

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.50 OF 2020

(Manikarao Pandurang Parkale .Vs. State of Maharashtra)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. A. V. Bhide, Advocate for Applicant
Shri. I. J. Damle, APP for Respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 1st FEBRUARY, 2022.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard Shri. A. V. Bhide, learned counsel for applicant.

3. The application for discharge filed by the applicant has been rejected by the order dated 27.01.2020 by the learned Sessions Court finding that unless the trial is conducted, the actual role played by the applicant cannot be gathered and therefore, whether there was negligence on the part of the applicant and the nature of such negligence, would be a matter of evidence.

4. The learned counsel for applicant submits, that the applicant was the owner of agricultural field admeasuring 11 and 1/2 acres in which, the services of one Ambadas Mahadeo Dakhore of Nimkhed were engaged, for the construction of the well to a depth of 90 feet for which, the consideration was determined at Rs.1,31,000/-. It is contended that the well was dug upto the depth of 70 feet and therefore, Ambadas Dakhore had engaged the services of one Kailash Jat for blasting purposes, on 16.02.2015.

When Ambadas Dakhore, Ram Laxman Kasdekar and Rainsing Jamra, had entered the under construction well in which, the blasting sticks had already been installed for the purposes of blasting, by means of a Crane, there was a sudden blast in which, Ambadas Dakhore and Rainsing Jamra expired. Ram Laxman Kasdekar sustained injuries from which, he is stated to have been recovered. It is therefore contended that the applicant being the mere owner of the field had hired the services of Ambadas Dakhore, he had no role to play in the matter and therefore, was entitled to discharge.

5. Shri. Damle, learned APP opposes the application, on the ground that it is too premature stage to hold that the applicant had no role to play and therefore, submits that the matter should go to the trial and justifies the impugned order.

6. The question of the involvement and the nature of the negligence of the applicant, in my considered opinion cannot be determined at this stage, more so in absence of any written contract between the applicant and Ambadas Dakhore in the matter of digging of the well. The issue of blasting also assumes significance, in as much as, whether the applicant was aware of the further digging, beyond depth of 70 feet by use of blasting powder and by drilling holes in the strata, and whether, there was any permission obtained for the same are all matters, which can only be determined, at the trial by leading proper evidence, considering which, I do not find any infirmity in the impugned order, which takes a view that the extent of negligence of the applicant and whether it amounts to

criminal negligence, has to be tested on the basis of evidence to be led in the trial.

7. The application therefor is without merits and therefore accordingly dismissed. No costs.

JUDGE

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