

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.747 OF 2018

Hemant Tukaram Buddhiwant	.. Applicant
Versus	
The State of Maharashtra	.. Respondents

...

Mr. Ashok P. Mundargi I/b Satyam H. Nimbalkar, Rohan N. Hogle and Rohit Takawane for the applicant.
Mr.H.J. Dedhia, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 24th SEPTEMBER, 2019

P.C:-

1 The applicant, arraigned as an accused in C.R.No.349 of 2007 for an offence punishable under Section 399 of IPC read with Section 4(25) of the Arms Act and Section 37(1) r/w Section 135 of the Bombay Police Act unsuccessfully approached the Sessions Court praying for discharge and being aggrieved has approached this Court.

2 With the assistance of learned senior counsel and the learned APP representing the respondent, I have perused the FIR and also the accompanying statements of the witnesses on which the prosecution relies. In sync with the complaint,

Tilak

the statements disclose that an information was received at Swargate Police station that a few people were moving around in a Maruti Van and a Zen car around bungalow of one Vighnagar Dhere, resident of Savarkar Society, Sahakarnagar No.2, Pune. On receipt of the information, the Swargate Police Personnel reached the spot and noticed two cars parked there and few people sitting in the car. As the police personnel approached towards the car, the occupiers of the said car alighted and fled away. On being chased, they were apprehended at around 4.30 a.m and came to be arrested.

The specific case of the prosecution is that the two cars were driven away by two respective drivers. The statement recorded can be bifurcated into two parts, the first part of the incident being when the six persons were apprehended and it makes reference to the incriminating material in the form of certain weapons being recovered from them. The second part contains the case of the prosecution is that on interrogation of this accused person, it led to the information that the Maruti Zen car bearing No.MH-12-AX-3427 was being driven by the present applicant, whereas the driver of another vehicle MH 12 BN 4363 was not known to the persons who were apprehended. Based on this information, the applicant has been arraigned as an accused and the provisions of Section 399 of IPC are invoked and applied against him.

3 Perusal of Section 399 of IPC would clearly disclose that it prescribes punishment for making preparation to commit dacoity. In order to attract the said section, some positive evidence in form of the preparation will have to be brought on record and what the prosecution had before it and on the basis of which it has proceeded is merely on a narration of group of people sitting in a car parked at a particular place and certain persons being apprehended with weapons and on the basis of this statement, the present applicant has been arraigned as an accused and Section 399 being invoked and applied against him.

4 Section 399 IPC makes any preparation for committing dacoity punishable. The term preparation is defined in Cambridge Dictionary to mean “the things that you do or the time you spend for preparing something”. As per Merriam – Websters Dictionary, it is defined to mean “the action or process of making something ready for use; a state of being prepared”. The Collins Dictionary defines the term as “the process of getting something ready for use or for a particular purpose or making arrangements for something”. The term 'preparation' is therefore assigned a meaning distinct from 'attempt'. Preparation consists of devising or arranging the means or measures necessary for the commission of an offence whereas the attempt to commit an offence is a direct movement towards commission after the preparations are

made. In **Malkiat Singh & Anr. v. State of Punjab reported in (1969) 1 SCC 157**, the Apex Court succinctly emphasised on the distinction between the two where in the backdrop of the fact that the Appellant has admitted that he was driving a truck loaded with paddy being transported to Delhi when he had no licence to carry the paddy. In the backdrop of Section 7 of the Essential Commodities Act and the restriction imposed on export of paddy and when the truck carrying paddy was stopped at Samalkha Barrier which is 32 miles from Delhi, the Apex Court observed thus:

“On the facts found, there was no attempt on the part of the appellants to commit the offence of export. It was merely preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. An attempt to commit the offence is a direct movement towards the commission after preparation was made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiency proximate to it to amount to an attempt to commit it.

If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may

be proved that he intended to set fire to a haystack at the time of the purchase.

The test for determining whether the act of the Appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless.”

5 Section 399 IPC makes the preparation to commit dacoity to be an offence. In absence of any cogent material to demonstrate and to lead to a conclusion that the present applicant was found to be making preparation for committing dacoity, the ingredients of the said section and resultantly, the penalty prescribed in Section 399 cannot be at all attracted. In absence of the ingredients of the said section being not made out, the applicant being asked to undergo the rigmarole of the trial, would be unjust and in such circumstances, the order of the Addl. Sessions Judge, Pune refusing to discharge the applicant under Section 327 of Cr.P.C. cannot be sustained.

6 The Addl. Sessions Judge, while rejecting the said application has relied on the statements of the police manual and has pointed out the involvement of the accused based on the said statements. The said order is based merely on the assumptions and since none of these statements collected during the investigation point out or indicate of constituting the ingredients under Section 399 IPC, the said order cannot be

sustained.

7 Resultantly, the Order dated 17/04/2018 passed by the Sessions Court, Pune thereby rejecting the discharge application filed by the Applicant is quashed and set aside.

8 Criminal Application is allowed in terms of prayer clause (b).

SMT. BHARATI DANGRE, J