

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

CRIMINAL REVISION APPLICATION NO.556 OF 2016

Mr. Gaurav Vinodbhai Patel & Anr.

... Applicants

Vs

State of Maharashtra

... Respondent

Mrs. Priyanka Patil i/b. Bhushan V. Mahadik for the Applicants.

Mr. Vinod Chate, APP, for the State.

CORAM : REVATI MOHITE DERE, J.

DATE : 06.02.2018

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of the Respondent-State.
3. By this application, the Applicants have impugned the order dated 1st August, 2016 passed by the learned Additional Sessions Judge, Greater Bombay, only to the extent that it directs framing of charge as against the Applicants for the offences punishable under Sections 285, 286, 427 of the Indian Penal Code.
4. Learned counsel for the Applicants submits that the Applicants have been falsely implicated in the said case. She submits that no particular role has been ascribed, to any of the Applicants and that there

is nothing to show that the Applicants were present at the spot, when the fire took place on 20.01.2010. She further submitted that the Applicants are partners of 'Adachi Pest Company', Gujarat, which was given the tender of removing scrap material/machinery from the textile mill. She submitted that considering the fact, that there is no material on record, qua the Applicants, the Applicants be discharged from the said case.

5. Learned APP opposed the application and submitted that no interference was warranted in the impugned order.

6. Perused the papers including the impugned order. The Applicants alongwith other co-accused have been chargesheeted in connection with C.R. No. 30/2010 registered with the Bhoiwada Police Station, Mumbai for the alleged offences punishable under section 285, 286, 247, 436 read with Sections 34 and 120-B of the Indian Penal Code. According to the prosecution, the incident took place at "Gold Mohor Textile Mill" on 20.01.2010, at about 12.35 hours. It is the prosecution case, that the said mill had closed down for about two years, prior to the incident and that a tender to remove the scrap material/ machinery was given to the Applicants company that is 'Adachi Pest'. It is further alleged that on 20.01.2010 at about 12.35 pm, a huge fire broke out at block No. 2 of the said mill. Pursuant thereto, the fire brigade came to the spot and

extinguished the said fire. Spot panchanama of the spot, where the fire broke out, was conducted and burnt material from the said spot was collected for the purpose of investigation for verifying the cause of fire. Photographs as well as videography of the incident was also recorded. Admittedly, the entire building of block No. 2 and the machinery therein, was reduced to ashes. It is not in dispute, that the contract of removal of the machinery was given to the Applicants company i.e. Adachi Pest. It is also not in dispute, that the Applicants are the partners of the said company. It appears that the company had used gas cutters, welding machines, LPG gas cylinders and Oxygen Gas Cylinders etc. for removing the said machinery and scrap from the Mill. During investigation, it was revealed that the fire had started at the same time at different places, and not at one place. Pursuant to the investigation, it was concluded that the said building of the mill was set on fire by the applicants and others. After investigation, charge-sheet was filed as against the Applicants and others. The fire brigade also submitted its report. According to the said report, the fire was not as a result of any short circuit or accidental fire, but, it appeared to have been caused by some person. Kerosene residues were also found on articles which were sent to the Forensic Lab. Thus, the conclusion drawn was that the fire was caused due to a human act, and

was not an accidental fire. During investigation, one of the accused that is Dinesh Marwadi gave a disclosure statement under Section 27 of the Evidence Act, pursuant to which two empty cans of kerosene were recovered. Although, it is contended that the Applicants were not present at the spot at the time of incident, the statements of witnesses, *prima facie* shows a different picture. Ramazan Ali Khan, in his statement, which is at page 163 of the compilation talks about the presence of the Applicants at the spot on 20.01.2010 at 12.30, when the fire broke out in the mill. Similarly, the statement of Ramesh Bhai which is at page 191, of the compilation, reveals that he had received a call from the Siraj Bhai stating that there was a fire in the mill compound. He has stated that that he had met the present applicant in the hotel. The statement of Govind Solanki, which is at page 112 of the compilation, shows that accused - Dinesh Marwadi had called him on 20.01.2010 at about 3.00 pm. and had disclosed to them, that when he was working under the instructions of the contractor, the contractor asked him and his associates to set the mill on fire, pursuant to which they set the mill on fire. The said statement is an extra judicial confession made by the co-accused Dinesh Marwadi to the said witness i.e. Govind Solanki.

7. Considering the material on record, it cannot be said that

there are no sufficient grounds to proceed as against the Applicants.

8. Considering the material on record the impugned order can neither be said to be perverse nor unsustainable warranting interference in writ jurisdiction. Rule is discharged.

9. Accordingly, the Application is dismissed.

10. Needless to state, that the Trial Court shall proceed with the case on its own merits in accordance with law, uninfluenced by the observations made in this Order.

(REVATI MOHITE DERE, J.)