

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.354 OF 2016

Balam Gulab Pathan,
Age - 35 Yrs., Occu.- Pvt. Service,
R/o.-Mudhal Post Pokhale,
Tal.Panhala, Dist.Kolhapur. ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....
Mr.Tejas Hilage, Advocate for the Applicant.
Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.
....

CORAM : A.M.BADAR J.

DATED : 11th APRIL 2017.

ORAL JUDGMENT :

1 By this revision petition, the revision petitioner/ original accused is challenging the order dated 01/04/2016 passed by the learned Additional Sessions Judge, Kolhapur on an application for discharge moved by the revision petitioner under Section 227 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for the sake of brevity). By the impugned order dated 01/04/2016, the learned Additional Sessions Judge rejected the application for discharge filed by the revision petitioner/original accused by holding that the application is devoid of merit as the charge has already been framed.

2 Heard. Admit. Heard finally by consent of parties.

3 Heard the learned Advocate appearing for the revision petitioner/accused. He argued that the learned Additional Sessions Judge, had hurriedly framed the charge and rejected the application for discharge filed by the revision petitioner/accused. The learned Advocate vehemently argued that the learned trial Court has given a complete go-bye to the provisions of Sections 226 and 227 of the Cr.P.C.. No hearing on the point of framing of charge was conducted and straightway the charge came to be framed. By placing reliance on paragraph 8 from the Judgment of the Honourable Single Judge of this Court in the matter of ***Vikrant Rajkumar Gupta v. State of Maharashtra*** reported in **2015 ALL MR (Cri.) 1752**, the learned Advocate argued that it is mandatory to comply provisions of Sections 226 and 227 of the Cr.P.C. prior to framing of the charge in order to ascertain whether there is enough material to frame the charge.

4 The learned Additional Public Prosecutor opposed the revision petition by supporting the impugned order rejecting the application for discharge.

5 The revision petitioner/original accused is invoking the revisional jurisdiction of this Court in challenging the impugned order dated 01/04/2016, whereby his application of the same date

for discharging him came to be rejected by the learned Additional Sessions Judge, Kolhapur. The revision petitioner/accused came to be charge-sheeted for the offence punishable under Section 302 of the Indian Penal Code ("IPC" for the sake of brevity) with an accusation that the revision petitioner/original accused had committed murder of Sharif Iqbal Patayit on 01/06/2015 at the residential house of the deceased at Vathar, Taluka Hatkanangale, District Kolhapur.

6 It is well settled that revisional jurisdiction is to be exercised in exceptional cases when it is shown that the Court below has committed glaring defect of procedure or manifest error on the point of law consequently resulting in flagrant miscarriage of justice. Keeping in mind these parameters of revisional jurisdiction of this Court, let us examine whether the learned Additional Sessions Judge in rejecting the application for discharge filed by the revision petitioner/original accused has committed any procedural irregularity or error on the point of law.

7 I have carefully considered the rival submissions and also perused the record made available including the application under Section 227 of the Cr.P.C. moved by the revision petitioner/accused on 01/04/2016 with a prayer to discharge him from the charge of Section 302 of the IPC. The application was moved by raising various grounds such as intention of causing

bodily injuries with knowledge is totally absent, the act was not premeditated act, the case does not fall under four corners of Section 302 of the IPC, spot panchanama itself is sufficient to discard the prosecution case etc. On the very same day i.e. on 01/04/2016 itself with the following order which is impugned in the instant petition, the application for discharge moved by the revision petitioner/accused came to be rejected :

“ORDER

Advocate Bandar is absent today. Present Application is presented by Adv.Samiulla Patil. However, he submitted that he does not want to argue on this application.

It seems from record that charge (Exh.7) is already framed against this accused on 22.1.2016. That time no such prayer was made. Thereafter case was fixed for hearing on 4.3.2016 present Advocate Shri.Bandar also filed application for adjourning the matter. That time also four witnesses were present. On 4.3.2016 as per request of Advocate Bandar order was passed below Exh.13 and matter was adjourned by imposing cost. Thereafter today also three witnesses are present. Now also Adv.Bandar is absent.

Present application is of no merit as charge is already framed. Application is rejected.”

