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

CRIMINAL REVISION APPLICATION NO.334 OF 2019

Moin Yusuf Attari	]	
aged : 24 years,	]	
r/o 29 th floor, Flat No.2903	]	<u>Applicant</u>
Shaficastle Rubber wala Tower	]	Ori. Accused No.3
242, Nagdevi Street	]	
Crawford Market, Mumbai 400 003.	]	

V/s.

The State of Maharashtra	]	
At the instance of Dongri Police Station	]	Respondents
Mumbai	]	

Mr. Ayaz Khan, for the Applicant.
 Mr. N. B. Patil, APP for respondent State.
 Mr. Prakash Dinkar, Police Sub Inspector, Dongari Police
 Station, Mumbai is present.

CORAM : N. J. JAMADAR, J.

DATE : 11th December, 2019.

ORAL JUDGMENT:

- 1] With the consent of the learned counsels for the parties, heard finally at the stage of admission.
- 2] The legality, propriety and correctness of the order dated 21st June 2019, passed by the learned Additional Sessions Judge, Greater Mumbai, on an application under Section 227 of the Code of Criminal Procedure (for

short “Code”), in Sessions Case No.486 of 2018 and Sessions Case No.481 of 2017, is assailed in this Revision Application.

3] The applicant-accused No.3, came to be arraigned, for the offences punishable under Section 489(B) and 489(C) of the Indian Penal Code (for short, “the Penal Code”), apparently, on the basis of discovery under Section 27 of the Indian Evidence Act, 1872 (for short, “Evidence Act”), allegedly made by Salman A Supariwala, accused No.2. The prosecution, has its genesis in the arrest of Waqar Ansari, accused No.1, who was found in possession of counterfeit currency notes.

4] The applicant had preferred application for discharge on the premise that apart from disclosure statement allegedly made by accused No.2 Salman Supariwala, there was no other material to connect the accused with the crime, and the disclosure statement of one accused under Section 27 of the Evidence Act can not be used even for framing charge against co-accused.

5] The prosecution resisted the application.

6] The learned Additional Sessions Judge, by the impugned order, was persuaded to reject the application. The learned Sessions Judge seems to have committed two manifest errors. One, on facts. The other, in application of the relevant provisions of the Indian Evidence Act to the facts in the instant case.

7] The fact which weighed with the learned Sessions Judge was the alleged recovery of the “printer” from the premises of the applicant/accused No.3, consequent to the discovery made by accused No.2. This finding of learned Sessions Judge is not borne out by the record. The learned APP, after taking instructions from the Officer, who is present in the Court, has submitted that the printer was not recovered from the premises of the applicant.

8] On law, the learned Sessions Judge seems to have confused the admissibility of discovery under Section 27 of the Evidence Act with confession of the co-accused under Section 30 of the Evidence Act, Thus, the learned Sessions Judge misdirected himself in rejecting the application by posing unto himself totally inappropriate question.

9] In the aforesaid view of the matter the impugned order deserves to be quashed and set aside, and it would be in the fitness of the things to direct the learned Sessions Judge to decide the application for discharge afresh after adverting to the governing principles of law and precedents.

10] Hence, the following order.

ORDER

i] The Revision Application stands allowed.

ii] The impugned order dated 21st June, 2019, in Sessions Case Nos. 486 of 2018 and 481 of 2017, passed by the learned Additional Sessions Judge, Greater Bombay, stands quashed and set aside.

iii] The application for discharge (Exh.3) in Sessions Case No.486 of 2018 and 481 of 2017, stands restored to file.

iv] The learned Additional Sessions Judge, is directed to hear and decide the application afresh, after providing an opportunity of hearing to the applicant and the prosecution, in accordance with law.

iii] The learned Additional Sessions Judge shall dispose of the application as expeditiously as possible and, preferably, within a period of three months from the receipt of copy of this order.

iv] Revision Application stands disposed of accordingly.

[N. J. JAMADAR, J.]