

Shailaja

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

CRIMINAL REVISION APPLICATION NO.562 OF 2015

Dhananjay Ranjitsingh Shitole and others] Applicants

Vs.

The State of Maharashtra] Respondent

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Mr. Ajit J. Kenjale a/w Sai Rajendra Kadam a/w Mr. Azharuddin Khan a/w Ms. Prachi Deokar, for Applicant.

Ms. G.P. Mulekar, A.P.P, for Respondent – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 13th DECEMBER, 2023.

P.C.

1. Heard learned Counsel for the applicants and the learned A.P.P.

2. Applicant Nos.1 to 4 are the original accused against whom the respondent had filed a charge-sheet for the offences punishable under Sections 395, 450 r/w 34 of the Indian Penal Code (for short “I.P.C”).

3. The genesis of the offence is, in fact, a civil dispute between the parties in light of the fact that a suit filed by the original complainant Maria Mascranous for specific performance and

injunction is pending before the Senior Division Civil Court, Pune. Original complainant - Maria Mascranous had filed a private complaint bearing R.C.C No.170 of 2013 in the Court of Judicial Magistrate First Class, Pimpri, Pune. Learned J.M.F.C passed an order under Section 156 (3) of the Code of Criminal Procedure (for short "Cr. P.C") for investigation. Investigation machinery thereafter registered an F.I.R vide C.R. No.127 of 2013 under Section 395, 450 r/w 34 of the I.P.C against the applicants on 27th March. 2013. A charge-sheet came to be filed against the applicants, however, Investigation Machinery dropped Section 395 of the I.P.C. Matter was committed to the Sessions Court by the J.M.F.C.

4. The applicants moved an application on 26th November, 2013 seeking discharge from the offence punishable under section 450 r/w section 34 of the I.P.C.

5. The basic flaw in the impugned order is that once the accused have been discharged for the offence punishable under Section 450 r/w 34 of the I.P.C, which is house-trespass in order to commit offence punishable with imprisonment for life, the question of committing the offence punishable under Section 395 of the I.P.C

becomes insignificant in light of the fact that if there was no house-trespass then there is no question of trespass for committing dacoity in the house of the first informant. Prosecution case is that the applicants had committed house-trespass in order to commit an offence of dacoity.

6. Learned Additional Sessions Judge has not only committed grave error but a patent illegality in directing the applicants to be prosecuted for the offence punishable under section 395 r/w 34 of the I.P.C when admittedly the charge-sheet has not been filed under section 395. Second illegality in the impugned order is that the learned Additional Sessions Judge turned a blind eye to the fact that there were only four accused against whom charge-sheet has been filed.

7. In order to bring the case within the purview of section 395 of the I.P.C which is a punishment for dacoity, at least five or more persons are required to be arraigned as persons who conjointly commit dacoity or attempt to commit dacoity in view of Section 391 of the I.P.C. This is an inherent defect in the impugned order. The learned Additional Sessions Judge, despite considering the ratio

laid down by this Court in cases of **Dudhnath @ Ajay Baburam Harijan Vs. State of Maharashtra, 2012 ALL Mr (Cri) 1110** as well as **Union of India Vs. Prafulla Kumar Samal and another, 1979 Cri. L.J 154 (1)** and **Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, AIR 2008 Supreme Court 2991** failed to understand the scope of section 227 of the Cr. P.C.

8. Since the impugned order is perverse and illegal, it needs to be set aside and as such, is quashed and set aside.

9. The applicants stand discharged of the offence punishable under Section 395 r/w 34 of the I.P.C.

10. Revision Application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]