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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3395 OF 2015

Shri Baban Raghuji Khamkar & anr.

.. Petitioners

Vs.

State of Maharashtra and anr.

.. Respondents

Mr. S. B. Deshmukh for petitioners.

Mr. V. B. Konde-Deshmukh, APP for State.

Mr. Vijay Killedar for respondent no.2.

CORAM: NARESH H. PATIL &
A. M. BADAR, JJ.

DECEMBER 12, 2017.

P.C.

1. During the pendency of this petition, a charge-sheet came to be filed against two accused persons. By an order dated 27/1/2017, this court (Coram : A. S. Oka & Anuja Prabhudessai,JJ) passed following order :

“1. The learned counsel appearing for the petitioners states that during the pendency of the Petition, charge sheet has been filed. He submits that he is relying upon the photographs and compact disk of video footage recording alleged incident

which cannot be considered in the discharge application. He, therefore, seeks permission to amend the Petition. We, therefore, grant leave to amend. Amendment to be carried out within a period of one week from the date on which this order is uploaded. We direct the Advocate for the Petitioners to supply a copy of the compact disc and copies of the photographs to the Investigation Officer within a period of two weeks from today.

2. Issue notice to the second respondent, returnable on 3rd March, 2017. In addition to service through Court, private service is permitted.”

2. Consequently, police submitted a report dated 8/11/2017, wherein the Investigating Officer opined that after examining the CC TV footage, CD and photographs, there was no incident noticed of tearing of T-shirt and closing door by the accused persons.

3. The learned counsel appearing for the respondent no.2 – original complainant submits that he is in possession of audio clip involving the accused persons in the alleged incident.

4. We have perused the material placed on record, considered the submissions advanced. The charge-sheet is already filed. Picking up few instances like CC TV footage, audio and video clips, the final determination of issue as to whether the petitioners need to be exonerated / discharged by quashing the charge-sheet would not be appropriate at this stage.

5. The petitioners have statutory right under the Cr. P. C. in approaching the trial court for seeking discharge. All issues on merits are kept open.

6. With the aforesaid liberty, petition stands disposed of.

(A. M. BADAR, J.)

(NARESH H. PATIL,J.)