

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.340 OF 2016

Prakash Digambar Lanjekar, Age 72 years,
Occ.retired, R/o.1241, Sukurwar Peth,
Subhash Nagar, Pune-411 002.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Jayant Joseph Bardeskar, Advocate for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd September 2022

PC :

1. Heard both sides. Learned APP submitted that although there is direction to file affidavit-in-reply, the application relates to rejection of discharge application and he would proceed on the basis of charge sheet which has been annexed to this application. Hence filing of affidavit is dispensed with.

2. The applicant is prosecuted for offence u/s.304 of Indian Penal Code vide Sessions Case No.135 of 2015. The FIR was registered vide CR No.2 of 2015 with Shahupuri Police Station, Satara. Investigation proceeded. Charge sheet was filed.

3. The case of prosecution is that on 20th August 2014 there was heavy rain in Satara and hence municipality conducted survey of the buildings within the jurisdiction of municipality. During the survey

the building situated at CTS No.148, Bhavani Peth, was found in dilapidated condition and wall on the Northern side of the building was swollen and dilapidated. There was possibility that wall would collapse and cause danger to the human life. There was also damage to the wall to the North side and notice u/s.195 of Maharashtra Municipality Act was issued to Vasant Narayan Langekar and Digambar Narayan Langekar directing them to demolish the wall. Notice was pasted on the building because owners were not present. The tenant of the building was present. On 8th September 2014 the complainant received information that some of the part of the building on CTS No.148 had collapsed. The complainant went to the spot and found that wall on the Eastern side of the building had collapsed and three people had dragged in the debris. They were rescued and shifted to hospital. They were declared dead. It is alleged that on account of negligence of the accused in removing the damaged wall, the incident had occurred resulting in death of three persons.

4. The applicant is arraigned as accused no.1 while co-accused was arraigned as accused no.2. The applicant preferred application for discharge u/s.227 of Cr.PC before the Court of Session. The application was rejected vide order dated 4th March 2016. Aggrieved by the said order, the applicant has preferred this revision application and sought discharge in the said proceedings.

5. Learned advocate for applicant Mr.Bardeskar submitted that Section 304 of IPC cannot be applied against applicant. The applicant is not responsible for the collapse of building and death of three persons on account of collapse of the said building. The

applicant was not in possession of said premises. The accused no.2 was in possession. The applicant is being implicated only on the ground that he is the legal heir of one of the owner of the building. The proceedings initiated in the court of law at the instance of co-accused and others would establish that possession of the building was not with applicant. Taking the case of prosecution as it is, there is no material to frame charge against applicant u/s.304 of IPC. Vasant Langekar and Digambar Langekar were the owners of building. There was no occasion for the applicant to initiate any steps for effecting any corrective measures to the dilapidated building. After knowing about condition of building, in fact the applicant had approached the contractor and instructed him to take appropriate measures. The contractor had commenced the work of executing corrective measures. However, due to heavy rain, the building had collapsed. For want of prima facie material, the applicant cannot be prosecuted for the offence. The Sessions Court has committed error in rejecting the application for discharge. The charge sheet does not contain any incriminating evidence against applicant to proceed against him. He relied upon several documents including map of the building to contend that he was not in possession of the building and not responsible for initiating correcting measures pursuant to purported notice issued by municipality. It is submitted that statement of contractor Mr.Digambar Bhosale indicate that at the instance of applicant he had started pulling down the structure in his possession. He cannot be held responsible for pulling down the structure which was not in his possession. The North- Eastern portion which had fallen was not in possession of applicant, which is evident from various litigations. The co-accused had admitted that she is in possession of portion in

question. The applicant cannot be charged for offence u/s.304(Part-II) of IPC. The material constituting said offence is absent in the charge sheet. The prosecution is not able to point out that collapsed portion of dilapidated building was in possession of applicant.

