

Anand

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

WRIT PETITION NO. 5111 OF 2019

Sunilkumar Singh .Petitioner
Age : 51 years, Occupation : NIL
Address : Flat No. 9, Building No. 8B,
NMM Kamgar CHS, Kalwa (West),
Thane – 400 605.

Vs.

The State of Maharashtra .Respondent
(Through Kalwa Police Station)

Mr. Dinesh Tiwari a/w Mr. Swapnil Ambure i/b. Dinesh Tiwari &
Associates, Advocate, for the Petitioner
Mr. A. R. Patil, APP, for the Respondent – State
Ms S. B. Chavan, PSI, Kalwa Police Station, Thane present

CORAM : REVATI MOHITE DERE, J.

DATE : 14.11.2019

ORAL JUDGMENT

. Heard.

2. Rule.

3. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

4. Learned APP waives notice on behalf of the Respondent –

State.

5. By this Petition, the Petitioner has impugned the order dated 05.09.2019 passed by the learned Additional Sessions Judge – 8 & Special Judge (POCSO) Act, Thane in Special Case (POCSO) No. 150 of 2017, by which the learned Sessions Judge was pleased to frame charge (Exh. No. 4) as against the Petitioner herein.

6. The principle submission of the learned counsel for the Petitioner is that on the very first day when the Petitioner appeared before the learned Judge, the learned Judge without handing over a copy of the charge-sheet to the Petitioner, proceeded to frame charge as against the Petitioner for the alleged offences punishable under Sections 375(b), 354A(1)(i) & 511 of the Indian Penal Code and under Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act (for short ‘POCSO’). He further submits that the learned Special Judge without following the procedure contemplated in Chapter XVIII of the Code of Criminal Procedure proceeded to frame charge, without complying with Section 226 of the Code of Criminal Procedure. He submits that as a result of the same, the Petitioner was deprived of an opportunity to file a discharge Application before the learned Sessions Judge.

7. Learned APP does not dispute the fact that Section 226 of the Code of Criminal Procedure has not been complied with. He submits that it was incumbent for the Petitioner to collect the charge-sheet and as such, no fault can be found with the learned Special Judge for not furnishing the charge-sheet to the Petitioner.

8. Perused the papers. The Petitioner was arrested in connection with C. R. No. I-91 of 2017 registered with the Kalwa Police Station, Thane, for the alleged offence punishable under Section 354 of the Indian Penal Code and Sections 8 & 12 of the POCSO. Thereafter, the learned Sessions Judge, Thane enlarged the Petitioner on bail vide order dated 20.02.2017. After investigation, charge-sheet was filed as against the Petitioner in the Court of the learned Sessions Judge, Thane. According to the learned counsel for the Petitioner, the Petitioner received summons from the police station on 24.08.2019 asking him to remain present before the learned Sessions Judge on 28.08.2019. It appears that the Petitioner could not remain present on the said date, however, his Advocate remained present on 28.08.2019 before the trial Court. It appears that the Petitioner's Advocate was informed that the Petitioner was summoned to the Court for the purpose of filing charge-sheet and hence, the Petitioner's Advocate sought a short date which was granted and the matter was kept on 05.05.2019. A copy of the

roznama is annexed to the aforesaid Petition at 'Exh.C'.

9. It appears that on 05.09.2019, the Petitioner and his Advocate were present. According to the learned counsel for the Petitioner, the Petitioner's Advocate disclosed to the Court that the matter was kept for filing of charge-sheet. He submits that the learned Sessions Judge perused the case papers and informed the Advocate for the Petitioner that charge-sheet had already been filed in the matter and that the matter was posted for framing of charge. It appears that the Petitioner's Advocate informed the Court that he had not received any summons or intimation about filing of the charge-sheet and had received summons to appear on 28.08.2019. It appears that thereafter, the learned Sessions Judge proceeded to frame charge as against the Petitioner on 05.09.2019. It appears that the Petitioner had not received a copy of the charge-sheet even on 05.09.2019. The learned Sessions Judge ought to have verified the same to verify the same and handed over a copy of the charge-sheet to the Petitioner. The learned Sessions Judge without complying with Chapter XVIII of the Code of Criminal Procedure in particular, Section 226 of the Code of Criminal Procedure proceeded to frame charge as against the Petitioner under Section 228 of the Code of Criminal Procedure. In the facts, the procedure adopted by the learned Sessions Judge was erroneous and unsustainable. The learned Sessions Judge could not have framed charge as against the Petitioner without

ensuring that a copy of the charge-sheet was handed over to the Petitioner.

10. Considering the aforesaid, the impugned order dated 05.09.2019, by which the learned Judge framed charge against the Petitioner is quashed & set aside. It appears that the Petitioner has, now, received a copy of the charge-sheet. Accordingly, the learned Sessions Judge shall now proceed with the case in accordance with Chapter XVIII of the Code of Criminal Procedure.

11. Accordingly, the Petition is allowed and Rule is made absolute in the aforesaid terms and is disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)