

nsc.

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

CRIMINAL REVISION APPLICATION NO.290 OF 2016

Chandan Ram Sumaya	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.M.A.Dalvi, for the Applicant

Ms.P.P.Shinde, A.P.P for the Respondent-State

Ms.Rebecca Gonsalvez, for the Respondent No.2 – CBI.

CORAM : REVATI MOHITE DERE, J.
DATE : 9th AUGUST, 2016

P.C. :

1. Heard learned Counsel for the applicant and learned counsel for the Respondent No.2 - CBI.

2. By this application, the applicant has impugned the Judgment and Order dated 26th August, 2015, passed by the learned Special Judge – CBI, C.R.No.47, Greater Mumbai, below Exhibit – 111 in CBI Special Case No.113 of 2010, by which the applicant's application seeking discharge came to be rejected.

3. In August, 2016, learned counsel for the applicant sought leave to amend the prayer clause, as he wanted to impugn the order dated 17th February, 2016, by which charge was framed against the applicant.

4. Learned Counsel for the respondent no.2 - CBI vehemently opposed the application. She submitted that no interference whatsoever was warranted, at this stage, considering the conduct of the applicant. She further submitted that even otherwise, the trial had commenced and the first witness had stepped in the witness box and was facing cross-examination by the Advocate for the other accused.

5. Learned Counsel for the applicant states that considering the fact, that permission was granted by this Court to amend the application and challenge the order framing charge, this Court ought to entertain the said application on merits. He submitted that the applicant has a good case on merits. He relied on the Judgment of the Punjab and Haryana High Court in the case of ***Dharambir v/s State of Haryana, decided on 9th July, 2013*** and Judgment of the Delhi High Court in the case of ***Varun Sharma (Carlay) v/s The State (NCT) and Ors, decided on 20th May, 2011,*** to

show that even after the discharge application was rejected and charge was framed, Courts can entertain application seeking discharge.

6. Perused the papers. A few dates are relevant in the present case. On 26th August, 2015, the applicant's discharge application was rejected by the learned Special Judge – CBI. On 30th November, 2015, the aforesaid Revision Application challenging the order dated 26th August, 2015 was filed in this Court. The said application was accompanied by an application seeking condonation of delay of 7 days in filing the said Revision Application. From 30th November, 2015, no efforts were taken by the learned counsel for the applicant to have the matter placed on board. On 17th February, 2016, the Trial Court framed charge against the applicant and other accused. On 29th April, 2016, the delay condonation application filed in the aforesaid Revision Application came up before this Court and delay of 7 days was condoned vide order dated 29th April, 2016. Thereafter, again no steps were taken to have the matter listed on board. The aforesaid Revision Application came up before this Court for the first time, on 8th July, 2016. On that day, none appeared for the applicant, hence the matter was adjourned to 22nd July, 2016. On 1st August, 2016, the applicant sought

leave to amend for adding a prayer clause, i.e. for challenging the order framing charge. Leave was granted and the matter was adjourned to 9th August, 2016. Pursuant, to the said leave, amendment was carried out by the learned counsel for the applicant. In the interregnum, i.e. on 29th March, 2016, the evidence of the first prosecution witness commenced. The fact remains that the applicant had not taken any steps to move this application till November, 2015, pursuant to which, charge was framed by the learned Special Judge on 17th February, 2016. Infact, a perusal of the aforesaid chronology of events shows that the evidence of the first witness had already commenced and he is presently in the witness box. The Judgment relied upon by the learned counsel for the applicant will not assist the applicant, as the facts of the present case are clearly distinguishable from the said 2 cases.

7. Considering the aforesaid and the fact that trial has already commenced and PW.1, witness of the CBI is in the witness box and is facing cross-examination, no interference is warranted.

8. Accordingly, the application is rejected and disposed of as such.

9. It is made clear, that this application has not been heard on merits and is rejected on the basis of what is stated aforesaid. The Trial Court shall conduct the case on its own merits, uninfluenced by the observations made herein.

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

REVATI MOHITE DERE, J.