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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.181 OF 2018

Ratna Shankerlal Chugh	..Applicant.
V/s.	
State of Maharashtra & Anr.	..Respondents.

Mr.Mohammed U.Kazi for the applicant.

Mrs.S.S.Kaushik, APP for the respondent-State.

Mr.Vinod Tayade for respondent No.2.

CORAM: NITIN W.SAMBRE, J.

DATE : FEBRUARY 27, 2018

PC.:-

Heard respective counsel for the parties.

2. The applicants have questioned the order dated December 3, 2016 passed by the learned Magistrate below, Exhibit-47 in R.C.C. No.298/2010 and the judgment and order dated January 29, 2018 passed by the learned Additional Sessions

Judge, Kalyan in Criminal Revision No.11/2017, whereby the claim of the present applicants for discharge came to be rejected.

3. The applicant No.1 is the accused No.3 in the charge-sheet, whereas applicant No.2 is accused No.4. The son of applicant No.1 namely, Bunty was married to the non applicant No.2 on December, 13, 2002. Out of the said wedlock, a son was born on June 1, 2004.

4. It is the case of respondent No.2 that on October 12, 2007, the present applicants-accused called the complainant along with her son, removed the son from her custody and ran away from the spot resulting into registration of Crime No.I-90/2009 for offences punishable under section 363 read with 34 of the Indian Penal Code.

5. The present applicants were charge-sheeted in the said offence and as such, have moved an application under section 239 of Code of Criminal Procedure, 1973 for discharge vide Exhibit-47 in Regular Criminal Case No.298/2010. The said application came

to be rejected on December 3, 2016, which was further confirmed in Criminal Revision Application No.11/2017 by the learned Sessions Judge vide judgment and order dated January 29, 2018. As such, this revision application.

6. The learned counsel for the applicant would urge that in a complaint No.954/2007 for offences punishable under section 363, 504, 506 and 323 read with 34 of the Indian Penal Code, the learned Magistrate issued process on May 6, 2009. For the same offence, on May 7, 2009 a complaint to the police has resulted in the registration of the crime No.I-90/2009. A prayer for clubbing of both these prosecution under the provisions of section 210 of the Code of Criminal Procedure was moved. The same was allowed. He would then urge that the application for discharge in complaint No.954/2007 was not pressed. He would then urge that the prayer for quashing of prosecution before this Court being Criminal Application No.53 of 2014 was withdrawn with liberty to pursue an application for discharge.

7. According to him, there is no *prima facie* evidence to

connect the applicants to the crime in question and they are falsely implicated. He would urge that the applicants are grandmother and uncle of the child Sujal and no *mens rea* could be attributed as the child was with the applicants out of love and affection. He would urge that the ingredients of sections 361 and 363 of the Indian Penal Code are not satisfied. According to him, in view of the matrimonial discord, false allegations are made.

8. The aforesaid pleadings are opposed by the learned counsel for the complainant, as according to him, the defence of the accused cannot be considered in the case while dealing with an application for discharge. According to the learned counsel, necessary ingredients of sections 361 and 363 were satisfied. He would urge that the application be dismissed.

9. The rival submissions if are considered, it could be inferred from the investigation papers that respondent No.2 is the natural biological mother of the child Sujal. From her custody, the child Sujal had been removed as is alleged in the complaint.

10. The fact remains that the proceedings under 6 of the Guardianships and Wards Act seeking custody of the child Sujal is already pending at the behest of applicants. Apart from above, it is to be noted that the explanation to section 361 is required to be considered in the backdrop of the facts of the present case. It is then to be considered that the allegations in the F.I.R. and the further investigation including that the statement of the child and statement of the complainant speaks voluminous about the availability of material so as to demonstrate *prima facie* involvement of the applicants in the crime in question.

11. In the aforesaid backdrop, in my opinion, no case is made out. The application preferred against the concurrent findings recorded dismissing the application for discharge does not warrant interference. The revision application stands dismissed.

(NITIN W.SAMBRE, J.)