

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

29 CRIMINAL REVISION APPLICATION NO.307 OF 2018

Ajaj Abdul Gaffar Shaikh
Age 30 years, Occu: Mason,
R/o. Katwan Khandoba,
Dist. Ahmednagar.

... Applicant
(Ori. Accused 1)

VERSUS

The State of Maharashtra
(Copy served on Public Prosecutor
High Court Bench at Aurangabad)

... Respondent

...

Advocate for Applicant : Mr. Deshmukh Rajendra S.
APP for Respondent/State: Mr. P.K. Lakhotiya

...

CORAM : MANGESH S. PATIL, J.

DATE : 18.09.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith.

2. The applicant is accused no.1 in Special Case No.205/2018 pending on the file of learned Additional Sessions Judge, Ahmednagar for the offence punishable under Section 20-(B) and 22 of the N.D.P.S. Act. It appears that after framing of the charge on 10.10.2018, he

submitted an application (Exh.14) on 26.10.2018 that the copies of the papers were not provided to him and his signatures were obtained on blank paper and that no opportunity of being heard was extended before framing the charge. The learned Additional Sessions Judge, passed following order on that application:

“Ld. Adv. Mrs. S.R. Sayyad has obtained the copies on behalf of accused. The accused has admitted this fact.”

The present revision has been filed for prosecuting the same application (Exh.14).

3. The learned advocate for the applicant submits that the petitioner had already made a grievance by submitting an application earlier on 13.06.2018 (Exh.15) and had alleged that his signatures were obtained on blank paper and the request was made to carry out investigation. It is at that stage, it was not proper on the part of the learned Additional Sessions Judge to proceed to frame the charge when the applicant was making a grievance about the signatures obtained on blank paper. Still the charge has been framed causing serious prejudice to him and therefore, for non-compliance of the provision of Section 227 the impugned order suffers from illegality and deprives him of his right to be heard before framing of the charge.

4. The learned APP submits that in fact, the grievance made

by the applicant about his signature having been obtained on blank paper was raised in the month of June 2018. It is thereafter that on 10.10.2018, the charge was framed. His plea was recorded. Obviously his signature must have been obtained on the plea and it is thereafter the matter was adjourned to 24.10.2018. Even on that day he had not made any grievance and it is thereafter, for the obvious reason, he has filed the application (Exh.14) on 26.10.2018, raising the issue regarding non-supply of document and about not having been extended an opportunity of being heard. Even there is a delay in challenging that order on his application (Exh.14).

5. I have carefully gone through the papers. As can be seen from the copy of the Roznama and the papers, the applicant who is an accused no.1 had made a grievance under his application dated 13.06.2018 (Exh.15) about his signature having been obtained on blank paper and requesting for carrying out an investigation. The grievance was apparently independent of the present issue.

6. As regards the framing of charge is concerned, the Roznama reads that it was framed on 10.10.2018 when the accused no.1 that is the applicant was brought from the jail and even the other accused was present. The plea was recorded and obviously their

signatures must have been obtained on the plea. The matter was thereafter adjourned to 24.10.2018. Even on that day, he was brought to the court from jail and the other accused was also present. The prosecutor tendered an application (Exh.9) under Section 294 of the Code of Criminal Procedure and also furnished a witness list (Exh.10). Apparently even on that day, he had not made any grievance about framing of the charge. It is thereafter that he has forward this application (Exh.14) dated 26.10.2018 from jail.

7. As can be seen from the impugned order, one advocate Mrs. S.R. Sayyad admitted to have obtained the copies of the paper on his behalf as well and even he admitted that fact. True it is that the learned Additional Sessions Judge has not in his impugned order specified anything about the grievance made by the applicant that he was not heard before framing of the charge in compliance to Section 227 of the Code of Criminal Procedure. However, the aforementioned happenings, framing of the charge on 10.10.2018 without any grievance and recording of his plea. His conduct is not raising any issue on the next date i.e. 24.10.2018 and sending the application (Exh.14) from jail on 26.10.2018 clearly demonstrate that he is only now taking a chance. He had not made any grievance about framing of the charge on earlier two occasions.

8. The aforementioned facts and circumstances clearly indicate that the charge was framed in presence of the applicant and he had not raised any objection at an appropriate opportunity. It is only by way of after thought, that he has tendered the application (Exh.14) and it has rightly been disposed of and the matter has proceeded further.

9. I find no sufficient and cogent reason to interfere in the impugned order. The Revision is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

habeeb