

(2011) 10 BOM CK 0067

In the Bombay High Court

Case No : Criminal Application No.4636 of 2011

Baliram Jogdand and Asmita

APPELLANT

Vs

The State of Maharashtra and Saroj Bansode

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 211, 212, 225, 226
Penal Code, 1860 (IPC) — Section 306
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 14, 15, 2(1), 3

Citation : (2012) BomCR(Cri) 571 : (2011) 113 BOMLR 4061

Hon'ble Judges : A.V. Potdar, J

Bench : Single Bench

Advocate : R.V. Gore, for the Appellant; S.G. Nandedkar, learned , Assistant Public Prosecutor for respondent State, for the Respondent

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. The present criminal application is moved by the original accused no.1 and 3 in Special Case No.3/2010 on the file of Additional Sessions Judge, Ambajogai, who is also holding the charge of Special Judge to conduct the trials under the Atrocities Act. Challenging the order passed below Exh.35 on 09/08/2011. Considering the nature of relief claimed, this Court does not feel it necessary to issue notice to the respondent no.2.
3. Such of the facts as are necessary for the decision of this application can be summarized as follows :

Victim Rajabhau Bansode and these applicants were in the service of Zila Parishad School as Assistant Teachers. The present petitioners are husband and wife. It appears that as the husband of respondent no.2 by name Rajabhau Bansode, who was serving as Assistant Teacher in Zilla Parishad School, had

committed suicide in the premises of the school itself, by consuming poison on 07/08/2009. On the complaint of respondent no.2, an offence came to be registered at CR No.81/2009 in Ambajogai (Rural) Police Station for the offence punishable u/s. 306 r/w. 34 of the IPC, so also for the offence punishable u/s. 3(ii)(v) of The S.C. and S.T. (Prevention of The Atrocities) Act of 1989. (Hereinafter to be referred as Atrocities Act.) It appears that on completion of investigation, charge sheet came to be filed before the learned J.M.F.C. Ambajogai on 31/01/2010. The case was numbered as RCC No.76/2010. It appears that on filing of the charge sheet, the learned J.M.F.C. Ambajogai had issued the process by its order dated 11/02/2010 against the present applicant and 2 others for an offence punishable u/s. 306, 506 r/w. 34 of the IPC, but issued the process for an offence punishable u/s. 3(ii)(v) of The Atrocities Act against the original accused no.2 and 4. While the investigation was in progress, they were released on bail by the order of this Court.

4. It appears that after the appearance of the applicants and others, necessary committal order was passed on 11/05/2010 as the offence for which process was issued against some of the accused for the offences under The Atrocities Act, is exclusively triable by the Special Judge. Accordingly, the trial was committed to the Court of Sessions/Special Judge by the 2nd J.M.F.C. Ambajogai and the case was numbered as Special Case No.3/2010.

5. It appears that at Exh.30, on 30/07/2011, learned Additional Judge2 Ambajogai had framed charge against these applicants and 2 others for the offence punishable u/s. 306, 504 r/w. 34 of the IPC, so also against these applicants and others for the offence punishable u/s. 3(ii)(v) of The Atrocities Act. It appears that at the time of framing of charge, learned counsel for these applicants, who was appearing before the Lower Court, was not heard. In view of this, an application was moved by the learned counsel for these applicants on 09/08/2011 u/s. 227 of The Cr.P.C. for discharge of these applicants only for the offence under the Atrocities Act. It appears that on the very day, learned Additional Judge, passed an order in the following terms :

Application will be decided at final stage of hearing as there are other offences and charge against the accused persons.

The said order is impugned in this application u/s. 482 of The Cr.P.C. before this Court.

