

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

WRIT PETITION NO. 906 OF 2017

Deepak @ Dilip Parvati Harpale & Ors.Petitioners
Versus
Namdeo Eknath Harpale & Anr.Respondents

Mr. Anita A. Agarwal for the petitioners.
Mrs. N.S. Jain, APP for the State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 05th OCTOBER, 2017***

P.C. :

1. The petitioners herein have challenged the order dated 06th March, 2010 and 31st October, 2011 passed by the Judicial Magistrate First Class Court, Court No.VII, Pune.
2. The brief facts necessary to decide this petition are as under :-
 - (i) Pursuant to the report lodged by respondent no.1, Crime No. 195 of 2008 was registered against the petitioners for offences under Sections 324, 502 and 506 read with Section 34 of the Indian Penal Code in Lonikalebhor Police Station, Pune. Upon completion of investigation, charge sheet was filed before the Judicial Magistrate First Class (VII), Pune and the same came to be registered as RCC No. 3014 of 2008.

(ii) It appears that on 16th July, 2008, the first informant had filed an application before the learned Magistrate to add Section 307 of the Indian Penal Code. The said application was heard and rejected by order dated 13th October, 2008.

(iii) The first informant thereafter filed a private complaint being RCC No. 5275 of 2008 in respect of the same incident. The learned Magistrate took cognizance of the offences and by the impugned order dated 06th March, 2008 issued process under section 307 read with Section 34 of the Indian Penal Code.

(iv) By order dated 31st October, 2011 in RCC No. 3014 of 2008, the learned Magistrate committed RCC No. 3014 of 2008 and the private complaint RCC No. 5275 of 2008 to the Sessions Court, Pune.

3. Aggrieved by these two orders, the petitioners have filed the present petition. The learned counsel for the petitioners submitted that having dismissed the application dated 16th July, 2008, filed by the respondent no.1 in RCC No. 3014 of 2008, the learned Magistrate could not have issued process under section 307 of the Indian Penal Code in a subsequent complaint. The learned counsel for the petitioners further claims that there is absolutely no material to issue process or to frame charge under section 307 of the Indian Penal Code.

4. It is to be noted that the order of issuance of process was passed on 06th March, 2010, whereas committal order was passed in the year 2011. The petitioners have challenged these orders after a period of over six years. There is no explanation whatsoever for the inordinate delay in filing the writ petition. The unexplained delay of about six years in filing the petition is sufficient for not exercising the writ jurisdiction, moreover, when the grounds raised by the petitioners can be urged before the Sessions Court.

5. Considering the above facts and circumstances, the petition is dismissed with liberty to the petitioners to file a discharge application before the Sessions Court. The Sessions Court shall consider the material on record and after hearing the submissions of the petitioners/accused and the prosecution, decide whether there are sufficient grounds to proceed against the petitioners for offence under Section 307 of the Indian Penal Code.

6. All concerned to act on an authenticated copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)