

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 6 OF 2018**

Shri Dattatray Gaude,
Son of Kashinath Gaude,
42 years of age,
Indian National,
R/O. H. No.281/68/2,
PDA Colony Mallar Corlim,
Tiswadi Goa,
N/o. Kudal Maharashtra

.... Petitioner

Versus

1. S T A T E

Through Police Inspector
Old Goa Police Station,
Tiswadi, Goa.

2. The Public Prosecutor,
High Court of Bombay
at Goa.

... Respondents

Coram:- C. V. BHADANG, J.

Date:- 12th March 2018.

Mr. Pavithran A.V., Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the Respondents.

ORAL ORDER:

The challenge in this criminal revision application is to the order dated 16/11/2017 passed by the Sessions Judge, Panaji in Sessions Case No.80/2016 refusing to discharge the petitioner from the offences punishable

under sections 342, 395, 427 and 120B of I.P.C.

2. I have heard Shri Pavithran, the learned counsel for the petitioner and Shri Rivankar, the learned Public Prosecutor for the Respondents.

3. The prosecution case is that; there was an incident of house breaking at the house of the complainant in the night intervening between 6th March to 7th March 2016 in which certain cash, gold ornaments and other articles were stolen away. On investigation, the investigation officer filed a charge sheet against in all nine accused including the applicant who happens to be the accused no.3. Admittedly, the applicant was not present when the incident of house breaking occurred. The allegation against the applicant is that he was constantly in touch with the accused no.1 and the accused no.2 prior to the incident and his location is shown at Menino Hotel where the accused no.1 was staying. The prosecution has produced the Call Data Record in order to substantiate that the applicant was in touch with the accused no.1 and accused no.2.

4. The learned Sessions Judge has found that there is enough material to frame charge against the applicant for the aforesaid offences.

5. It is submitted by Shri Pavithran, the learned counsel for the petitioner that although the petitioner is shown to be in contact with the accused no.1, it is only on 2/3/2016 i.e. about five days prior to the incident. It is submitted that the the petitioner is a taxi driver by profession and the accused no.1 and others had come to Goa as tourists. It is thus submitted that it is not unusual for the petitioner to have some contact with the accused no.1. In the submission of the learned counsel for the petitioner this cannot give rise to any suspicion, much less a grave suspicion so as to frame charge.

6. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case of **Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra (2008) 10 SCC 394.**, in order to submit that where two views are equally possible, giving rise to a suspicion as against a grave suspicion, the court is justified in discharging the accused. It is submitted that the petitioner cannot be made to face the trial on the basis of the material which is not sufficient to frame charge.

6. On the contrary it is submitted by Shri Rivankar, the learned Public Prosecutor that there is also a charge under section 120-B of IPC. i.e. of there being a conspiracy between the petitioner and the co accused. It is submitted that the petitioner is shown to be in contact with the accused no.1 and

accused no.2, who are the prime accused and at this stage it would be sufficient to frame charge inasmuch as the Court at the stage of framing of charge is not required to see whether the prosecution would end in an acquittal.

7. I have carefully considered the rival circumstances and the submissions made. Under section 227 of Cr.P.C., the Court is required to see whether or not there is sufficient ground for proceeding against the accused and if there be none, the accused is entitled to discharge. The scope and ambit of the inquiry which is envisaged at the stage of framing of charge has been subject matter of several decisions. In the case of **Yogesh Joshi (supra)**, the Supreme Court has held that at the stage of framing of the charge, the Court is not required to see whether the trial will end in an conviction or not. The Supreme Court while explaining the expression “not sufficient ground for proceeding against the accused” as appearing in section 227 of Cr.P.C has held that the said expression postulates an exercise in order to determine whether a case for trial has been made out by the prosecution or not. Although at this stage the court can sift and weigh the material, it is bound to do so for the limited purpose whether or not there is prima facie case against the accused. It has been held that the test to determine prima facie case would obviously depend upon the facts and circumstances of each case.

Principally where the court finds that a case of grave suspicion as against mere suspicion is made out the Court would be justified in framing charge.

9. Coming back to the present case, there is also a charge framed under section 120B of I.P.C. It is now well settled that criminal conspiracies are hatched in a manner in which normally direct evidence cannot be expected. In the present case, the applicant is shown to be in contact with the accused no.1 and accused no.2 about five days prior to the incident. In my considered view, it cannot be accepted that the material produced only gives rise to a suspicion and not a grave suspicion. I find that it gives rise to a grave suspicion and charge could have been framed against the petitioner.

10. I have carefully gone through the impugned order and I do not find that a case for interference is made out. The criminal revision application is accordingly dismissed.

C. V. BHADANG, J.

ap/-