

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2805 OF 2016**

Kailash Harakchand Jain ... Petitioner

vs.

The State of Maharashtra ... Respondents

Mr. Rajendra Shirodkar i/b. Mr. Archit Sakhalkar for the Petitioner.

Ms. M. R. Tidke, APP for the State.

CORAM : A. K. MENON, J.

DATE : 3rd AUGUST, 2017

P.C.:

1. By this Writ Petition the petitioner seeks to call into question an order dated 29th February, 2016 rejecting an application seeking discharge in respect of offences punishable under sections 304, 427, 288, 337 and 338 of the IPC. . The facts in brief are as follows :

2. The petitioner was conducting a jewellery business in the name of Vardhaman Jewellers at Shop no. 5 and 6 situated at the Ground floor of Laxmi Chhaya, L. T. Road, Borivali (West), Mumbai. On 18th July, 2007 the building partially collapsed. Apparently the wall between shop no 5 and 6 on the ground floor had been removed. It is case of the prosecution that no permission had been taken for the said repair work that was being undertaken. The petitioner claimed discharge on the basis that there was no evidence to suggest that he was responsible for the removal of the wall or for carrying out any repair at the premises.

3. Mr. Shirodkar, learned Counsel appearing on behalf of the petitioner has invited my attention to the fact that one of such accused Mr. Sanjay Jain who was brother of the present petitioner is already been discharged in Criminal Application no. 1117 of 2010. He invited my attention to judgment of this Court dated 11th January, 2012 wherein this Court found that there was no allegation whatsoever against applicant in this application in the entire charge sheet. This Court observed in paragraph 6 that having gone through the relevant statements, there was no allegation whatsoever against the applicant Mr. Sanjay Jain and as a result the Court concluded that as there was no material on record to frame any charges. In a similar set of circumstances, it is submitted that as against the present petitioner as well there is no reason to hold him liable and subject him to trial

4. According to Mr. Shirodkar, part of the premises in question i.e. shop no. 5 had been given on leave and licence rent to one Darshan Electricals who had vacated and handed back possession to the present petitioner who was restarting his jewellery business. According to him, the petitioner requisition of the services of a carpenter to remove furniture affixed to the wall of the shop premises and accordingly a carpenter was called upon to remove items of furniture. But during the process of removal of the furniture affixed to the common wall between shop no. 5 and 6 the wall collapsed and this was brought to the attention of the present petitioner who then informed the office bearers of the Co-operative Housing Society. It was therefore suggested that the petitioner

has not removed any wall between the two shops and wall has collapsed due to poor quality of material utilised.

5. In support of his contentions Mr. Shirodkar relied upon a report dated 23rd July, 2007 obtained by the police from the Indian Institute of Technology, Mumbai, a copy of which is annexed to this petition. The incident took place on 18th July, 2007, the information which is issued by IIT is signed by two professor's of the Department of Civil Engineering. It records prima facie reasons for the collapse as "alterations executed in the recent past" and that there was evidence of overloading of the structure resulting in "progressive failure of the ground floor columns". The report also opined on the inadequate quality of concrete used. This being prima facie view Mr. Shirodkar submitted that the applicant cannot be faulted.

6. There is no allegation that the petitioner is responsible for the deterioration of the wall since all that was done at his instance was removal of the furniture affixed to the wall which gave way in that process. He therefore submitted that the petitioner is entitled to discharge. He relied upon observation of this Court order dated 11th January, 2012 and submitted that in a similar case the brother of the present petitioner was discharged.

7. The application is opposed by the prosecution. Learned APP relied upon the statement of the Municipal Authority. In particular, the statement of Mr Baburao More dated 19th July, 2007 setting out the fact that no permission

whatsoever was obtained by the petitioners or owners of Vardhaman Jewellers before any work was carried out. Learned APP has also invited my attention to the statement of the Architect, Mr.Durgesh Anil Kothari recorded on 21st July, 2007 wherein he has stated that on 17th July, 2007 at about 9.00 pm he received a telephone call from Manoj bhai stating that there are columns and beams in the shop which are required to be examined. Accordingly, at about 9.30 pm he visited the shop premises of the present petitioner and observed that the petitioner was present along with brother and the common wall between shop nos. 5 and 6 had been removed. He has also stated that several pillars in the column and concrete had been broken and the iron rods were exposed. These are the observations of the said Mr. Kothari.

8. Learned APP also invited my attention to the impugned order in paragraph 5 which specifically invited attention to the observation of this Court while discharging the application in the Criminal Application No. 1117 of 2010 wherein the Court observed that the allegations were not against the applicant therein. However, it is brother of the applicant [petitioner herein] who has undertaken repair work and who is accused no. 2 before the trial Court. These observations are to be found in paragraph 6 of the order of this Court in Criminal Application no. 1117 of 2010. It is not in dispute that the discharge application now present petition was taken out on 11th August, 2016 much after 11th January, 2012 when this Court passed order of discharge of Mr. Sanjay Jain brother of the present petitioner.

9. Prima facie, I find there is no perversity in the order dated 29th February, 2016 and there is nothing that has been shown on record to justify discharge of the petitioner.

10. In the circumstances, I am not inclined to interfere with the impugned order . I therefore pass the following order :

- (i) Writ petition is rejected.
- (ii) No orders as to costs.
- (iii) The trial Court shall not be influenced by the observations in this order.

(A. K. MENON, J.)