6. During the course of submissions across the bar, initially the learned counsel appearing for the applicants took me through the definition clause of the Atrocities Act, in which u/s. 2(1)(d), it is defined as : "Special Court" means A court of Session specified as Special Court in Section 14. Further he took me through chapter (iv) of the said Act, of which section 14 and section 15 deals with the Special Court and Special Public Prosecutor. Section 14 and 15 of The Atrocities Act read as follows :

Section 14 : Special Court : For the purpose of providing for speedy trial, the

State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Sessions to be a Special Court to try the offences under this Act.

Section 15 : Special Public Prosecutor : For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

7. From the definition of The Special Court u/s. 2(1)(d) of The Atrocities Act r/w. Section 14 and 15, one fact is clear and can not be disputed that the Sessions Court are delegated with the powers of the Special Court as contemplated under provisions of The Atrocities Act. Considering this aspect, one fact is clear that the cases to be tried before the Special Court, the designated court is to be tried as Sessions Trial. Once this fact is clear, then the procedure required to be followed while conducting these special cases is the procedure as given under chapter XXVIII of the Cr.P.C. While considering this procedure, Section 225, 226, 227 and 228 of The Cr.P.C., will play an important role.

Section 225 : Trial to be conducted by Public Prosecutor : In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Section 226 : Opening case for prosecution : When the accused appears or is brought before the Court in pursuance of a commitment of the case u/s 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Section 227 : Discharge : If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 228 : Framing of charge : (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the First Class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the First class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (9) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

8. Considering the provisions as contemplated u/s. 226 and 227 of The Cr.P.C., while framing the charge u/s. 228 of the Cr.P.C., the Special Court, a designated Sessions Judge, is required to hear the learned public prosecutor, who is also a Special Prosecutor within the meaning of section 15 of The Atrocities Act on the point of incriminating evidence against the accused, to enable the Special Court to frame the charge. At that time, the defense also required to hear u/s. 227 of The Cr.P.C. The very purpose to hear the learned Special Public Prosecutor, so also the learned defense counsel, is to enable the Special Court to frame the charge u/s. 228 of The Cr.P.C.

9. Chapter XVII of The Cr.P.C. deals with the charge. Section 211 speaks for contents of charge, while section 212 speaks for particulars as to time, place and person of the charge. The very basic principle about the contents of charge so also the particulars of the charge is to enable the prosecution to know what they require to prove during the trial. At the same time, the defense must know what charge they are facing. At this juncture, it is to be noted that to frame the charge in the criminal trial, is the stage where the prosecution knows what they required to prove, while the defense knows what they required to face and what they required to rebut.

10. The learned Trial Court has passed the order that the application will be decided at the stage of final hearing of the trial, which will frustrate the very purpose of section 211, 212 and section 228 of the Cr.P.C., as if the discharge application to be considered at the end of the trial, then the prosecution will not be in a position, what sort of evidence to be produced against these applicants nor these applicants will be in a position to know what sort of defense they are required to put during the trial.

11. In the catena of judgments, it is observed by the Apex Court that at the time of framing of charge, if an application is moved for discharge, or the submissions were made by the defense counsel, praying for discharge, then the learned Sessions Judge/Special Judge to decide that application, in his discretion, in accordance with Law by passing speaking order, either to allow the application or to reject the application, but if such an application is moved, the learned Sessions Judge/Special Judge can not keep the application in abeyance till the final hearing of the case. Thus the order impugned passed by the learned Special Judge in this application, is contrary to the legal position, without application of mind. The order impugned is totally unknown to the criminal law and if it is so, the order impugned is an erroneous order, and needs to be quashed and set aside. Accordingly, the application succeeds. The order impugned is quashed and set aside. The matter is remitted back to the learned Special Judge, Ambajogai, on whose file special case no. 3/2010 is pending, with further directions to decide the application moved by these applicants at Exh.35 in accordance with Law and

then to proceed with the trial. Application is allowed with these directions and stands disposed of.

12. Rule thus made absolute.

13. Parties to act on the authenticate copy of this order. Learned A.P.P. also to intimate on fax, about this order passed, to the concerned D.G.P./Special P.P. of the Special Court at Ambajogai.