

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

CRIMINAL APPLICATION NO. 322 OF 2017

Yatindra Satish Pai Raikar

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. R.G.Merchant i/b. Mr. Avinash Avhad for the Applicant

Dr.F.R.Shaikh, APP for the Respondent No.1.

Mr. Sachin Pawar for the Respondent No.2.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.

DATED : 20TH MARCH, 2017

P.C.

1. Heard the learned Counsel appearing for the Applicant. The learned Counsel appearing for the Applicant states that the Applicant is pressing the prayer for quashing the chargesheet on merits and not on the ground of settlement.

2. He accepts that the application for discharge made by the Applicant has been rejected on merits and that the said Order has not been challenged. Moreover, he accepts that he is not relying upon any document which is not a part of the chargesheet.

3. The remedy under Section 482 of Code of Criminal Procedure, 1973 is a discretionary remedy. The Apex Court has repeatedly observed that the remedy has to be resorted to very sparingly.

4. In our view, it was necessary for the Applicant to disclose in his petition that the Application for discharge made by him has been rejected. Admittedly, the said fact has not been disclosed in this Application. Not disclosing the said fact amounts to suppression of a material fact. This conduct dis-entitles the Applicant to seek a discretionary remedy and the present Application is liable to be dismissed only on this ground.

5. In any event, the Applicant can always challenge the Order rejecting the application for discharge and urge all the contentions on merits, as admittedly the applicant has not relied upon any document which is not a part of the chargesheet. Therefore, we decline to entertain this application under Section 482 of the Code of Criminal Procedure. However, remedy of challenging the order rejecting the application for discharge is kept open. All contentions on merits are kept open.

6. At this stage, the learned Counsel appearing for the Applicant

submits that he wants to rely upon the decision of the Apex Court in the case of Bhajanlal to point out that a cognizable offence is not made out.

7. Firstly, the Applicant has indulged in suppression of material facts. Secondly, this contention can be always raised in the proceeding which can be filed for challenging the Order passed on the Application for discharge.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)