

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

CRI. REVISION APPLICATION NO. 637 OF 2017

Manik Bhiku Shingare & Anr.

.. Applicants

Vs.

The State of Maharashtra

.. Respondent

.....
Mr. Tejas Hilage, Advocate for the Applicants.

Ms. R. M. Gadhvi, APP for the Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 6, 2018.

P.C. :

Applicants are impleaded as accused in C.R. No.160 of 2014, registered with Hathkangangle Police Station, Kolhapur for offences punishable under Sections 307, 326, 341, 143, 147, 148, 149, 427, 506 and 504 of the Indian Penal Code. The first information report (FIR) was lodged at the instance of one Rajaram Shankar Shingare on 23th December, 2014. On completion of investigation, charge - sheet has been filed.

2 The applicants preferred an application for discharge before the Sessions Court. The said application has been rejected by order dated 14th November, 2017.

3 The case of the prosecution is that on 23rd December, 2014 at about 9:00 a.m. all the accused formed unlawful assembly and with common objection assaulted the injured persons with weapons and by fist blows. Applicant no.1 is attributed the role of assaulting Rajaram/first informant. Applicant no.2 is also attributed the overt-act of assaulting the mother of the first informant Smt.Housabai.

4 Learned counsel for the applicants submitted that there is dispute between the family of the complainant and the applicant. On account of rivalry, the entire family of the applicant has been falsely implicated in the case. It is submitted that both the applicants being husband and wife were residing at Pune and for the entire month of December 2014, applicants were at Pune, as the applicant no.1 is employed as Sales Tax Inspector at Pune. Learned counsel relied upon the attendance sheet which reflects the attendance of applicant no.1 at Sales Tax Office at Pune on the date of incident as well as in the entire month of December 2014. It is submitted that the said document established that applicant no.1 has been falsely implicated in this case. Applicant no.2, being wife of applicant no.1, was residing at Pune with him. Learned counsel pointed out statement of three witnesses which

were recorded by police in which the said witnesses have stated that applicant no.1 was not present at the scene of offence and he was at Pune. The statements of the said witnesses were recorded on 28th February, 2015. Learned counsel submitted that the fact that applicant no.1 was not present at the place of incident is fortified by the fact that there is no recovery of clothes from the applicant no.1's, whereas against the other accused there is recovery of clothes which were purportedly on their person at the time of incident. Learned counsel further submitted that the attendance sheet which exonerate applicant no.1 was overlooked by the trial Court while rejecting the application for discharge. It is submitted that the applicant was entitled to rely upon such a documents in support of his defence that the applicant has no role to play in the said crime. Learned counsel submitted that at the stage of framing of charge, document of sterling quality has been relied upon by the accused. The learned counsel relied upon the decision of the Apex Court in the case of **Nitya Dharmananda @ K.Lenin & Anr. Vs. Sri Gopal Sheelum Reddy & Anr.**¹ Learned counsel also placed reliance on the decision of this Court in the case of **Tika Bahadur Bhandari Vs. State of Goa**². It is submitted that there is no evidence to

1 In Criminal Appeal No.2114 of 2017 a/w. 2115 of 2017, decided on 10.7.2017

2 In Criminal Revn. Appln. No.71 of 2015 decided on 27.1.2016

proceed against the applicants and the Sessions Court ought to have discharged the applicants from the said proceedings. Learned APP submitted that the arguments advanced by the learned counsel for the applicants cannot be considered at this stage. *Prima face*, case is made out to proceed against the applicants - accused. The statements of eye witnesses who are injured persons attribute specific overt-act to the applicants/accused and, therefore, no case is made out for discharge. It is submitted that merely on the basis of the statements of three witnesses which purportedly exonerate applicant no.1, cannot be taken into consideration at this stage in the light of the statements of eye witnesses to the incident of assault. It is further submitted that the version of assault is fortified by the injury certificate of the injured person. It is further submitted that the documents relied upon by the applicants before the trial Court as well as this Court viz attendance register is a defence document, which can be used at the time of trial and this is not the stage to the authenticity of said documents.

5 I have perused the charge-sheet which has been annexed to this application. The statements of the complainant

and other witnesses attribute specific overt-act to the applicants. Applicant no.1 has purportedly assaulted the father of the complainant and applicant no.2 is attributed role of assaulting the mother of the complainant. The prosecution case is that all the accused have formed unlawful assembly with a common object and assaulted witnesses. *Prima facie* case is made out to proceed against the applicants to frame charge *qua* alleged offence. The document in relation to the attendance sheet relied upon by the applicants, is in the nature of defence and it cannot be considered at this stage. On relying upon the said document, the version of the eye witnesses, cannot be discarded at this stage. Learned counsel relied upon the decision of the Supreme Court as stated hereinabove. In the said decision, the Supreme Court has stated that the documents of sterling quality can be considered. The question which arises in the present case is that whether the statements of eye witnesses can be brushed aside by relying upon the said documents at the stage of framing charge. The applicant no.1 is trying to prove the liability at this stage, which cannot be accepted at the stage of framing charge. It is pertinent to note that in the decision of the Supreme Court in the case of ***State of Orissa Vs. Debendra Nath Padhi***³, the Supreme Court has

3 (2005) 1SCC 568

categorically held that the documents which is in nature of defence of the accused, cannot be looked into at the stage of framing of charge by trial Court.

6 In the aforesaid circumstances, no case is made out for discharge and the application deserves to be rejected.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Application No.637 of 2017 stands rejected.

(PRAKASH D. NAIK, J.)