

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.566 OF 2016

Behram Maneck Pardiwala & Anr. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**
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Mr.Girish Kulkarni i/b. Maitreya Girish Shukla, Advocate for the Applicants.

Ms.V.S.Mhaispurkar, APP for the Respondent/State.

Mr.Vinod Kashid, Advocate for the applicants in APPR/636/2016.

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CORAM : A. M. BADAR J.

DATED : 16th NOVEMBER 2016.

P.C.

1 By this Revision Application under Section 401 of the Code of Criminal Procedure, the applicant/accused No.1 in Sessions Case No.483 of 2016 is assailing the order below Exh.10 passed by the learned Assistant Sessions Judge, Sessions Court, Greater Bombay, in the said Sessions Case thereby rejecting the application for discharge moved by the applicant.

2 The applicant and two other co-accused are facing the trial of Sessions Case No.483 of 2016 for the offence punishable under Sections 420, 465, 467, 468, 471, 408, 451, 452, 453, 454, 455, 456, 457, 392, 506(2), 328 read with Section 34 of the Indian Penal Code. After filing of the charge-sheet, applicant No.1 Behram Pardiwala

preferred an application under Section 227 of the Code of Criminal Procedure for his discharge. After hearing all parties, by the impugned order dated 28th September 2016, the said application was rejected by the learned Assistant Sessions Judge.

3 Heard the learned counsel appearing for the Revision applicant/accused at length. He argued that except Section 328 of the Indian Penal Code, all other Sections of Indian Penal Code invoked against the present applicant/accused are triable by the Court of Magistrate. It is further argued that there is no iota of evidence so far as Section 328 of the Indian Penal Code is concerned and, therefore, the applicant cannot be asked to face the charge for the offence punishable under Section 328 of the Indian Penal Code. In substantiating this contention, the learned counsel for the applicant has taken me through the criminal complaint, on the basis of which learned Magistrate had ordered investigation, which resulted in filing of the charge-sheet against accused persons. It was argued that in this private criminal complaint, complainant had not made averments regarding the offence punishable under Section 328 of the Indian Penal Code. The learned counsel further argued that death of Ramjan Thanawala occurred on 15/02/2015 is a result of cancer and the entire charge-sheet, if taken as it is, nowhere discloses commission of offence punishable under Section 328 of the Indian Penal Code. As such, in submission of the learned counsel for the Revision applicant, there are no grounds to proceed against accused persons for the offence punishable under Section 328 of the Indian Penal Code, and as such, the learned Assistant Sessions Judge has committed error of law by

perversely rejecting the application for discharge. The learned counsel for the Revisional applicant placed reliance on statement of Dr.Azad Irani attending Doctor to submit that even the statement of Dr.Azad Irani nowhere discloses that he had prescribed Tablet Restyl to late Ramjan Thanawala. It is argued that Restyl is a common medicine, which is taken as a sleeping pill by all and sundry and as such, it cannot be a poison or stupefying, intoxicating or unwholesome drug. My attention was also drawn to the statement of other witnesses in order to demonstrate that there is no case for the offence punishable under Section 328 of the Indian Penal Code. It is argued that rest of the offences are triable by the Magistrate and therefore, if the trial is allowed to be held before the Assistant Sessions Judge, then great prejudice would be caused to the applicant/accused as he will lose one remedy of appeal.

4 I have heard the learned counsel for the original complainant. He drew my attention to the statement of Rekha Bane employee of deceased Ramjan, so also that of Bablu Sahu another employee and argued that these statements reveal the intention on the part of the applicant as well as co-accused to administer unwholesome drug to deceased Ramjan, who was 85 years of age. Consequences of administration of such medicine is said to be pointed out from statement of Bablu Sahu. Therefore, in submissions of learned counsel for the complainant, there are sufficient grounds for proceeding against the accused persons even for the offence punishable under Section 328 of the Indian Penal Code.

5 The learned Additional Public Prosecutor argued that because of administration of unwholesome drug, death of Ramjan was accelerated.

6 I have given anxious thought to the rival submissions and also perused the record made available including statement of witnesses. It is well settled that revisional jurisdiction is exercised in exceptional cases wherein there is glaring error of law or perverse appreciation of evidence. Finding of fact supported by evidence cannot be interfered with while exercising revisional jurisdiction. As the learned counsel for the Revisional applicant has restricted his arguments to the offence punishable under Section 328 of the Indian Penal Code, let us put up on record the provisions of Section 328 of the Indian Penal Code, which reads thus :

328. Causing hurt by means of poison, etc., with intent to commit an offence.- Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

7 Bare perusal of the provisions of Section 328 of the Indian Penal Code as such makes it clear that administration of stupefying, intoxicating or unwholesome drug or other thing with an intent to cause hurt to a person makes out the offence punishable under Section 328 of the Indian Penal Code.

8 Section 319 of the Code of Criminal Procedure defines the term 'hurt' as whoever causes bodily pain, disease or infirmity to any person is said to cause hurt to that person.

9 In this case, Rekha Bane, according to the case of prosecution, was serving the deceased as his Personal Secretary. Her statement recorded on 11/08/2015 shows that she had seen the present applicant as well as co-accused Minu and Yusuf administering Tablet of Restyl-0.25 mg to Ramjan on several occasions. Rekha has categorically stated that Restyl-0.25 mg tablet were daily administered to Ramjan by the applicant as well as co-accused and they had kept concealed many packets of that tablets in the house of Ramjan.

10 Statement of attending Medical Officer Dr.Azad Irani goes to show that he had never prescribed tablet Restyl to deceased Ramjan at any point of time. Dr.Irani had stated that Tablet Restyl is commonly used as sleeping pill. Statement of Dr.Irani further revealed that late Ramjan had complained to him that many a times nobody administered the medicine to him and on some occasion, he was being given double doses of medicine prescribed to him.

11 Statement of Bablu Sahu goes to show that because of administering the medicine, which was not prescribed by the attending Medical Officer health of the deceased Ramjan was further deteriorated.

12 If cumulative effect of all these evidence collected by the prosecution is considered, then it cannot be said that there are no grounds or material to proceed against present petitioner for the offence punishable under Section 328 of the Indian Penal Code. Statement of Rekha also reflects threatening by co-accused Minu Patel to complainant Shaban to the effect that the flat should be vacated or else he will also meet with the same fact as that of his brother Ramjan caused because of administration of medicinal pills.

13 It is well settled that the FIR cannot be an encyclopedia of crime. The complainant who is brother of the deceased may not be knowing about administration of Tab. Restyle to the deceased by accused persons. This fact surfaced on record during investigation through statements of employees of the deceased.

14 In view of this material collected during the investigation, it is not possible to hold that there are no sufficient grounds to proceed against the applicant for the offence punishable under Section 328 of the Indian Penal Code. No error of law or perversity can be found in the impugned order passed by the learned Assistant Sessions Judge in rejecting the application for discharge moved by the present revisional applicant.

15 In this view of the matter, the revision petition is devoid of substance and the same is rejected.

(A. M. BADAR J.)