

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 186 OF 2021

DEVEN MANGALDAS BHANUSHALI

AND ANR.

) APPLICANTS

V/S.

THE STATE OF MAHARASHTRA

) RESPONDENT

* * * *

Mr. P.A. Pol a/w. Mr. Sharad Suryawanshi, Advocate for
the applicant.

Mr. A.R. Patil, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 7th December, 2021.

P.C. :

1. Heard Mr. Pol, learned Counsel for the
applicants and Mr. Patil, learned APP for State.

2. Applicants have questioned the correctness of
order, framing charge, under Section 353 read with

Section 34 of the Indian Penal Code, in Sessions Case No. 943/2019.

3. Applicants are accused nos.1 and 2 in the aforestated Sessions Case, pending in the Court of Sessions at Mumbai. Their case is that, in application to Maharashtra Act 40 of 2018, the offence under Section 353 is classified, as triable by the Court of Sessions and in consequence, their case, has been committed to the Court of Sessions under Section 323 of the Criminal Procedure Code. Their grievance is that, on 30th July, 2019, although they were present, the charge was framed in defiance, of the directions contained in Sections 211 to 214 of the Criminal Procedure Code and in absence of their Advocate. In other words, it is applicant's case that, they were not conveyed with sufficient clarity and certainty, what the prosecution intends to prove against them.

4. Mr. Pol, learned Counsel for the applicants, would argue that the charge framed against the applicant is groundless and would rely on the grounds enumerated

in this revision application. Infact, grounds urged before me in support of the application are the grounds for seeking the discharge. As such, once charge is framed in the warrant cases instituted either on complaint or police report, Magistrate has no power under the Code to discharge the accused but to either acquit or convict the accused. Therefore, applicants prayer that they may be discharged, cannot be granted and is rejected accordingly.

5. Mr. Pol, learned Counsel for the applicants, would contend that, applicants be granted liberty to move under Section 216 of the Criminal Procedure Code for seeking alteration of charge. It may be stated that, under Section 216 of the Criminal Procedure Code, the Court is empowered to alter or add to the charge at any time before judgment is pronounced and may exercise such powers when the prosecution evidence is being adduced in the case. Therefore, at the appropriate stage and after considering the evidence being adduced by the prosecution, if such evidence is falling short of the ingredients of the offence under Section 353 of the Indian

Rane

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REVN-186-2021-SR.22

7December, 2021.

Penal Code, the applicants, if advised, may take appropriate steps seeking alteration of the charge. The Revision Application is disposed of in the aforesaid terms.

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(SANDEEP K. SHINDE, J.)