

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5549 OF 2019

Sapana Amarsingh Sandhu	]	Petitioner
Vs.		
The State of Maharashtra	]	Respondent

.....
Mr. Sunil Gosavi, for the Petitioner.

Mr. A.R. Patil, A.P.P for the Respondent - State.
.....

CORAM : REVATI MOHITE DERE, J.

DATE : 13TH NOVEMBER, 2019.

P.C. :

Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent-State.

3. Perused the papers. The Petitioner is facing prosecution for the offences punishable under section 3 and 7 of the Official Secrets Act, 1923, registered vide C.R. No.407 of 2017 with the Rabale Police Station, Navi Mumbai. After investigation, charge-sheet was filed as against the Petitioner in the Court of the learned J.M.F.C, Vashi at Belapur on 23rd May, 2018 and the case was numbered as Regular Case No.764 of 2019.

It appears that the Petitioner filed an application seeking her discharge from the said case on 19th June, 2019 before the learned Magistrate under section 239 of the Code of Criminal Procedure and the learned Magistrate was pleased to reject the said discharge application vide order dated 25th June, 2019.

4. Being aggrieved by the said order, the Petitioner approached the Sessions Court by filing Revision Application No.173 of 2019 along with an interim application. The learned Sessions Judge was pleased to issue notice to the Respondent-State. It appears that the Public Prosecutor was to file his say to the Interim Application, however, no say was filed by the learned Public Prosecutor. It appears that during the pendency of the Revision Application alongwith the connected application i.e Interim Application, the Petitioner sought adjournments before the trial Court i.e before the learned Magistrate. It appears that on 17th July, 2019, the learned Magistrate adjourned the case as the Revision Application of the Petitioner was pending before the Sessions Court and an opportunity was granted subject to proceeding with the case on the next date. Thereafter, again on 5th August, 2019, the Petitioner's adjournment application was allowed. On 16th October, 2019, the Petitioner appeared in person as her Advocate was not available and filed an application for adjournment and for postponing of framing of charge, as the

Petitioner's Revision Application was pending before the learned Sessions Judge. The Trial Court vide order dated 16th October, 2019, rejected the said application after observing that a copy of the Revision Application was not furnished despite demand nor the status of the Revision Application was disclosed. The learned Magistrate observed that without any record and as the number of the Revision Application as well as the order of the District Court is not given, refused to grant any adjournment and proceeded to frame charge as against the Petitioner in the absence of her Advocate. The Magistrate framed charge on the very date i.e on 16th October, 2019 as against the Petitioner.

5. It is pertinent to note that the observation made by the learned Magistrate while refusing adjournment and proceeding to frame charge against the Petitioner, stating that the number of the revision application and the status not furnished was incorrect. The application filed by the Petitioner on 17th July, 2019 clearly shows that number of the Revision Petition was disclosed by the Petitioner.

6. Considering the aforesaid, the impugned order dated 16th October, 2019 passed below Exhibit 3 as well as the order dated 16th October, 2019 passed by the learned J.M.F.C framing charge as against the Petitioner is quashed and set aside.

7. In the meantime, the learned Sessions Judge before whom Criminal Revision Application No.173 of 2019 along with Interim Application is pending to decide the Interim Application as expeditiously as possible and in any event, within six weeks from the date of receipt of this order.

8. The Rule is made absolute in the aforesaid terms and the Petition is disposed of.

9. All the parties to act upon the authenticated copy of this order.

[REVATI MOHITE DERE, J.]