6. Learned APP submitted that at the stage of framing charge and adjudicating application for discharge, the Court is not required to hold roving inquiry. In the event prima facie material is against accused, the Court is not precluded from framing charge. Learned Sessions Judge has passed detailed order giving cogent reasons for rejecting the application for discharge. Learned Sessions Judge has relied on statements of witnesses. There is no infirmity in the impugned order rejecting application for discharge. Learned APP has harped on the statements of contractor Mr.Digamber Bhosale and other witnesses, and submitted that at this stage the Court is not required to appreciate evidence. The evidence on record is sufficient to frame charge against applicant. The statements on record would indicate that applicant had knowledge that building is in dilapidated condition and that notice was issued by Municipal authorities. Hence, application may be rejected.

7. The applicant is undisputedly legal heir of one of the original owner. The case of prosecution is that both the accused were required to take corrective measures for removal of dangerous portion of dilapidated building which has resulted in collapse of building and death of three persons. The statement of contractor Digamber Bhosale dated 14th September 2014 refers to the fact that applicant had approached him for removing dangerous portion of building and at on the next day the building had collapsed. The

applicant was aware of the dilapidated condition of building. The contention of applicant is that he is not in possession of the building and therefore he cannot be held responsible for the collapse of building and death of three persons. He is relying on the civil litigation initiated by parties and contended that co-accused was in possession of dangerous portion of the building. The documents indicate that applicant as well as co-accused were in possession of building. The question is as to of which portion of the building the applicant and the co-accused were in possession. The submissions advanced by learned counsel for applicant are in the form of his defenses which are to be urged in trial. This is not the stage to appreciate the statements on record. At the stage of considering the application for discharge or for framing of charge, the Court is required to consider prima facie material before it. The impugned order dated 4th March 2016 indicate that Session Court has analyzed the factual aspects of the matter, considered statements on record and passed well reasoned order, which does not require interference. After analyzing the material on record learned Session Judge had observed that considering accusations against applicant and in view of the material collected during investigation, there is prima facie evidence collected against applicant and to proceed against him u/s.304, Part-II of IPC. The applicant knew about dilapidated condition of building and dangerous condition of building but in spite of that, after purchasing most of the shares of the co-sharers of the property, except accused no.2, he did not make any effort to protect the building from collapse. Ultimately the North-Eastern portion in the possession of the applicant had fallen. That does not give scope to the applicant. Name of the applicant is recorded in the property record. Whatever defenses the applicant has to take, will be

considered at the time of trial. The charge sheet indicate that statements of witnesses were recorded. As per version of Jaywant Bhosale, CTS No.148 stands in the name of applicant as per extract of said property. Since 21st October 2011 accused no.1 is the owner of said property and he has also executed sale deed. He did not inform Municipal Council about purchase of the property and did not deposit house tax for the years 2012 to 2015. He is responsible for the collapse of building and if within time he had dismantled the building, the mishap could have been avoided. The statement of Digambar Bhosale refers to the fact that accused no.1 along with Mr.Narkar had been to him. The accused no.1 informed to him that building at CTS No.148 is old and is in dangerous condition. The Municipal Council had informed him on 20th August 2014 and therefore he has come to him. Accused no.1 discussed with Digambar Bhosale about dismantling the building. On the next day the witness visited the site and saw the building. On 25th February 2014 Digambar Bhosale started dismantling the building by employing 5 to 6 labourers. According to him, one Suresh Mahajani came there and questioned him as to under whose instructions he is dismantling the building. There was heavy rain during the said period. On 7th September 2014 and 8th September 2014 work could not be done. On 8th September 2014 building had collapsed which had caused casualty. The statements of other witnesses Mrs.Ashwini Bhise, Mrs.Vaishali Ingale, Mrs.Gita Khopatkar, Ms.Nita Bole and other witnesses were recorded. They have stated that building was in dilapidated condition and there was threat to their life from the building if it falls and accused no.1 was responsible for not removing the old structure.

8. In the circumstances this is not the stage to accept the contentions of applicant. I do not find any reason to deviate from any reasoning given by Session Court. Accordingly Revision Application stands rejected and disposed off.

(PRAKASH D. NAIK, J.)

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