8 Chapter XVIII of the Cr.P.C. deals with procedure which is required to be adopted in trial of Sessions Cases. Section 226 of the Cr.P.C. provides for opening case for prosecution by the prosecutor. He is required to conduct hearing by describing the charge brought against the accused and by pointing out the evidence against the accused in support of the charge levelled against him. The defence gets an opportunity at this stage to move an application for discharge or to claim discharge from the case by pointing out that there is not sufficient ground for proceeding against the accused. With this reason, the accused can claim discharge prior to framing of the charge against him by resorting to provisions of Section 228 of the Cr.P.C.

9 It is well settled that at the stage of framing of the charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, reflects the existence of all the ingredients constituting the alleged offence. At the stage of framing of the charge, the Court is not expected to go deep into the probative value of the material on record. Requirement is just to examine whether there is a ground for presuming that the offence has been committed by the accused. At that stage, even strong suspicion founded on material which leads the Court to form a *prima facie* opinion as to the existence of the factual ingredients constituting the offence alleged, would justify

the framing of charge against the accused in respect of the commission of that offence. However, if at the stage of framing of the charge it is shown that there is not sufficient ground for proceeding against the accused, then he needs to be discharged from the case. However, once the charge against the accused is framed, the Sessions Judge has no power under Section 227 or any other provisions of the Cr.P.C. to cancel that charge and reverse the proceedings to the stage of Section 227 of Cr.P.C. and discharge the accused.

10 In the instant case, undisputedly, the charge came to be framed on 22/01/2016. However, the application for discharge of the accused came to be filed on 01/04/2016 i.e. after framing of the charge against the accused. Once the charge is framed, the Sessions Court cannot revert back for considering the application for discharge. The next stage provided by Chapter XVIII of the Cr.P.C. dealing with the trial of sessions case is to record conviction on plea of guilty, if after explaining the charge to the accused, he pleads guilty to it. If the accused does not plead guilty, then the Sessions Judge is duty bound to record evidence of the prosecution and to proceed ahead as per the provisions of Section 230 and 237 of the Cr.P.C.. After framing of the charge, application for discharge cannot be entertained as there is no provision in the Cr.P.C. to revert back and discharge the accused. The Sessions Judge then can either acquit or convict the accused.

11 In the matter of ***Vikrant Rajkumar Gupta*** (supra) relied by the revision petitioner, what was challenged was the order of framing charge against the petitioner therein under Section 304-B, 306 and 498 read with Section 34 of the IPC and in that context, referring to the Judgment in the matter of ***Ambadas Kashirao Kharad v. State of Maharashtra***, paragraph 8 of that Judgment came to be relied which reads thus :

“8. A bare perusal of the above sections makes it clear that in a Sessions Trial the case has to begin with opening of the case by the prosecution followed by arguments on behalf of the prosecution and the accused culminating in passing of an order provided in Section 227 of the Code of Criminal Procedure. The compliance of Sections 226 and 227 is not an empty formality and the Sessions Courts dealing with the sessions cases are bound to comply with the Sections 226 and 227 of the Code of Criminal Procedure in letter and spirit. Section 226 has been enacted so that the accused knows in advance the nature of the evidence which the prosecution proposes to lead to prove the charge brought against him. The object of Section 227 is to ensure expeditious disposal of sessions cases so that the accused is discharge if there is no case against him or tried quickly and either acquitted or convicted as the case may be. Section 227 also saves the accused front harassment

inasmuch as if the records do not make out any *prima facie* case against the accused, the accused is entitled to be discharged. This is not only with a view to avoid undue harassment of the accused but also waste of public time over the cases which do not disclose even *prima facie* case. Therefore, at this stage the Judge has to apply his judicial mind to find out as to whether *prima facie* any offence is made out against the accused having regard to the record relied upon by the prosecution. No doubt exercise undertaken by the Judge at this stage is to find out if there is *prima facie* evidence against the accused so that the accused can be tried by the competent Court, that is, Sessions Court or any other Court/Magistrate having jurisdiction to try the offence.”

However, in the case in hand, as seen from the impugned order, the charge was already framed and explained to the accused on 22/01/2016 and the application for discharge came to be moved on 01/04/2016 when the Sessions Case was fixed for recording of evidence as per provisions of Section 231 of the Cr.P.C. and when three of the prosecution witnesses were present for adducing evidence before the learned trial Court. Considering this fact situation, the impugned order came to be passed by the learned Sessions Judge.

12 In this view of the matter, no error on the point of law or procedural irregularity can be seen from the impugned order rejecting the application for discharge.

13 The revision petition, as such is devoid of merit and the same is, therefore, dismissed.

(A.M.BADAR J.)