

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.509 OF 2015

1. Smt.Dina Vasant Shah, Age 58 years,
Occ. Business,

2. Vasant Himchand Shah, Age 58 years,
Occ.House wife,
Both R/o.64/B, Jalaram Ashish, D.D.Road,
Mulund (W), Mumbai-400 080.

Applicants

versus

The State of Maharashtra through EOW,
Unit-II, Mumbai.

Respondent

Mr.Raj J. Khude for applicants.
Ms.R.M.Gadhavi, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 7th February 2018

PC :

1. The applicants are prosecuted for offence under Sections 255 to 260, 465, 467, 468, 471, 420, 120-B of Indian Penal Code. The offences were registered vide CR Nos.91 of 2004 and 337 of 2014. The applicants are impleaded as accused nos.7 and 8 in the said proceedings. The application for discharge filed by the applicants was rejected by the Sessions Court vide order dated 1st September 2015.

2. The case of the prosecution is that the complainant is the Chief Manager of State Bank of Indore, Bhuleshwar Branch, at Mumbai. It was noticed by the complainant after verifying the documents of some of the persons including the applicants and other accused that they had obtained housing loan from the bank but they were not paying

the equal monthly installments. On further investigation it was noticed that the accused had taken loan from State Bank of Indore and it was revealed that the builder had not received the loan amount and that the borrowers had not received the possession of premises. It was also noticed that the accused had produced forged and fabricated documents to obtain loan in the year 2003. There were about eighteen persons who had obtained the loan from the said bank by relying upon the forged documents. After completing the investigation, the charge sheet was filed.

3. The applicants as well as other accused filed an application for discharge which has been rejected by the Sessions Court.

4. The learned counsel for the applicants submitted that there is no evidence against the applicants to support the charge under section 255 of Indian Penal Code. It is submitted that to frame the charge under section 255 of IPC, there has to be recovery of material used by the accused for counterfeiting the stamp which is totally absent in the present case. It is submitted that to substantiate the offence under section 255 of IPC, the accused are required to counterfeit the stamps or knowingly perform any part of process of counterfeiting any stamp issued by Government for the purpose of revenue and there is no evidence to support the said charge. The learned counsel placed reliance on the decision in the case of **Manmit Saggu and another V/s. State of Maharashtra 2009-All.M.R. (Cri.)-735**.

5. Learned APP opposed the application. It is submitted that the grounds raised by the applicants cannot be considered at this stage. The case for discharge was not made out. The prosecution should be given an opportunity to lead the evidence to prove the charge against

the accused. The accused had used forged and fabricated documents which shows that the stamps were pasted on the documents by mechanical process. It is, therefore, submitted that the application may be rejected.

6. I have perused the documents on record. The primary contention of the applicants is that offence under section 255 of IPC is not made out since there is no evidence to establish the alleged offence of counterfeiting stamps. The offence under Section 255 is the only offence triable before Sessions Court amongst the offences charged against the accused. It has been contended that there is no recovery of any such instruments from the accused nor they were found counterfeiting the government stamps. It is further submitted that the offence under section 255 of IPC is triable by the Sessions Court and the other offences are triable by the Court of Magistrate. It is therefore contended that in the absence of any evidence to frame charge under section 255 of IPC, the applicants be discharged in relation to charge under section 255 of IPC. It is submitted that the applicants have not committed any offence. The Sessions Court has rejected the application filed by the accused including the applicants. While rejecting the application the Court has assigned reasons which does not require interference by this Court. The prosecution case is that the accused no.1 has disbursed the loan of about Rs.1,05,96,000/- to various borrowers i.e. accused persons. The accused no.1 had authority to sanction loan up to Rs.10 lakh. The said borrowers did not repay the loan amount. The loan was disbursed without verifying the genuineness of margin money. The pay orders were directly handed over to the accused. The investigation authority had recorded the statements of various witnesses including the sub-registrar to substantiate the charge that

sale deeds which were executed by the applicants, were forged and fabricated documents. The franking on the said documents was forged. The receipt of stamp duty, rubber stamps and signatures were also forged. At the stage of deciding an application for discharge, the Court is required to look into the material on record and whether prima facie case is made out for proceeding against the accused. From the statements of witnesses it is manifest that the accused had counterfeited the government revenue stamps/franking and knowingly performed the acts and consciously defrauded to pay the stamp duty. The other accused had also preferred similar application before the Trial Court which were rejected by common order dated 1st September 2015. Some of the accused had preferred Criminal Revision Application Nos.552 of 2015 and 561 of 2016 before this Court which are rejected vide order dated 3rd August 2017. Considering the fact that prima facie case is made out to constitute the offence, the decision relied upon by the applicants, cannot be applied in the facts of present case. Hence, the application is required to be rejected.

7. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.509 of 2015 is rejected;
- (ii) It is clarified that the observations made in this order are only for considering the present application and the Trial Court shall not be influenced by the same at the time of trial;
- (iii) Criminal Revision Application No.509 of 2015 is disposed of.

(PRAKASH D. NAIK, J.)