

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.515 OF 2017

Himanshu Singh Rajawat & Anr. ... **Petitioners**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Mihir Gheewala with Mr.Ishan Jani i/b. Mr.Santosh G. Pawar,
Advocate for the Petitioners.

Ms.Anamika Malhotra, APP for the Respondent/State.

Mr.Gautam Tiwari i/b. Probus Legal, Advocate for the First
Informant.

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CORAM : A.M.BADAR J.

DATED : 4th JULY 2018.

P.C. :

1 Heard the learned Advocate appearing for the applicants/accused Nos.8 and 9, who are reported to be Police Sub-Inspectors of Rajasthan Police Force. By this revision petition, these two accused persons are challenging the Order dated 31/07/2017 passed by the learned Additional Session Judge, Sessions Court, Greater Mumbai thereby rejecting their application (Exhibit 1059) for discharge from the Sessions Case commonly known as 'fake encounter case' in respect of Soharabuddin Shaikh, his wife Kauserbi and Tulshiram Prajapati.

2 From submission of the learned Advocate appearing for these revision petitioners, it is crystal clear that after rejection of discharge application (Exhibit 1059) filed by both these revision petitioners/accused Nos.8 and 9, the learned trial Court has framed charge against them and as of now 125 prosecution witnesses are already examined by the learned trial Court. Undisputedly, all these prosecution witnesses are cross-examined by the learned Advocate appearing for both these petitioners in that trial.

3 Though the learned Advocate appearing for the petitioners submitted that he is pressing the revision petition by resorting the provisions of Section 197 of the Criminal Procedure Code, I am not inclined to enter into that controversy. It is well settled that revisional jurisdiction is required to be exercised sparingly and that too in exceptional cases, when there is some glaring defect of the procedure or there is a manifest error on a point of law which has consequently resulted in a flagrant miscarriage of justice. In the case in hand, the charge has already been framed and explained to the revision petitioners/accused persons. Prosecution witnesses, 125 in number are already examined by the prosecution and they are cross-examined by the revision petitioners/accused persons. Procedure for trial of sessions triable case is prescribed in Chapter XVIII of the Criminal Procedure Code. Section 226 of the Criminal Procedure Code deals with opening of the prosecution case by the Prosecutor.

Section 227 of the Criminal Procedure Code deals with discharge of the accused and it reads thus :

“227. Discharge : If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

Perusal of this provision makes it clear that when the Judge considers that 'there is not sufficient ground for proceeding', he is duty bound to discharge the accused. However, after hearing the parties, if the Judge is of the opinion that 'there is ground for presuming that the accused has committed the offence', then in sessions triable case, he is duty bound to frame charge in writing against the accused and to explain the same in order to ascertain whether he pleads guilty or not to the charge so framed. Next step prescribed by the Criminal Procedure Code is then either conviction on plea of guilty or recording of evidence of the prosecution.

4 Thus, the scheme of the Criminal Procedure Code provides that once the charge has been framed and explained to the accused, next step is recording of evidence of prosecution and then if after taking the evidence of the prosecution and upon examining the accused and hearing the Prosecutor, the Judge

considers that there is no evidence that the accused has committed the alleged offence, then the accused can be acquitted. Once the charge is framed, there cannot be any question of discharge. Similar provisions in respect of warrant triable case were examined by the Honourable Apex Court in the matter of ***Ratilal Bhanji Mithani v. State of Maharashtra & Ors.***¹ Paragraph Nos.26 and 26A thereof needs reproduction and reads thus :

“**26.** From the scheme of the provisions noticed above, it is clear that in a warrant case instituted otherwise on a police report, 'discharge' or 'acquittal' of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of 'discharge' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in the light of the evidence that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under Section 254 and frame charge against the accused. Section 254 shows that a charge, can be framed if after taking

1 AIR 1979 SC 94.

evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case.

26A. Once a charge is framed, the Magistrate has no power under section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973)."

5 In this view of the matter, no case for interference in the revisional jurisdiction is made out particularly when 125 prosecution witnesses are already examined after framing of the charge against both the revision petitioners.

6 Revision Petition is, therefore, dismissed.

(A.M.BADAR J.)