge against the applicant, came to be challenged by the applicant before this Court by filing a Criminal Application bearing No.141/16. On 20/06/2016, the learned counsel for applicant on instructions sought leave to withdraw the said Criminal Application No.141/16 with a liberty to adopt appropriate proceedings for challenging order of framing of the Charge. In other words, the challenge to the order dated 17/12/2015 passed by the learned Additional Sessions Judge holding that there are sufficient grounds to proceed against the applicant and consequently not considering the request of the applicant for discharge; was abandoned by the applicant by withdrawal of the Criminal Application No.141/16. This was done because the Charge against the applicant for the offences punishable u/s 304 Part II and 337 of IPC came to be framed by the Trial Court. At this juncture, it is to be noted that, due hearing was granted to the parties by the learned Additional Sessions Judge, in terms of provisions of section 226 and 227 of Cr.P.C. and ultimately the learned Additional Sessions Judge, Greater Mumbai, by an order dated 17/12/2015 came to the conclusion that there are sufficient

grounds for proceeding against the applicant. Framing of Charge on 07/06/2016 is merely a consequential act. Therefore, when the earlier application challenging order dated 17/12/2015 passed by the learned Additional Sessions Judge, Greater Mumbai, was withdrawn by the present applicant, subsequent revision application virtually challenging the same subject matter is not maintainable.

13. Be that as it may, the applicant approached this court by the instant revision application for challenging the Charge framed against him on 07/06/2016 as a consequence of the order dated 17/12/2015 passed u/s 227 and 228 of Cr.P.C. Therefore, one will have to consider the parameters of revisional jurisdiction of this Court. It is well settled that the revisional jurisdiction is to be exercised in exceptional cases when there is glaring defect in the procedure or manifest error on the point of law resulting in miscarriage of justice. In revisional jurisdiction, there cannot be any interference with the findings of the fact and the evidence cannot be re-appreciated. Keeping in mind these parameters, if the Charge framed against the applicant is perused then it cannot be said that the learned Trial Court has committed any error of law or

there was a adopted defect in procedure while framing Charge. Due opportunity of hearing was granted to the parties as contemplated by section 226 and 227 of Cr.P.C. A reasoned order pointing out the material against the applicant was passed on 17/12/2015. Challenge to that order was withdrawn by the applicant by withdrawing Criminal Application No.141/16 on 20/06/2016. Framing of the Charge is merely a consequence of the order dated 17/12/2016. I do not find any error of law committed by the learned Trial Court in framing of the Charge. There is no perversity in framing the charge as the same is in consonance with the material gathered by the investigator.

14. Record shows “Alimohammed Mansion” a building of which the ground floor was undisputedly in possession of present applicant was inspected by the panel consisting of three Structural Engineers. Report of the panel of Engineers (record page 295) categorically shows that panel of Structural Engineers came to the conclusion that the building was in dilapidated condition, unstable and hence unsafe for the use. It was recommended that the building should be vacated urgently. A doubt is sought to be

created about this report by stating that this report is in respect of “Laxmi Niwas”. However, Minutes of order duly signed by the present applicant in Writ Petition No.2045/06 removes this doubt and particularly paragraph No.1 of the Minutes makes the position clear. On this backdrop, it is seen from statements of two architects namely Mr.V.R. Talwalkar and Mr.Nilkanth Nagesh Shrikhande that though the applicant being occupant of the ground floor of building in question, was time and again asked to prop up the building by giving support to it, she failed to accept the request of the authorities on the pretext that her architect has certified it to be fit for occupation and that because of ceiling of plaster of paris, she does not desire to give support to the slab of ground floor of the said building. Apart from this, there is other material which *prima facie* makes it a fit case for proceeding against the present applicant. Even otherwise, it is well settled that at the stage of framing Charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the material produced is sufficient or not for sustaining conviction. If *prima facie* case is made out, then the

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accused cannot be discharged. Considering the evidence collected during investigation against the present applicant, no case for discharge was made out by the present applicant before the learned Additional Sessions Judge, and therefore, order dated 17/12/2015 came to be passed by the said learned Judge rejecting the request for discharge and directing framing of Charge. Framing of the Charge on subsequent date is merely a consequence of this order dated 17/12/2015 which has attained finality. Therefore, no case for quashing and setting aside the Charge framed on 07/06/2016 is made out. The revision application is devoid of merits and therefore same is rejected. Needless to mention that these observations are *prima facie* in nature and they shall not have any bearing on trial.

15. At this stage, learned counsel for the applicant prays for extension of stay. No case for interference in the Charge is made out has held by this Court while passing order and therefore the request of staying operation of this order is rejected.

**(A.M. BADAR, J.)**