

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3599 OF 2017

Akshay Manoj Jaisinghani,	]	
Age 21 years, Occ. Nil,	]	
R/at – B-309, Skylark Building,	]	
Raheja Woods, Next to H.S.B.C.,	]	
Kalyani Nagar, Pune	]	... Petitioner
<i>Versus</i>		
The State of Maharashtra,	]	
At the instance of Yerwada Police Station,	]	
Pune in C.R. No.993/2016	]	... Respondent

Mr. Subodh Desai, a/w. Mr. Sayeed Y. Mulani, Ms. Shobhana Waghmare and Mr. Abhishek Sawant, i/by M/s. Mulani & Co., for the Petitioner.

Ms. N.S. Jain, A.P.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 15TH DECEMBER 2017.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for the Petitioner and learned A.P.P. for the Respondent-State.

2. This Writ Petition is preferred against 'framing of Charge' by the Additional Sessions Judge, Pune vide order dated 6th July 2017 passed in Sessions Case No.440 of 2017.

3. The main grievance of the Petitioner is that, the learned Sessions Judge has framed 'charge' against the Petitioner without hearing him

and thereby in non-compliance of the provisions of Sections 226 and 227 of the Cr.P.C. To substantiate this submission, learned counsel for the Petitioner has pointed out to the copy of the 'Roznama' of the Sessions Case No.440 of 2017 dated 6th July 2017, which is produced at page No.66 to this Petition, to show that, on that day, without the learned A.P.P. or learned counsel for the Accused being heard, the 'charge' is directly framed against the Petitioner vide "Exhibit-C". It is submitted that, Roznama does not disclose that either learned A.P.P. or learned counsel for the Petitioner were heard before framing of 'charge'.

4. In this respect, Mr. Desai, learned counsel for the Petitioner, has placed reliance on the Judgment of this Court in the case of *Rajukumar Girdharilal Yadav Vs. State of Maharashtra, 2013 ALL MR (Cri) 2053*, wherein, after considering the provisions of Section 226 and 227 of Cr.P.C., it was held that,

"The stage to frame a charge comes after the Court comes to a conclusion that there was no case for discharge. The charge is to be framed, if, upon consideration of record and hearing, as stated in Section 227 of the Code of Criminal Procedure, the Judge is of the opinion that there are grounds for presuming that the Accused has committed an offence, which is exclusively triable by the Sessions Court."

5. Learned counsel for the Petitioner has also placed reliance on another decision of this Court in the case of *Ambadas Kashirao Kharad Vs. State of Maharashtra, 2007 ALL MR (Cri) 1916*, wherein after

considering in detail the provisions of Sections 226 and 227 of Cr.P.C.

and its object and reason, it was observed that,

“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 provisions of these Sections in letter and spirit.”

6. It was further held that,

“Compliance of these provisions is not only to ensure expeditious disposal of Sessions Cases so that the Accused is discharged, if there is no case against him or tried quickly and either acquitted or convicted, as the case may be, but, also to save the Accused from harassment inasmuch as if the records do not make out any prima facie case against the Accused, the Accused is entitled to be discharged.”

7. It was further held that,

“It also avoids 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.”

8. In paragraph No.11 of the said Judgment, it was directed that,

“Since the practice of directly framing the ‘charge’ against the Accused in the Sessions Trial appears to have been followed by different Sessions / Additional Sessions Courts, the copy of this Judgment be circulated to all the Sessions Judges so that the directions contained in the Judgment, relating to scrupulous compliance of the provisions of Sections 226 and 227 of the Cr.P.C. are followed.”

9. Admittedly, in the present case, the 'Roznama' does not disclose that Additional Public Prosecutor was present and he has opened the case and learned Sessions Judge has heard the A.P.P. before framing of 'charge'. Though learned counsel for the Petitioner was present along with the Petitioner, 'Roznama' shows that, he has on that day itself filed the Vakalatnama and 'Roznama' is silent as to whether learned counsel for the Petitioner was heard before framing of charge or not. In such situation, in the light of the law laid down in both the Judgments referred above, this Writ Petition needs to be allowed. Hence, ordered accordingly.

"O R D E R"

- (i) The impugned order dated 6th July 2017 passed by the Additional Sessions Judge, Pune, in Sessions Case No.440 of 2017, thereby framing 'Charge'(Exhibit-C) against the Petitioner, is quashed and set aside.
- (ii) The learned Sessions Judge is directed to follow the procedure laid down in Sections 226 and 227 of the Criminal Procedure Code, as stated here-in-above, and proceed further in accordance with law.

10. Rule is made absolute in the above terms.

11. Writ Petition is disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]