

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 148 OF 2023

Vinod s/o Babruwan Hulsure & Others ...Applicants

VERSUS

The State of Maharashtra & Others ...Respondents

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Mr. Hemant Surve, Advocate for applicants.

Mr. P.G. Borade, APP for respondents-State.

Mr. P.G. Patil, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 4th SEPTEMBER, 2023

PRONOUNCED ON: 8th NOVEMBER, 2023

ORDER :

1. This criminal revision application is filed for following reliefs:

"A Rule be issued, and if felt possible, the present Criminal Revision Application may kindly be adjudicated at the stage of admission itself;

B This Honourable Court be pleased to fault the order passed by the learned trial Court of the Judicial Magistrate, First Class, Nilanga, district Latur, as passed on 09.02.2023 in RCC No, 183 of 2019 below Exh. 27, thereby negating to discharge the Petition, and consequently be pleased to exercise the powers vested in My Lord under Section 482 of the Code of Criminal Procedure, 1973 and quash and set aside the charge-sheet filed in connection with first information report No. 41 I 2019 dated 14.04.2019 registered with Aurad Shahajani Police Station, Latur presently pending

before the learned J.M.F.C., Nilanga numbered as Regular Criminal Case no. 183 I 2019;"

2. In the cause title of application, applicants have mentioned '*In the matter of the provisions of Section 397 and 482 of the Code of Criminal Procedure Code, 1973;*' And '*In the matter of Sections 498-A, 323, 504 read with section 34 of the Indian Penal Code, 1860;*'

3. It is a matter of record that earlier Criminal Application No. 3291/2019 (Exhibit-D) was filed for quashing of FIR. During the pendency of that application, charge sheet came to be filed. Division Bench of this Court (Coram: Sarang V. Kotwal & Bharat P. Deshpande, JJ.) on 27th June, 2022, passed following order;

"1. Learned Counsel for the applicants prays for withdrawal of this application with liberty to approach the Trial Court by way of application for discharge.

2. Permission is granted.

3. Application is allowed to be withdrawn with such liberty. If such an application for discharge is preferred, it shall be decided on its own merits in accordance with law. Criminal Application is disposed of as withdrawn."

4. Pursuant to the liberty granted by this Court, discharge application (Exhibit-27) is filed by applicants in the

court of learned Judicial Magistrate First Class, Nilanga, which came to be rejected by the impugned order dated 09.02.2023. Said decision is challenged in this criminal revision application, which applicants claim to have filed under section 397 read with section 482 of Cr.P.C. It appears that section 482 is mentioned by applicants, so as to avoid filing of criminal revision application before the Sessions Court.

In the revision application, in paragraph 17 it is averred that '*The Revisionists assert that they are not having any alternate remedy, save and except approaching this Honourable High Court.*'

5. Section 397 provides concurrent powers to the High Court as well as to the Sessions Court. The order passed by learned Magistrate is not an interlocutory order, therefore, the impugned order passed by the learned Magistrate is revisable under section 397 Cr.P.C. In this view of the matter and in view of the fact that application filed by applicants under section 482 Cr.P.C. was withdrawn by applicants with liberty to file discharge application, it is clear that in view of filing of charge sheet, this Court was not inclined to entertain the application and grant them relief. Obviously, therefore, applicants prayed for

withdrawal of application, with liberty to file discharge application. Once discharge application filed by applicants before learned JMFC, is rejected, applicants have alternate efficacious remedy of filing criminal revision application challenging that order before the Sessions Court. Instead of availing that remedy, applicants have directly approached this Court by filing present criminal revision application.

6. With a view to avoid approaching the Sessions Court, applicants have made a statement in paragraph 17 that applicants assert that they have no alternate efficacious remedy. This statement is unacceptable in view of availability of alternate efficacious remedy of filing revision application before the Sessions Court.

7. Merely because section 482 of Cr.P.C. is mentioned in the cause title and in the prayer clause, this Court is not inclined to exercise its jurisdiction under that section in view of availability of alternate efficacious remedy under section 397 of Cr.P.C. to applicants.

8. For the aforesaid reasons, revision application is disposed of with liberty to applicants to file criminal revision application before the Sessions Court.

9. While considering the delay in filing criminal revision application, pendency of criminal revision application before this Court shall be taken into consideration.

[NITIN B. SURYAWANSHI, J.]