

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 11 OF 2019

RAVINDRA N. DESAI., ... Applicant

Versus

STATE, THR. P.P., ... Respondent

Ms. Ankita Kamat, Advocate for the applicant.

Shri S.R. Rivankar, Public Prosecutor for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 26th March 2019

P.C.:

Heard Ms. Ankita Kamat, learned Advocate for the applicant and Shri S.R. Rivankar, learned Public Prosecutor for the respondents.

2. It was her contention that the chargesheet was initially filed against the applicant under Sections 3 and 25 of the Arms Act and Section 5 of the Explosive Substances Act, 1908 r/w. Section 34 of IPC. The case was committed to the Court of Sessions since the offence under Section 5 of the Explosive Substances Act, 1908 is exclusively triable by the Court of Sessions. The Sessions Court further by the impugned order dated 27/01/2017 held that there was no material to frame charge against the applicant under Section 5 of the Explosive Substances Act, 1908

and in the operative part of the order had directed that the charge be framed against the applicants for the offences under Sections 3 and 25 of the Arms Act r/w.34 of IPC and directed the matter to be made over to the Chief Judicial Magistrate, Panaji for deciding the same in accordance with law. In her contention the order so passed was without any valid reasons and perverse and called for an interference from this Court. She also contended in the alternative that even if the statements of Mohammad Hussain and the father of the applicant were looked into, there was no material to incriminate the applicant and on that premise too, he was entitled to a discharge from the offences under Sections 3 and 25 of the Arms Act. Besides, it was her contention that both the deponents had expired and thus not available for testing their statement on oath.

3. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State fairly conceded that the order was fit for interference and in any event there was no opportunity given to the applicant to canvass a case for his discharge from the proceedings. In his submission, the matter could be remanded to the learned JMFC for affording an opportunity to the applicant to press for a case of discharge and in that view of the matter the impugned order could be quashed and set aside.

4. i have heard Ms. A. Kamat, learned Advocate for the

applicant who invited attention not only to the impugned order but that of the two statements from the records. i have also considered the submissions of Shri S.R. Rivankar, learned Public Prosecutor and it is apparent that the order passed does not assign any reason and therefore liable to be interfered with. In view thereof, the impugned order is quashed and set aside to the extent that the charges are ordered to be framed against the applicant under Sections 3 and 25 of the Arms Act r/w. 34 of IPC. The learned JMFC is directed to give an opportunity to the applicant to canvass a case for discharge by drawing attention to the relevant material statements on record and other material to substantiate his case. The learned JMFC to hear the applicant on a case for discharge from the proceedings under Sections 3 and 25 of the Arms Act r/w. 34 of IPC.

5. In these terms, the revision stands disposed off.

NUTAN D. SARDESSAI, J.

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