

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 878 OF 2021

Sanjay R. Veera	...Applicant
Versus	
State Of Maharashtra	...Respondent

**WITH
INTERIM APPLICATION NO. 13 OF 2022
IN
CRIMINAL APPLICATION NO. 878 OF 2021**

Dr. Navin Kumar Gupta	...Applicant
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IN THE MATTER BETWEEN :-

Sanjay Ramniklal Veera	...Applicant
Versus	
State Of Maharashtra	...Respondent

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Mr. Milan Desai, a/w Ms. Dhawni Shah, Advocate for the Applicant in Criminal Application.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Vivek Patil i/by Phalguni Banerjee, Advocate for the Applicant in Interim Application.

Mr. V.B. Mohite (P.S.I.) Kalachowki Police Station, Mumbai, Present.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	4th JULY, 2022.

PER COURT:

1. The applicant is original accused No.2 in Sessions Case No.124 of 2017 pending before the Court of Sessions at Greater

Bombay. The case arises out First Information Report (for short 'FIR') registered with Kalachowki Police Station vide C.R. No.127 of 2016 for offences punishable under Sections 307, 341, 427, r/w Section 34 of Indian Penal Code (for short "IPC") and Sections 4 & 25 of the Arms Act and Section 37(1)(A) of the Maharashtra Police Act.

2. The applicant preferred an application for discarding the statements and other materials collected in course of further investigation vide Exhibit – 72 before the Court of Sessions. The learned Sessions Judge vide order dated 02.03.2021 dismissed the said application.

3. The applicant has challenged the aforesaid order dated 02.03.2021 passed by the learned Sessions Judge below Exhibit – 72 rejecting the said application and prayed that, declaration be issued that the documents annexed with Application under Section 294 of Cr.P.C. and further final report dated 17.04.2018 including the statement of Mr. Rajkiran Sharma recorded under Section 164 of Cr.P.C. is bad in law. The applicant also seeks declaration and direction that the documents annexed with application under Section 294 of Cr.P.C. and final report dated 17.04.2018 including statement of Mr. Sharma recorded under Section 164 of Cr.P.C.

cannot be looked into for any purpose during the course of trial and that the documents annexed with Application under Section 294 of Cr.PC., the final Report dated 17.04.2018, statement of Mr. Rajkiran Sharma recorded under Section 164 of Cr.PC. be removed and/or expunged from the record and proceedings of the case.

4. The first informant has preferred interim application No.13 of 2022 seeking intervention in Criminal Application No.878 of 2021.

5. Learned Advocate for the applicant in Criminal Application No.878 of 2021 submitted that, the impugned order dated 02.03.2022 dismissing the application Exhibit – 72 is contrary to law. Pursuant to registration of FIR vide C.R. No.127 of 2016, accused were arrested and on completing investigation, charge-sheet was filed. The case was committed to the Court of Sessions and it was numbered as Sessions Case No.691 of 2016. The applicant was granted anticipatory bail by the High Court. Subsequently charge-sheet was filed against the applicant and case was committed to the Sessions Court which was numbered as Sessions Case No.124 of 2017. The first informant had challenged the order granting anticipatory bail before the Hon'ble Supreme Court. Mr. Rajkiran Sharma preferred an application before the

Sessions Court claiming that, he is a witness in the case. He also filed an affidavit in support of his application. The Special Leave Petition preferred by the first informant came up for hearing before the apex Court and the Investigating Officer filed an affidavit that, the investigation is completed and charge-sheet is filed against the Applicant. During the pendency of application preferred by Mr. Rajkiran Sharma, his statement was recorded under Sections 161 & 164 of Cr.P.C. The applicant had withdrawn the application for discharge before this Court with liberty to file fresh application after obtaining the copy of statement of Mr. Sharma recorded under Section 164 of Cr.P.C. The prosecution had submitted that, further investigation under Section 173(8) of Cr.P.C. is in progress. The prosecution filed application under Section 294 of Cr.P.C. and sought to place on record the material collected after filing of charge-sheet. Further investigation was conducted without obtaining permission from the Court. Statutory requirement of law was not complied. Section 294 of Cr.P.C. cannot be invoked after framing of charge. Statement of Mr. Rajkiran Sharma could not have been recorded under Section 164 of Cr.P.C. post cognizance being taken under Section 190(b) of Cr.P.C. There was variation in the statement given by Mr. Sharma and submitted by Shirestedar of the Court and the Investigating Officer. The statement of Mr.

Sharma recorded under Section 164 of Cr.P.C. and further report submitted by Investigating Agency is illegal and liable to be discarded. The Investigating Agency can conduct further investigation only on discovering new material. Reliance is placed on the decision of the Hon'ble Supreme Court in the Case of *Raj Kishore Prasad V/s. State of Bihar*¹.

6. The first informant filed an intervention application and contended that, he had suffered injuries. Crime was initially registered against the unknown persons, who had caused serious injuries in an attempt to murder him with deadly weapons. The applicant is the master mind of the crime and it is this accused at whose behest and instigation the assailants had intercepted the car of the informant on the fateful day and committed the crime. There is concrete irrefutable incriminating evidence against the accused. The direct and incriminating evidence against the applicant/accused is the statement of his bodyguard recorded by learned Magistrate on 02.01.2018 under Section 164 of Cr.P.C.

7. Learned A.P.P. submitted that, there is no infirmity in the impugned order. The learned Sessions Judge has rightly rejected the application preferred by the applicant. The impugned order is supported by reasons. There is no illegality in the investigation

¹ 1996 Supp (2) SCR 125

conducted by the police. The statement recorded under Section 164 of Cr.P.C. need not be discarded. The charge was not framed and the trial had not commenced. The application is devoid of merits.

