

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.273 OF 2017

(Sharad s/o Gulabrao Moharkar and others vs. State of Maharashtra and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri D.J. Charlewar, Advocate for applicants
Shri P.S. Tembhre, Additional Public Prosecutor for
respondent no.1.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 18, 2017

Heard Shri Charlewar, learned Counsel for
applicants, and Shri Tembhre, learned Additional Public
Prosecutor for respondent no.1.

Considering the prayer made in the criminal
application, same can be decided even without issuing
notice to original complainant/respondent no.2 herein.

By filing this application, it is prayed to
quash and set aside the order dated 7/3/2017 passed by
learned Sessions Judge in Criminal Revision
Application No.13/2017 vide which learned Sessions
Judge by setting aside order dated 13/12/2016 passed
by learned Judicial Magistrate, First Class, remitted case
back to learned Magistrate with direction to consider the
same afresh on its own merits on hearing all parties.

Shri Charlewar, learned Counsel for
applicants, has submitted that applicants were involved
in Crime No.45/2016 registered by Arjuni Morgaon
Police Station for the offence punishable under Section

302 read with Section 34 of Indian Penal Code on the basis of report lodged by respondent no.2/complainant.

All the applicants were discharged by the learned Judicial Magistrate, First Class under Section 169 of Code of Criminal Procedure in this crime for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, which order was assailed by respondent no.2 by filing Criminal Revision Application No.13/2017 wherein impugned order came to be passed by learned Sessions Judge directing learned Magistrate to re-consider grant of discharge under Section 169 of Code of Criminal Procedure on considering material on record as has been observed in paras 11 and 12 of the impugned judgment.

Since matter is admittedly remitted as aforesaid and learned trial Court is requested to re-consider grant of discharge of applicants under Section 169 of Code of Criminal Procedure from the offence punishable under Section 302 read with Section 34 of Indian Penal Code, order for quashing of the impugned order does not appear to be necessary as by the impugned order, the matter is remitted back to learned trial Court for reconsideration as aforesaid.

In the circumstances, criminal application is liable to be disposed of in the following terms :

Criminal Application seeking quashing of the impugned order dated 7/3/2017 passed by learned Sessions Judge is rejected. However, it is clarified that in the event any adverse order is passed against applicants herein by learned Judicial Magistrate, First Class while

considering discharge application filed under Section 169 of Code of Criminal Procedure in Crime No.45/2016 for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, the same shall not be given effect to for a period of two weeks from the date of such order, in effect, no coercive action will be taken against applicants during such period.

JUDGE

khj