

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 213 OF 2018

Vitthal Mahadeo Shelar ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. V. B. Shivarkar for Applicant.

Mr. S. S. Pednekar, APP for Respondent - State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 19, 2018.

P.C. :

In Sessions Case No. 830 of 2013 the learned Additional Sessions Judge, Pune framed charge on April 8, 2015 against the present Applicant for an offence punishable under Sections 143, 147, 148, 149, 302 r/w 34, 341 r/w 34 of Indian Penal Code and Section 135 of Bombay Police Act and Section 25 of the Arms Act.

2. While ordering framing of charge, Application (Exh.12) moved by the Applicant – Accused remained to be decided. It was decided

after framing of charge. The learned Additional Sessions Judge rejected the Application (Exh.12) by the impugned order dated 19th March 2018. As such, this Revision Application.

3. While invoking revisional jurisdiction of this Court, Mr. Shivarkar, the learned Counsel for Applicant – Accused would urge that perusal of the chargesheet would depict that there is no material on record to infer the physical presence of the Applicant while committing the crime in question. According to him, in the aforesaid background, the charge framed against the Applicant – Accused *qua* Sections 149 read with 302 of the Indian Penal Code is not sustainable. He would submit that the learned court below has committed an error in appreciating the statement of co-accused so as to infer the prima facie involvement of the Applicant in the crime in question.

4. The learned APP opposed the claim and submits that the order impugned need not to be gone into at this stage, as the trial is pending since 2009 and a discharge order questioned in the present Revision Application is passed after framing of charge.

5. Considered the rival submissions.

6. It appears that there are criminal antecedents against the Applicant. In the aforesaid background, the learned Additional Sessions Judge proceeded to analyze the weapon used in the commission of crime which is claimed to have been provided by the Applicant to co-accused.

7. May be the Applicant ought not to have been charged for an offence under Section 149 of the Indian Penal Code, viz – unlawful assembly, however, the fact remains that the material on record speaks of the common intention *qua* the commission of crime in question. There is sufficient material to suspect the involvement of the Applicant in the crime in question which, in my opinion, does not warrant or call for this Court to exercise the revisional jurisdiction to interfere with the order of refusal of discharge. No case is made out.

8. As such, Revision Application is dismissed.

(NITIN W. SAMBRE, J.)