



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

CRIMINAL REVISION APPLICATION NO. 412 OF 2015

Vijay Lulla	.. Applicant
Versus	
State of Maharashtra	.. Respondent

**WITH
INTERIM APPLICATION NO. 1054 OF 2020
IN
CRIMINAL REVISION APPLICATION NO. 412 OF 2015**

Sharda Natwarlal Patel	Intervenor /
	.. Applicant

IN THE MATTER BETWEEN:

Vijay Lulla	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Rajendra Singh Saluja a/w Mr. Pradeep Raisinghavi and Mr. Samarendra Choudhury, Advocates for Applicant.
 - Ms. Manisha R. Tidke, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 05, 2024.

ORAL JUDGMENT:

1. Heard Mr. Saluja, learned Advocate for Applicant and Ms. Tidke, learned APP for Respondent – State. None present for Intervenor.

2. By the present Criminal Revision Application, Revision Applicant - Accused No.6 is challenging rejection order dated 22.05.2015 passed by Additional Sessions Judge, Vasai on Application

filed below Exhibit "104" in Sessions Case No.67 of 2008 seeking discharge under Section 227 of the Code of Criminal Procedure, 1973 (for short "**Cr.P.C.**").

3. Interim Application No.1054 of 2020 is filed by first informant Mrs. Sharda Natwarlal Patel for intervening in the Revision Application. However when the matter is listed for hearing before the Court, none was present on her behalf to prosecute the same on the previous date as also today. Revision Application is filed in 2015. Intervention is filed in 2020. Matter cannot be protracted further. It is the duty of the litigants and their Advocates to be vigilant, diligent in attending to matters.

4. Briefly stated, prosecution case is that first informant, deceased and all accused were residents of building in Mangalam Apartments situated at Nalasopara (East), Taluka Vasai, District Thane. There was some friction between accused Nos.5 and 7 on one side and deceased on the other over administration of Society work due to which accused Nos.2, 5, 6 and 7 who are all relatives of the Lulla family allegedly held a grudge against deceased. It is alleged that prior to the present incident, accused Nos.2, 5, 6 and 7 had assaulted deceased and F.I.R. was lodged against them leading to their arrest. It is alleged that dispute between accused Nos.2, 5, 6, 7 and deceased augmented in furtherance of which accused Nos.2, 5, 6 and 7 hatched

a conspiracy to murder the deceased and roped in accused Nos.1, 3 and 4. Incident of assault by Accused Nos.1, 2, 3 and 4 on deceased Mr. Multanmal Jain took place on 29.03.2008 at 08:00 p.m. in his Flat No.201. Precursor of this incident is the quarrel which took place on 28.03.2008 at 09:00 pm. This quarrel was on account of an incident. Flat No.301 was owned by Mr. Jitu Panchal. The licensee of Flat No.301 was Ms. Kashmira Mandliya. A visitor to her flat namely Ms. Heena Lulla by splashing water washed her face in the balcony window of Flat No.301 and water dropped down in the balcony of Flat No.201 belonging to deceased Mr. Jain. He got incensed and barged into Flat No.301 and picked up a quarrel. When both incidents on 28.03.2008 and 29.03.2008 took place, admittedly Applicant was not present. Accordingly on the date of incident i.e. on 29.03.2008, accused Nos.1 to 4 barged into the flat of deceased, verbally abused him over a quarrel that took place between them on the previous evening and assaulted him with wooden stick eventually leading to his death. It is alleged that Ms. Sharda Patel – first informant lived in Flat No.203 was a relative and neighbour of the deceased who intervened in the fight, however she was assaulted by the accused with wooden sticks causing injury to her.10 FIR No.16 of 2008 was registered by Respondent against accused Nos. 1 to 7 for offences under Section 302, 323, 324, 325, 452, 504, 506 readwith 34 and 120(B) of the Indian Penal Code, 1860 (for short "IPC") at instance of first informant.

On completion of investigation, chargesheet came to be filed against all accused in the Court of Additional Sessions Judge, Vasai including present Applicant. He filed Application below Exhibit "104" for discharge under Section 227 of Cr.P.C. By order dated 22.05.2015, Additional Sessions Judge rejected his Application for discharge. Hence, the present Revision Application.

