

GRM

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

CRIMINAL REVISION APPLICATION NO. 375 OF 2022

Anita Raju Palsingh & Ors. ... Applicants
V/s.
The State of Maharashtra ... Respondent

Mr. Gaurav Bhawnani, Adv. for the Applicants.

Mr. R. M. Pethe, APP for the State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 24, 2022

P.C.:

1. The applicants, who are the original accused nos. 2 to 6 in C.R. No. 33 of 2017 registered with Sewree Police Station, Mumbai for the offence punishable under Sections 353, 447, 143, 145, 147 & 149 of Indian Penal Code, 1860, are challenging the order dated 3rd August, 2022 rejecting the application for discharge under Section 227 of Code of Criminal Procedure, 1973.

2. The prosecution's case in brief is as under :-

The informant was working as Security Guard with Bombay Port Trust. Bombay Port Trust was removing the unauthorized encroachments from their land at Gaadi Adda, Haji Bunder Road, Sewree, Mumbai from 21st March, 2017 to 25th March, 2017. However, the unauthorized slum dwellers were not removing their belongings.

On 23rd March, 2017, the work of digging of building was

going on with the aid of JCB machine. At that time, the informant asked the slum dweller viz. Sanjay Khandagale to remove his belongings. At that time, the relative of Sanjay Khandagale, who was residing in the same slum area viz. Aamrapali Ravindra Lahane came at the spot and started abusing the BPT workers and officers loudly. Aamrapali Lahane along with 15-20 others, formed an unlawful assembly and started arguing with the BPT workers & officials and were obstructing them while carrying out their work. They broke the glass of JCB and therefore, the BPT officials had called the police. The people surrounded there also started arguing with the police and therefore, the First Information Report was lodged against the applicants along with others.

3. During the course of investigation, the investigating officer recorded the statement of witnesses and after completion of investigation, charge-sheet came to be filed against the applicants/accused persons. The applicants, therefore, filed an application for discharge under Section 227 of Code of Criminal Procedure, 1973 contending that they are falsely implicated merely because they are residing near the spot of incident; the names of applicants were never revealed by the informant or the witnesses; there is neither Test Identification Parade nor CCTV footage of the recovery from the applicants; in the crowd, there was no one, who was knowing the assailants; the names of applicants were revealed by accused no. 1 and except the confessional statement made to the police by co-accused, there is no other material on record against the applicants to frame charge.

4. The learned Additional Sessions Judge by impugned order

dated 3rd August, 2022 rejected the application on the ground that it is not possible for the informant to name each and every person present on the spot and the applicants shall have liberty to raise defences during trial.

5. Heard the learned Advocate for the applicants and the learned APP for the State.

6. The learned Advocate for the applicants submitted that except the confessional statement of co-accused giving names of the applicants, there is no other material on record to link the applicants with the offences alleged against them and in the absence of material to link the applicants with the offences alleged, the evidence in the form of charge-sheet is not sufficient to frame charges against the applicants. There is no ground to proceed against the applicants. He placed reliance on the judgments of Hon'ble Apex Court in the case of **Dipakbhai Jagdischandra Patel v/s. State of Gujarat** reported in (2019)16 SCC 547, in the case of **Suresh Budharmal Kalani v/s. State of Maharashtra** reported in (1998)7 SCC 337 and the unreported judgment in **Criminal Revision Application No. 16 of 2001** in the case of **Ajit Menon v/s. State of Maharashtra**.

7. *Per-contra*, the learned APP for the State Mr. R. M. Pethe submitted that the material on record is sufficient to frame charge against the applicants. There is no need to conduct Test Identification Parade, as the accused can be identified during the trial. The learned Additional Sessions Judge has rightly rejected

the application of applicants for discharge.

8. Having considered the submissions on behalf of both the sides and on perusal of the material on record, it appears that except the confessional statement of accused no. 1 Aamrapali Lahane giving names of the applicants/accused persons, there is no other person, who has named the applicants. In the absence of statements or other material against the applicants, prosecuting them in relation of the offence alleged against them, only on the basis of confessional statement of the co-accused without corroboration from any other witness or material, is not sufficient to raise strong suspicion against the applicants. The Hon'ble Apex Court in the case of **Dipakbhai Jagdischandra Patel** (*supra*) held that confession before the police officer by co-accused, not corroborated by any other material or evidence, is not sufficient to raise strong suspicion and therefore, in such a case the accused is entitled to the relief of discharge. In the case of **Suresh Budharmal Kalani** (*supra*), the Hon'ble Apex Court held that at the stage of framing of charges, the Court is required to confine its attention to only those materials collected during investigation, which can be legally translated into evidence and is not to be based upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the charges are framed.

9. On overall scrutiny of the material produced on record, I am satisfied that except the confessional statement of co-accused without any corroboration, there is no ground to proceed against

the applicants/accused.

10. It is well settled that while considering the application for discharge, the Court is entitled to sift evidence on record and the Court is not supposed to act as a post office.

11. In that view of the matter, the learned Additional Sessions Judge is not justified in rejecting the application for discharge. I, therefore, pass the following order :-

a. The impugned judgment and order passed below Exhibit-4 by the learned Additional Sessions Judge, Court Room No. 23, Greater Mumbai dated 3rd August, 2022 in Sessions Case No. 1589 of 2019 is quashed and set aside.

b. The application at Exhibit-4 is allowed. The applicants/original accused nos. 2 to 6 are discharged of the offence under Sections 353, 447, 143, 145, 147 & 149 of Indian Penal Code, 1860 registered with Sewree Police Station, Mumbai vide C.R. No. 33 of 2017.

c. Rule is made absolute in the above terms. No costs.

(AMIT BORKAR, J.)