

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.11 OF 2016**

Renuka Bharat Ballal)...Applicant

V/s.
State Of Maharashtra & Anr.)...Respondents

Mr. Satish R. Borulkar i/by Nikhil Chavan, Advocates for the Applicant.

Mr. A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 21st MARCH, 2017.

P.C. :

By this revision petition, the revision petitioner/original accused is praying for quashing and setting the order dated 16.12.2015 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.348 of 2013 thereby rejecting plea of discharge by the revision petitioner- original accused.

2 Heard the learned advocate appearing for the revision petitioner/accused in Crime No.186 of 2011 for the offence punishable under Sections 323, 324 and 504 of IPC. The learned advocate drew my attention to the FIR of Crime No.185 of 2011

lodged by the revision petitioner/original accused against the first informant in this case and vehemently argued that infact, the revision petitioner/original accused is the victim of the crime and she had suffered miscarriage because of incident in question. The learned advocate further argued that perusal of FIR lodged by first informant Ratnakar Dattatraya Mane which has resulted in Crime No.186 of 2011 does not reflect commission of any offence by the revision petitioner/original accused. It is urged that the first informant Ratnakar Mane is son of police official and by using his influence, to counter blast FIR lodged by the revision petitioner/original accused which is first in point of time, this FIR came to be lodged which has resulted in registration of Crime No.186 of 2011 against the revision petitioner/original accused. It is further argued that offence alleged against the revision petitioner/original accused is triable by the Court of Magistrate and as such, the learned Magistrate was not justified in committing case to the Court of Sessions by order dated 25.3.2013 passed in Regular Criminal Case No.88 of 2012. The learned Advocate for the revision petitioner/original accused further

argued that perusal of the impugned order dated 16.12.2015 goes to show that the learned trial Court has not given any cogent reasons and has not pointed out as to on which material it has come to conclusion that there exists prima-facie case against the revision petitioner-original accused. As such, in submission of the learned advocate for the revision petitioner/original accused, the impugned order suffers from error of law as well as perversity and, therefore, same needs to be quashed and set aside.

3 The learned APP supported the impugned order rejecting discharge claim by the revision petitioner-original accused.

4 With the assistance of the learned advocate appearing for the revision petitioner-original accused, I have perused compilation of documents produced by the revision petitioner-original accused so also the record made available including FIR of Crime No.186 of 2011 and the injury certificate of the first informant.

5 The incident in question is fall out of road rage at Pune. It is reported by the first informant Ratnakar Dattatraya

Mane that on 14.12.2011 at about 1.30 p.m., he was riding on the motor-cycle and there was traffic jam causing him to stop behind the bus in front of an engineering college. The first informant further reported that the revision petitioner/original accused was also riding on a scooter and she was insisting him to take his motor-cycle on the footpath. The first informant refused. The first informant further reported that because of his refusal, the revision petitioner/original accused became angry. She assaulted him and bite him on his left thumb causing injury to him. This report has resulted in registration of Crime No.186 of 2011 for the offences punishable under Sections 324, 323 and 504 of IPC with Khadki Police Station, Pune. The revision petitioner is seeking discharge from this crime.

6 The first informant Ratnakar Dattatraya Mane during the course of investigation was sent to Sasoon General Hospital, Pune on the very same day. He was examined there by doctors from this Government hospital. During the course of his medical examination, it was found that he had suffered a bite mark over the left hand of size 2 x 2 cm. Apart from this injury, the first

informant suffered abrasions of size 2 X 1 cm over left side of his face so also contusion over upper rib region.

7 The compilation furnished by the learned Advocate for the revision petitioner/original accused shows that the revision petitioner has reported the incident first in point of time which has resulted in registration of Crime No.185 of 2011 for the offence punishable under Sections 354, 323 and 504 of IPC against the first informant in the case in hand namely, Ratnakar Mane. The revision petitioner/original accused in her report has alleged that when she insisted the first informant to take his motor-cycle on side of the road for giving her way, he abused her and assaulted her thereby outraging her modesty.

8 Accused can claim discharge if it is shown that charges are groundless. In the matter of **Onkar Nath Mishra & Ors. v. State (NCT Delhi) and Another** reported in **2008 (2) SCC 561**, the Hon'ble Apex Court has held that at the stage of framing of charge, the Court is required to evaluate material and documents on record with a view to finding out if facts emerging therefrom, taken at their face value, disclosed the existence of all the

ingredients constituting the alleged offence. What needs to be considered at the stage of framing of charge is whether there is ground for presuming that offence has been committed and not a ground for convicting the accused. If strong suspicion can be found on the basis of material on record gathered during the investigation, the accused cannot be discharged. Viewed from this angle, it is seen that the first informant has categorically averred that the revision petitioner-original accused had assaulted him by biting at thumb of his left palm and assaulted him by using her hands. This version of the first informant is gaining corroboration from medical evidence collected during the investigation. As such, at this stage, it cannot be said that the charge levelled against the revision petitioner-original accused is groundless or that there is no material to proceed against the revision petitioner-original accused.

9 Incident in question has resulted in registration of two FIRs giving two different versions of two different first informants. It is well settled that when one incident resulted in registration of two crimes and two cross cases then even if one is triable by the

learned Magistrate, both cross cases are required to be tried together and evidence in both cases is required to be recorded separately. Both such cross cases are required to be decided on one and the same date. If one of such cross case is triable by the Sessions Judge then another cross case which may be the case triable by the learned Magistrate then also it is required to be committed to the Court of Sessions. [See **Sudhir and Ors. v. State of Madhya Pradesh with State of Madhya Pradesh v. Lavkush & Ors.** reported in AIR 2001 Supreme Court 826, **Dilip s/o Narayan Lelekar & Anr. v. State of Maharashtra** reported in 2004 ALL MR (Cri.) 415 and **Nathilal and Ors. v. State of U.P and Another** reported in 1990 (Supp) Supreme Court Cases 145].

10 Therefore, it cannot be said that the revision petitioner/original accused deserves discharge because the magistrate triable case is committed to the Court of Sessions. This cannot be a ground for claiming the discharge.

11 The charge-sheet against the first informant in this case has resulted in registration of the criminal case against him

and merely because the counter case is registered against the first informant, the revision petitioner-original accused cannot claim discharge.

12 In this view of the matter, it cannot be said that the impugned order of the learned Additional Sessions Judge in rejecting discharge application suffers from perversity or error of law. It is not at all necessary to reproduce entire prosecution case while deciding the application for discharge. The learned Additional Sessions Judge has mentioned in the impugned order that he has perused case-papers including statements of witnesses and medical certificate and then came to conclusion that medical certificate is a corroborating piece of evidence and that there is sufficient material to proceed against the revision petitioner-original accused. I have already stated the material available against the revision petitioner in foregoing paragraphs.

13 In this view of the matter, no case for interference is made out in the revisional jurisdiction of this Court. The revision petition is, therefore, dismissed.

(A. M. BADAR, J.)