

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
SUO MOTU REVISION APPLICATION NO. 1 OF 2019**

High Court on its own motion ...Applicant
Versus
Satish @ Satya Chandrakant Shinde & anr. ...Respondents

None for the Applicant.
Mr. Vishal M. Deshmukh, for Respondent no.1.
Mr. N. B. Patil, APP for the State.

**CORAM: N. J. JAMADAR, J.
DATED : 13th DECEMBER, 2019**

PC:-

1. This *suo motu* revision application arises in the backdrop of the following facts:

(a) A crime was registered at CR No.185 of 2018 at Juhu Police Station, Mumbai, on the basis of a report lodged by Mr. Ravikumar Tummar (hereinafter referred to as 'the first informant') for the offences punishable under Sections 342, 364(A), 386, 506(2), 504, 394 read with 34 of the Indian Penal Code ("the Penal Code") against Satish @ Satya Chandrakant Shinde (Respondent no.1) and his associates, namely, Raju, Kalpesh Mafatlal Shah and an unknown person.

(b) The gravamen of indictment against the aforesaid persons was that on 18th August, 2018, in between 3.00 pm. to 8.00 pm. the accused abducted the first informant on the point

of a toy gun, wrongfully confined him in a room of a building situated in the lane of Sanjay Gandhi National Park, voluntarily caused hurt to the first informant, insulted him and made a demand of ransom of Rs.1 crore and threatened to kill the first informant in the event the ransom was not paid.

(c) After completion of investigation, only accused Satish was sent for trial and the rest of the associates of the said accused were shown absconders. The charge-sheet thus came to be lodged, on 30th September, 2019, for the offences punishable under Sections 342, 364(A), 386, 506(2), 504, 394 read with 34 of the Penal Code.

(d) The learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai, took cognizance of the offences punishable under the aforesaid sections. On the very day, accused no.1 Satish filed an application for expeditious disposal of the said case as the first informant and accused had resolved the dispute amicably. It was further asserted that the first informant was a resident of State of Gujarat, and was ready to attend the Court on the next date.

(e) The learned Magistrate framed charge against accused Satish on the very day, for the offences punishable under Sections 342, 364(A), 386, 506(2), 504, 394 read with 34

of the Penal Code. Accused no.1 abjured his guilt and claimed for trial.

(f) On the next date, on 16th October, 2019, the first informant Ravikumar Tummar (PW-1) was examined. The first informant did not support the prosecution. The learned Magistrate dispensed with the examination of the accused under Section 313 of the Criminal Procedure Code, as no incriminating material was found in the testimony of the first informant. On the very day, the learned Magistrate was persuaded to pass the judgment. The learned Magistrate, thus, acquitted the accused Satish of the offences punishable under 342, 364(A), 386, 506(2), 504, 394 read with 34 of the Penal Code.

(g) On the next day or a day thereafter, the learned Magistrate realised that one of the offences, for which the accused Satish was tried and acquitted, was triable by the Court of Session i.e. the offence punishable under Section 364(A). Thus, having realised the fact that the Court of the Magistrate could not have tried accused Satish for the offence punishable under Section 364(A), the learned Magistrate addressed a communication to the Sessions Judge, Greater Bombay, on 18th October, 2019, conceding the said inadvertent mistake, with a request to treat the communication as a revision

application for the purpose of exercising *suo motu* revisional power. The said communication was, in turn, forwarded by the learned Sessions Judge, Greater Bombay, to the Registrar General of this Court by a communication dated 5th November, 2019. Thereupon, the Registrar (Judicial) of this Court has obtained the orders of the Hon'ble Chief Justice to register the application of the learned Magistrate as a *Suo Motu* Revision.

2. Mr. Deshmukh, the learned Counsel appeared on behalf of the accused Satish/respondent no.1. An affidavit is filed by the accused affirming that he has no objection if the judgment passed by the learned Magistrate in CC No.2642/PW/2019 is quashed and set aside and further proceedings are conducted in accordance with the provisions of the Code.

3. Evidently, the offence punishable under Section 364(A) is triable by the Court of Session. The trial of an offender for the offence, which the Magistrate is not empowered to try, under the provisions of the Code, is void. In terms of the provisions contained in Section 461(l) of the Code, it is an irregularity which vitiates the entire proceedings. The learned Magistrate clearly transgressed his jurisdiction in trying the accused for the offence punishable under Section 364(A) of the Penal Code. The judgment and order passed by the learned Magistrate, thus, being void, needs to be formally quashed and set aside.

4. From the record of the case before the learned Magistrate, it appears that the learned Magistrate did not bestow adequate consideration to the important judicial task of framing the charge. Undoubtedly, the accused had prayed for an expeditious trial yet the learned Magistrate ought to have scrupulously followed the discipline of framing correct charge. It appears that the learned Magistrate framed a composite charge for the offences punishable under 342, 364(A), 386, 506(2), 504, 394 read with 34 of the Penal Code. If the learned Magistrate had taken care to frame separate charge for each count of the offences, at the very instant, the learned Magistrate would have realised that the charge was also for an offence punishable under Section 364(A) of the Penal Code, which is triable by the Court of Session.

5. Once, the charge was framed and the matter was posted for recording evidence, on the next date, the refusal of the first informant to subscribe to the prosecution version, in the backdrop of the alleged resolution of the dispute between the accused and first informant, was inevitable. The learned Magistrate then proceeded to pass the judgment of acquittal.

6. To the credit of the learned Magistrate, the mistake was realised within a couple of days and the learned Magistrate immediately forwarded a communication to the learned

Sessions Judge, Greater Bombay, with an unconditional apology and a request to rectify the mistake in exercise of the revisional jurisdiction.

7. In the aforesaid view of the matter, the impugned judgment and order dated 16th October, 2019 in CC No.2642/PW/2019 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai, stands quashed and set aside.

8. CC No.2642/PW/2019 stands restored to the file of the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai.

9. The learned Magistrate may pass appropriate orders under Section 209 of the Code for committal of the case, after complying with the provisions contained in Section 207 of the Code.

10. The accused Satish @ Satya Chandrakant Shinde shall remain present before the Court of the learned Metropolitan Magistrate on 7th January, 2020.

11. The *Suo Motu* Revision Application stands accordingly disposed of.

[N. J. JAMADAR, J.]