

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 647 OF 2016**

Vijay Shankar Hande	...Applicant
Versus	
Sudhir Datattraya Kawde & Anr.	...Respondents

Mr. Vilas B. Shivarkar for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 16th DECEMBER, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the Respondent-State.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Learned APP waives service on behalf of Respondent - State.

3. By this application, the applicant has impugned the order dated 24th September, 2016 passed by the learned Additional Sessions Judge in Criminal Appeal No. 408 of 2012.

4. Mr. Shivarkar, learned Counsel for the applicant states that considering the evidence on record, the learned Judge ought not to have remanded the matter back to the trial Court with a direction to record the statement of the applicant under Section 313 of the Cr.P.C afresh and thereafter, decide the matter in accordance with law. He submits that in para 8 of the impugned order, the ground regarding framing of charge raised by the applicant has not been considered by the learned Judge and instead, the learned Judge has observed that the same will be decided at the time of hearing of the appeal.

5. Learned A.P.P submits that no interference is warranted in the impugned judgment and order. He states that even the question whether the charge was correctly framed or not, can be decided by the trial Court since the matter has been remitted back to the trial Court to record the statement of the applicant under Section 313 Cr.P.C.

6. Perused the papers. The learned Additional Sessions Judge, Pune vide order dated 24th September, 2016 was pleased to quash and set-

aside the judgment and order of conviction and sentence passed by the learned Judicial Magistrate First Class, Pune, in Regular Criminal Case No. 3587 of 2007 and remanded the matter back to the trial Court with a direction that a statement of the applicant/accused under Section 313 be recorded afresh and the matter be decided afresh in accordance with law.

7. Since the matter is remitted back with a direction to record the statement under Section 313 afresh and decide the matter afresh, it would be appropriate that the applicant be permitted to raise the plea that the charge was not framed correctly as against the applicant, before the trial Court. Otherwise, there is no infirmity in the order.

8. Rule is made absolute to the above extent. Revision Application is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.