

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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CRIMINAL APPLICATION NO. 1192 OF 2016

DEVIDAS S/O SUKHDEO GHATE AND OTHERS
VERSUS
THE STATE OF MAHARSHTRA AND ANOTHER

...
Advocate for applicants : Mr.S.R. Dheple
APP for Respondent/State:Mr.S.B. Pulkundwar

...
CORAM: S.S.SHINDE & K.K. SONAWANE, JJ.
Dated: January 12, 2017

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The learned counsel appearing for the applicants fairly submits that, the charge is already framed by the trial Court.

2. The Supreme Court in the case of **State of Maharashtra V/s Salman Salim Khan and another**¹ in para 12 held thus;

"We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the

¹ AIR 2004 SC 1189

Code to quash charges framed by the trial Court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the Apex Court most of which were with reference to appeals arising out of convictions, we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304, Part, II, IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time we are also in agreement with the arguments of

learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable under Section 304, Part II, IPC."

3. In that view of the matter, in the facts of the present case, we are not inclined to undertake an exercise of scrutinizing entire evidence collected by the prosecution by invoking jurisdiction under Section 482 of the Code of Criminal Procedure and to adjudicate the prayer of the applicants for quashing F.I.R./charge-sheet. Hence the application stands disposed of.

(K.K. SONAWANE, J)

(S.S. SHINDE, J)