

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 307 OF 2020

Mr. Kailash Harakchand JainApplicant

V/s.

The State of Maharashtra and anr.Respondents

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Mr. Manish Bohra a/w. Mr. Ashish Dubey, Mr. Ujjwal
Gandhi i/by. Mr. Anurag Ghag, *Advocate for the
applicant.*

Mr. A.D. Khamkhedkar, *APP for State.*

Coram : Sandeep K. Shinde, J.

Wednesday, 17th November, 2021.

P.C. :

1. The applicant is facing trial in Sessions Case No.57/2009 for the offences punishable under Sections 304, 427, 288, 337 and 338 of the Indian Penal Code.

2. Pending trial, applicant moved an application seeking discharge from the case. The trial Judge declined

to discharge him; Whereafter the applicant questioned the trial Court's order, declining to discharge him in writ jurisdiction. Writ Petition was dismissed on 3rd August, 2017, and rejection order was confirmed by the Apex Court. Thereafter, the applicant moved an application under Section 216 of Criminal Procedure Code on 14th March, 2018 seeking alteration of the charge framed under Section 304 of the Indian Penal Code to Section 304A. That application was rejected on 7th January, 2020.

Background facts :

3. The applicant was conducting the jewellery business at Shops No.5 and 6 situate on the ground floor of Lakshmi Chaya, Borivali (West). On 18th June 2007, the building partially collapsed. Apparently, the wall between Shops no.5 and 6 on the ground floor had been removed by the applicant while renovating his shop. This Court, while rejecting Writ Petition, in para-5 of the order, dealt with the report dated 23rd July, 2007 obtained by the police from the Indian Institute of Technology, Mumbai. This report, prima-facie, indicates reasons for collapse as; "alterations executed in the recent past in residential and commercial areas of the building

and “there was evidence of overloading of the structure resulting into progressive failure of the ground floor columns.”

. Evidence also suggest that, applicant illegally sliced the main pillar without permission during renovation of shop and caused loss to life and property.

4. In consideration of the facts of the case and evidence on record, in my view, the order dated 7th January, 2020 passed by the learned Additional Sessions Judge, declining to alter the charge cannot be interfered with.

5. The application is dismissed.

6. The learned Sessions Court shall commence the trial within a month from today.

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(Sandeep K. Shinde, J.)