

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 23 OF 2018

Jairam Bapith and others ...Applicants

Versus

State (Through the Officer Incharge
of Panaji Police Station) and another ...Respondents

Shri G. Teles, Advocate for the Applicants.

Shri S.R. Rivankar, Public Prosecutor for the respondents.

CORAM: NUTAN D. SARDESSAI, J.

DATED : 19th June, 2018.

P. C. :-

1. Heard Shri G. Teles, learned Advocate for the applicants and Shri S.R. Rivankar, learned Public Prosecutor for the respondents.

2. It has been the contention of Shri Teles, learned Advocate for the applicants that the ingredients of the offence of kidnapping or abduction in order to murder punishable under Section 364 of IPC are not made out and therefore the learned Additional Sessions Judge was in

error to order charge to be framed against the applicants and to reject their application for discharge from the proceedings for the said offence under Section 364 IPC. He placed reliance in **Tondi and others v/s. The State of U.P.** [1975 Cri L.J. 950] in support of his contention.

3. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State submitted that there was ample material on record to frame the charge against the applicants under Section 364 IPC and that the learned Additional Sessions Judge had correctly applied her mind to the material on record and ordered such charge to be framed against the applicants. The application therefore had to be dismissed. He invited attention to the complaint and supporting statements to buttress his case and prayed for the dismissal of the petition.

4. i have considered their submissions and besides perused the statements from which it is apparent that although the applicants had gone out into the high seas in

their large fishing trawler, it is prima facie borne out from the complaint that they had tried to obstruct the complainant and his teammates who were within a small fiber boat for fishing. They had obstructed them with the trawler despite their objection that they would damage their nets and in that process three of the fishermen on the fiber boat had fallen in the deep sea. It is another matter that the complaint reads out that the applicants were instrumental in picking up these three persons from the deep sea who were placed not on the fiber boat but on their own trawler to which they had tied the fiber boat and were taking it further onwards.

5. The statement of Shri S. Gawas substantiates the case of the complainant that the fishing trawler of the applicants who are mainly from Karnataka was instrumental in taking the fiber boat out to deep sea while the statement of one Nitesh reveals that the applicants were found in the deep sea alongwith the fiber boat who were in the process of taking the fiber boat further into

deep sea. It is apparent from the complaint that the applicants were instrumental in causing physical harm to them so much so that the complaint reveals that one of the applicants had tried to strangle him. The judgment in **Tondi** (supra), was in the facts of that case, clearly distinguishable and therefore does not support the case of the applicants for their discharge from Section 364 IPC. The learned Additional Sessions Judge on the basis of the material on record had clearly held that there was enough material on record to frame charge against the applicants under Section 364 IPC which does not require any interference by this Court while exercising the power of revision.

6. It was also the contention of Shri G. Teles, learned Advocate for the applicant that the intention to commit murder should be prevalent at the inception itself which was lacking in the present case. However, this contention does not stand the test of scrutiny inasmuch as a bare reading of the ingredients of the offence under Section 364

IPC reveals that any person who abducts another in order that such person may be murdered or may be disposed off in such way as to put him in danger of being murdered would be liable to be punished for the said offence. The intention would be borne out from the material as revealed in the course of the proceedings.

7. In view thereof, there is no merit in the application which accordingly stands dismissed.

NUTAN D. SARDESSAI J.

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