5. Mr. Saluja, learned Advocate appearing for Applicant - accused No.6 has drawn my attention to the statement dated 30.03.2008 of two eye-witnesses to the incident namely Mrs. Santoshi Durjan Singh Rajput and her daughter Ms. Jyoti Durjan Singh Rajput who have categorically deposed that though Flat No.304 in the Society is owned by Applicant, he alongwith his family resides in a different Society and his said Flat No.304 of the Society is occupied by his elder brother Mr. Narendra Lulla and his wife Mrs. Jaya Lulla (accused No.5). Name of Applicant – Accused No.6 is Vijay Lulla. He would submit that accused No.5 - Mrs. Jaya Narendra Lulla has been discharged by order dated 27.09.2012 of this Court in Criminal Revision Application No.503 of 2010. He has drawn my attention to the said order.

5.1. Next, he would submit that Additional Sessions Judge has accepted the *prima facie* prosecution case against Applicant while placing sole reliance on the statement of an eyewitness namely Mrs.

Kashmira Mandliya who has stated in her statement that on the date of incident i.e. on 29.03.2008 present Applicant - accused No.6 came to her residence alongwith his brother Mr. Ramesh Lulla and stated before her that they will teach a lesson to the deceased. He would submit that however there is nothing on record to corroborate their statement of the eye-witness as even the statement of her daughter Ms. Manasvi Mandliya. He would submit that admittedly present Applicant was not present at the spot of incident during the incident. Hence, he would submit that mere presence of Applicant on 29.03.2008 in the building at a different point of time cannot prove the complicity of Applicant and link him to the incident which occurred at night time.

5.2. He would submit that the learned Additional Sessions Judge ought to have considered that accused No.5 - Mrs. Jaya Lulla whose incidentally stayed in the same building and who admittedly met the other accused similarly during the day has been discharged. He would submit that Applicant's case lies on a similar footing for seeking discharged, rather on a better footing than that of original Accused No.5.

5.3. He would submit that there is not an iota of evidence to establish any *prima facie* case, motive, intention, conspiracy, collusion against the present Applicant and there is no sufficient ground for proceeding with trial against the Applicant. Hence, he would urge the

Court to discharge Applicant - accused No.6 from Sessions Case No.67 of 2008 pending on the file of Additional Sessions Judge, Vasai.

6. *PER CONTRA*, Ms. Tidke, learned APP for Respondent -State has vehemently opposed the Revision Application. She would submit that the offences involved in the present case are of a very serious nature which resulted in death of deceased. She would submit that case of accused No.5 Mrs. Jaya Lulla and present Applicant are different. She has drawn my attention to the statement of the eye-witness Mrs. Kashmira Mandliya who has referred to Applicant's presence in the building on the date of incident much before the incident occurred. She would submit that involvement of present Applicant in the crime cannot be ruled out as he alongwith his other family members is accused of conspiracy hatching a conspiracy to eliminate the deceased. Next she has drawn my attention to statement dated 30.03.2008 of another eye-witness Mr. Mehul Patel, son of first informant who has stated about previous animosity between the deceased and members of the Lulla family. She would urge the Court that the order dated 22.05.2015 passed by the Additional Sessions Judge, Vasai be upheld and the Accused No.6 - Revision Applicant be subjected to trial.

7. I have heard Mr. Saluja, learned Advocate for Revision - Applicant and Ms. Tidke, learned APP for Respondent - State and with

their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

8. Applicant before me is accused No.6 and he has challenged order of rejection of this discharge Application dated 22.05.2015 passed by Additional Sessions Judge, Vasai in Sessions Case No.67 of 2008. The name of Applicant - accused No.6 has surfaced in the statement of Ms. Kashmira Mandliya. In her statement, she has stated that accused Nos.6 and 7 visited her flat namely Flat No.301 on the date of incident in the afternoon. In those alongwith Accused Nos.5 who was also present. At that time, one Ramesh Lulla – Accused No.7 expressed that deceased and first informant Ms. Sharda Patel, who were residing in the same building had become a nuisance for the Society as they were in the habit of defaming everybody and a lesson should be taught to them. I have perused the statement dated 28.08.2008 of Ms. Kashmira Mandliya. From a bare reading of the said statement, it is clear that no specific overt act is attributable to accused No.6 – Applicant before me. Merely being present at Flat No.301 alongwith accused Nos.5 and 7 and the aforesaid statement made by Accused No.7 cannot be held as an act attributable to Applicant unless it can be *prima facie* shows that Applicant played any active role or was involved in any conspiracy or was present at the incident spot alongwith others, participated in the incident resulting in causing injury to deceased to which he succumbed later on.