8. The learned Sessions Judge while rejecting application Exhibit – 72 has assigned cogent reasons. The prosecution had opposed the application by filing say vide Exhibit – 86. The FIR was registered with Kalachowki Police Station, Mumbai vide C.R.No.127 of 2016 on 23.06.2016. Two sessions cases were registered bearing No.124 of 2017 and 691 of 2016. The accused preferred an application with prayer that the supplementary police report and the supplementary charge-sheet dated 17.04.2018 which contains the statements of witnesses recorded under Section 161 of Cr.P.C. and statements recorded by Magistrate under Section 164 of Cr.P.C. be discarded/removed/expunged from the records and proceedings of the case. The contention of the prosecution was that, further investigation was conducted in accordance with Section 173(8) of Cr.P.C. Statement of witness Mr. Rajkiran Sharma was recorded by the Investigating Officer as per Section 161 of Cr.P.C. and by the Magistrate as per Section 164 of Cr.P.C. The order passed by the learned Sessions Judge indicate that the charge

is not framed. The accused has adequate opportunity of dealing with the case because prosecution evidence is yet to be started. Even if the statement is made before the Hon'ble Supreme Court that, charge-sheet has been filed or affidavit is filed in that regard, it was information regarding first charge-sheet and does not restrict the investigating officer in any manner to further investigate the case in view of Section 173(8) of Cr.P.C. In the present case, one of the accused is absconding and investigation against the said accused is still going on. It is the duty of prosecution to prove the guilt of accused beyond all reasonable doubt and therefore, the prosecution must have all the opportunity to collect the evidence which is relevant and admissible. The goal of any criminal trial is to place on record the best evidence, in order to discover the truth and achieve justice. If after filing the charge-sheet, the investigating officer gets the knowledge of the witness, who is alleged to be an eye witness, his statement becomes relevant. The Investigating Officer has specifically recorded the statement of alleged eye witness by name Rajkiran Sharma. Even the Magistrate has recorded his statement under Section 164 of Cr.P.C., call data records were collected and the supplementary charge-sheet is filed. The witness has turned up before the Court and filed an affidavit. The objection filed by the accused for discarding the

evidence is raised at premature stage. The charge is yet to be framed and the prosecution is yet to examine any witnesses and not yet relied on those CDRs. The relevancy and admissibility is only to be decided when the prosecution examined those witnesses. When the evidence itself is not led by the prosecution, the same cannot be discarded or removed from the charge-sheet.

9. The prosecution filed charge-sheet and supplementary charge-sheet on 23.09.2016 and 27.01.2017 with liberty to file additional evidence later on. One of the accused is absconding. The witness Rajkiran Sharma filed an application on 11.08.2017 that he is eye witness and later on the investigating officer has recorded his statement under Section 161 of Cr.P.C. and learned Magistrate recorded his statement under Section 164 of Cr.P.C. on 26.12.2017. The learned Sessions Judge has referred to provisions of Section 173(8) of Cr.P.C. and rightly observed that, if the investigating officer obtained further evidence, it is incumbent on his part to forward the same to the Magistrate with further report with regard to such evidence in prescribed form. The same has been done in the present case. The alleged eye witness himself filed an application before the Court and subsequently his statements were recorded which are part and parcel of

supplementary charge-sheet. Section 173(8) of Cr.P.C. permits further investigation and even without directions from the court, the Police may investigate and that too even after the Court takes cognizance. The supplementary charge-sheet filed in the case was part of further investigation.

10. The learned Sessions Judge summarized the issue urged by the accused by preferring the application. Paragraph – 16 of the impugned order dated 02.03.2021 clearly reflects that the Court has taken note of the factual aspects of the matter and the legal provisions while rejecting the said application, which does not call for any interference. Paragraph – 16 of the said order reads as follows :-

“ Therefore, in view of my above discussions, it is necessary to mention that it is the duty of the Court to arrive at the truth by all lawful means and one of such means is examine of witnesses who are known to be in the position to speak important relevant facts. As discussed earlier in the present case, there are many accused. The first chargesheet was filed on 23.09.2016 and the supplementary chargesheet was filed on 27.01.2017 . The objection raised by the accused appears to be at a very premature stage. The relevancy and admissibility of the evidence will be decided at the time when it is led by the prosecution or after it is being led. In the present case the accused is taking objection regarding so-called eye witness even before it is led in the trial. The accused will certainly get an opportunity for cross examining all those witnesses or at a further stage of the trial but the prosecution cannot be denied to rely upon the evidence which are gathered during further course of investigation and

has been filed on record by way of supplementary chargesheet. The supplementary chargesheet which is filed is very well within the purview of section 173(8) of the Cr.P.C. The evidence collected at the time of further investigation and filed by way of supplementary chargesheet cannot be discarded at this stage when even the charge is not yet framed and even the trial is not yet commenced. When one of the accused is still absconding and it is a case with allegations of criminal conspiracy with attempt to murder, the evidence so collected applies even to the absconding accused and cannot be discarded at this stage. Whether the Magistrate has adopted correct procedure for recording statement u/s. 164 of the Cr.P.C. can also to be dealt only when the prosecution will get an opportunity to examine such witness before the Court. Therefore, at this stage, the evidence so filed by way of supplementary chargesheet or the details of which are mentioned in the application cannot be discarded.”

11. In the light of observations made by the learned Sessions Judge and the legal provisions, I do not find any reason to take a different view and set aside the impugned order. The decision relied upon by the learned counsel for the applicant is not applicable in the present case. No case is made out to grant relief sought in this application.

12. Hence, I pass the following order :-

ORDER

- i. Criminal Application No.878 of 2021 is rejected.
- ii. Interim Application No.13 of 2022 stands disposed of.

(PRAKASH D. NAIK, J.)