

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1504 OF 2016

Dauling Kantilal Doshi

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Fakruddin Khan Advocate for Applicant
Ms. Anamika Malhotra APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATED : 18th APRIL, 2017.

P.C.

1) Heard.

2) Being aggrieved by the order dated 27/10/2016 passed by the Additional Sessions Judge, Greater Mumbai in Revision Application No. 792 of 2016, applicant has filed this application seeking discharge from C.C. No. 34/PW/2004. Applicant herein is charge-sheeted for offence punishable under sections 420 & 406 of the Indian Penal Code. Applicant had filed an application seeking discharge on the ground that the statements of the witnesses are stereotype. It was also contended that it is a civil dispute. It

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appears from the charge-sheet that there were several people who had been cheated by the applicant. The learned Chief Metropolitan Magistrate 47th Court, Esplanade, Mumbai, by an order dated 06/05/2016 had rejected the application. Being aggrieved by the said order, applicant had filed Criminal Revision Application No. 792 of 2016. At the time of hearing of the revision application, applicant had made an attempt to place on record certain documents which did not find place in the compilation of the charge-sheet and therefore, the learned Revisional Court had rightly observed that the documents which are not part of the charge-sheet cannot be taken into consideration as it would be the defence of the accused.

3) Perused the charge-sheet. According to the learned counsel for the applicant, he had started the business in ball bearing in the year 1989 itself. That he had learnt from reliable sources that a complaint was filed against him before Economic Offences Wing (E.O.W.) and therefore, he had approached office of E.O.W. to co-operate, however, at that stage, he learnt that no offence was registered on the basis of the report filed by the complainant. Subsequently, crime no. 44 of 1999 was registered at Crime

Branch, E.O.W. According to the learned counsel, the compilation of the charge-sheet would indicate that Mukesh Thakkar is co-accused and that there are similar allegations against him and that his name appears in the F.I.R. also. According to the learned counsel for the applicant, police has not filed charge-sheet against Mukesh Thakkar for the reasons best known to the investigating agency and therefore, according to the learned counsel, grave and serious prejudice is caused to the present applicant.

4) This is not a civil suit which can be dismissed for non joinder of necessary parties. Applicant cannot be discharged on the ground that co-accused has not been charge-sheeted. This Court cannot inquire into the reasons for not filing charge-sheet against co-accused. According to the learned counsel for the applicant, applicant had no intention to cheat anybody but only because there was recession and the business was slack, he could not fulfill the orders for which he had taken advances.

5) The intention or *mens rea* of the accused can be decided only by way of substantive evidence before the Court. It would be a finding of fact and the

the exercise can be undertaken at the time of trial by the learned Trial Court. No case is made out for discharging the applicant. Both the courts had assigned justifiable reasons for rejecting the discharge application. Hence, no interference is called for.

6) Application, being sans merits, stands rejected.

7) The learned Magistrate shall make every endeavour to expedite the trial as far as possible.

(SMT. SADHANA S. JADHAV, J.)