Admittedly, Applicant was not present at the incident spot.

9. Hence, it can not be said that Applicant could be involved in the incident. That apart, with reference to statement of Ms. Kashmira Mandliya, there is nothing placed on record by prosecution after investigation to link Applicant – accused No.6 to the incident in any respect whatsoever. The role of Applicant having any nexus with the incident or deceased or hatching any conspiracy to eliminate the deceased or to cause harm to deceased is not brought and established before the Court by the prosecution. A mere vague but sweeping statement by Ms. Kashmira Mandliya that accused Nos.5, 6 and 7 visited her house and accused No.7 expressed his view about the nuisance caused by deceased alongwith Ms. Sharda Patel and he needed to be taught a lesson cannot be attributable to indictment of Applicant being part of any conspiracy to eliminate the deceased. There is virtually no *prima facie* evidence to establish role of Applicant to the incident. Save and except that he had visited the building namely Flat No.301 during the day, there is nothing attributable whatsoever to Applicant. Incident occurred in Flat No.201 at night 09:00 p.m.. Other 4 Accused were present, whose names are given by first informant, eye-witness to the incident of assault. Prosecution has recorded statements of 25 witnesses, but save and except the statement of Ms. Kashmira Mandliya, wherein all that she states is that accused Nos.6 and 7 visited Flat No.301 during the day and Accused

No.7 stated that the deceased will have to be taught a lesson there is nothing more than that to link the Applicant.

10. In that view of the matter, the impugned order is clearly unsustainable. Once it is clear that there is no direct or indirect role of accused No.6 linked to the incident in question nor any evidence of his presence nor any role attributable to him in any conspiracy hatched to eliminate the deceased, Applicant cannot be asked to face trial. Even the charge-sheet is silent in so far as role of Applicant is concerned. To make a *prima facie* case, there has to be a believable case on the basis of some material placed on record to establish relevant nexus of Applicant to the incident. None of the ingredients are present in the present case qua Applicant. The prosecution has failed to point out any material, which would otherwise directly or indirectly establish any nexus or connection of Applicant with the incident or the offence.

11. It is seen that Applicant is primarily charged for the offence of conspiracy. Even on that count, the only material placed before the Court is the vague and sweeping statement of Ms. Kashmira Mandliya about accused Nos.6 and 7's presence in her flat on the date of incident and nothing more. Applicant cannot be indicted on the basis of such statement.

12. Apart from this, there is nothing placed on record to show or establish any *prima facie* case of conspiracy or involvement of

Applicant in the indictment of assault.

13. Hence, I am of the opinion that, since no role whatsoever is attributable to Applicant, he be discharged on the same footing as that of Accused No.5 (Jaya Lulla), who has also been discharged by this Court.

14. Order dated 22.05.2015 is not sustainable and it is therefore quashed and set aside. Resultantly, Application filed below Exhibit “104” by Applicant before the Trial Court stands allowed. Accused No.6 i.e. Applicant before me stands discharged.

15. Criminal Revision Application stands allowed in terms of prayer clause (1) which reads thus:-

“(1) The Orders passed by the LD Session Judge Session Court Vasai Dist Palghar dated 22/05/2015 on the discharge Application of the Applicant Accused after taking into consideration the legality propriety and correctness of the same be quashed and set aside.”

16. Criminal Revision Application is allowed and disposed.

17. Interim Application No.1054 of 2020 is also accordingly disposed as it no longer survives.

[MILIND N. JADHAV, J.]

Ajay

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AJAY TRAMBAK
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