

Digitally signed
by SATISH
RAMCHANDRA
SANGAR
Date:
2023.02.17
14:28:36
+0530

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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 291 OF 2016

Jaywant Ganpat Khamkar

... Applicant

Versus

Hindurao Ganapati Pawar and Ors.

... Respondents

Mr.Prabhakar M. Jadhav a/w Mr.Veerdhaval Kakade a/w Mr.Shekhar V. Mane, Advocate for the Applicant.

Mr.R.K.Mendadkar, Advocate for Respondent Nos.1 to 3.

Mr.H.J.Dedhia - APP for the Respondent No.4 – State.

CORAM : S. M. MODAK, J.

DATED : 16th FEBRUARY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant and learned Advocate for the Respondents-Accused.

2. As per the impugned order dated 26th March, 2015, learned Metropolitan Magistrate, 29th Court, Dadar, Mumbai has discharged the Respondents-Accused by invoking the provisions of Section 245(1) of the Code of Criminal Procedure, 1973 ["Cr.P.C."]. There was a prosecution for the offence punishable under Sections 465, 471 read with 34 of the Indian Penal Code, 1860 ["IPC"]. The case is of the year 2007. Whereas, the Complainant has not given evidence for almost 8 years. My attention is invited to a copy of roznama of that case. It is contended that though the Complainant has remained present, learned Metropolitan Magistrate has not recorded his evidence.

3. There is also mention about a counter case filed by the present Respondents against the present Applicant for the offence punishable

under Sections 448, 454, 380 read with 34 of IPC. Now, it is stated that the present Applicant is acquitted on merits.

4. Learned Magistrate has observed that both the cases are not counter cases. Be that it may, it is the duty of the Complainant to give evidence prior to framing of a charge. This is a warrant triable case. Merely because the Complainant remained present in the Court is not sufficient. Ultimately, he has to enter into the witness-box and give evidence. Section 245(1) permit the Magistrate to discharge the Accused if the evidence will not warrant conviction even if it will go unchallenged. Whereas, Section 245(2) empowers the Magistrate to discharge the Accused at any previous stage. There are two essentials ; one is previous stage means prior to recording of evidence and second is if the charge is groundless. If the Complainant has not given any evidence, what can be the inference. It can only be that the charge is groundless. So, I do not feel that the order impugned may be said to be illegal.

5. No case for grant of leave is made out. Hence, Application is dismissed.

(S. M. MODAK, J.)