



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

CRIMINAL APPLICATION (APL) NO.1313 OF 2023

SAMBHASHIV @ SANTOSH BALIRAM PAWADE AND OTHERS

VS

STATE OF MAH. THR. PSO, PS GADCHIROLI, TAH. KORPANA, DIST. CHANDRAPUR AND
ANOTHER.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.A. Dhawas, Advocate for the applicant/s

Mr. Badar, A.P.P. for the non-applicant No.1/State

CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10.07.2024.

1. Heard the learned Advocate for the applicants. After taking us through charge-sheet, he relies on the decision in ***Cherubin Gregory Vs. State of Bihar*** reported in AIR 1964 SC 205.

2. From the perusal of the decision of the Hon'ble Apex Court, what we could find is that it was an appeal by special leave against the judgment of the High Court, dismissing the appeal against his conviction and the sentence passed by the Sessions Judge. That means those observations were on the basis of the entire evidence.

3. Here, we are at a very preliminary stage. According to the learned Advocate for the applicants, offence under Section 304 of the IPC is not transpiring and further when the applicants had approached earlier before this Court, liberty was granted.

Considering that it was a premature stage and therefore, the present application has been filed.

4. The learned APP waives service of notice for non-applicant No.1.

5. Taking into consideration the fact that the applicants can still point out to the learned Trial Judge as to which offence is transpiring, which can be considered either in an application for discharge or under Section 228 of the CrPC. We find that still it will not be appropriate to this Court as to which offence is being transpiring. We cannot quash the entire FIR and the charge-sheet in view of the fact that the other Sections are also involved and the allegations in the FIR as well as the charge sheet would show that the real spot was at a different place i.e. in the field of the applicants and the place where the dead body was found is at a different place and therefore, Section 201 of the IPC has been invoked. So also since the death was by electrocution, it appears that the said connection which was taken to the fencing was illegal and therefore, Section 135 of the Electricity Act, 2003 has been invoked and therefore, taking into consideration this prosecution story, when disinclination is shown, the learned Advocate for the applicants seeks withdrawal of the present application with liberty to approach the Special Judge, Chandrapur, before whom Special Case No.62 of 2023 is pending, either to file application for discharge or to make submissions at the time of framing of charge i.e. under Section 228 of the CrPC.

6. In view of the said submissions, the application is **disposed of** with liberty as prayed.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]