
(2012) 11 BOM CK 0103

In the Bombay High Court

Case No : Criminal Writ Petition No. 702 of 2009

Devendra Kumar Zialal Sukhchand and Jaiswal and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 141, 143, 147, 149, 323

Citation : (2013) ALLMR(Cri) 25 : (2013) 3 BomCR(Cri) 399

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : R.B. Thakare instructed by Mr. A.M. Chimalkar and Amba Salekar, for the Appellant; G.P. Mulekar, App for the State, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—This petition questions the order, passed by the learned Additional Sessions Judge, Mumbai in Revision Application No. 1002 of 2008, whereby he rejected the prayer of the petitioner to set aside the order passed by the learned Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai, rejecting their application for discharge. The facts which are material for deciding this petition, are as under:-

The petitioners were possibly working as Security Guards with an agency run by Vivek Virendra Singh, who stated that he had deployed them at site where one Akruti Builders was having transit camp for slum rehabilitation project. A team of NDTV, possibly learning about some irregularities, sought to interview persons residing in the transit camp. Therefore, the first informant Dharmesh, working as Reporter, alongwith cameraman Rajan Samant, and a driver had been to the site. They claimed to have contacted Pardeshi and Sonawane the co-accused, and told them that they wanted to take interview of Senior Citizens. Accordingly, the team claimed to have gone to room Nos. 507 and 508 on the fifth floor of the transit camp to interview the Senior Citizens about their sufferings. At that time some security guards came to the place and asked them to stop shooting. Pardeshi

also came there with more security guards, including the co-accused prince Ramchandra Jaiswal, who has been specifically named as having tried to snatch the camera and removing the digital chip and tape. The team was abused and manhandled. Before the team could move out of the building, the passage was locked and the team was locked inside building for 30 minutes. Police officers were contacted, they came, broke open the lock and rescued the team. On a report by Dharmesh, an offence was registered and investigation commenced. On completion of investigation, chargesheet was sent up. The Senior Police Inspector, Tardeo Police Station himself wrote to the learned Magistrate stating that after examining the entire investigation papers, though initially an offence was registered under Sections 141, 143, 147, 149, 323, 504, 506, 342, 392 of the Indian Penal Code, eventually the prosecution of petitioners and others, was sought only for the offences punishable under Sections 342 and 395 of the Indian Penal Code.

2. The petitioners applied for discharge. The learned Magistrate, by his order dated 15th September, 2008, rejected their application. The Revision Application filed by them against the order of the Magistrate came to be rejected by the learned Additional Sessions Judge and this is how the petitioners are before this Court.

3. I have heard learned counsel for the petitioners and the learned Additional Public Prosecutor for the State and with the help of both I have gone through the material on record.

4. First, as had been noted by the learned Additional Sessions Judge also, test identification parade was not held. Thus, there is no witness who could be said to have identified the petitioners as the persons involved in either wrongfully confining media team and/ or having robbed the media team of a digital chip and tape from the camera. As rightly pointed by the learned counsel for the petitioners at worst, the petitioners were Security Guards employed at the site, as stated by the petitioners' employer Vivek Virendra Singh. One Fuldeo Kanchan Pandey, who was present at the time of incident stated that after Dharmesh Thakkar and his team went to room No. 507 and 508, Security Guards also went there alongwith their officers and within few minutes thereafter they were coming down quarrelling with each other and shouting. A crowd gathered below the building as well and someone out of that crowd locked the passage. He does not state that any security guard did this. Learned counsel for the petitioner is therefore, right in submitting that even according to evidence collected, the passage was locked not by the petitioners, but by someone in the crowd, who is not identified. He submitted in the face of the material collected by the prosecution that it would, therefore, be impossible to bring home the charge of offence punishable u/s 342 of the Indian penal Code in so far as the petitioners are concerned and therefore, as far as they are concerned, the charge must be held to be groundless.

5. Learned counsel for the petitioners further pointed out that it is not even the

case of Dharmesh that any of the petitioner had taken out digital chip and tape from the camera. He submits that Dharmesh had named prince Ramchandra Jaiswal as the person who had tried to snatch the camera. The learned counsel pointed out that even according to statement of Dharmesh, it was Pardeshi, Sonawane and Prince Ramchandra Jaiswal, who had been named as having been participated alongwith others in the incident. Learned APP submits that the statement of Dharmesh would show that Pardeshi, a retired A.C.P., started manhandling the cameraman. He called about 20 to 25 security guards and at that time, a digital chip and tape was forcibly removed. She, therefore, submitted that this act of removing the digital chip and tape must be held to have been done by security guards. In a criminal trial in the absence of any specific role attributed to the petitioners, it would not be possible for the prosecution to contend that any of the petitioner had actually participated in the alleged dacoity in snatching away the digital chip or tape from the camera. Material collected is far too deficient to put the petitioners to trial, even on the charge of offence punishable u/s 395 of the Indian Penal Code. It is unfortunate that inspite of the fact that mediemen were manhandled, investigation machinery did not think it fit to have test identification parade held. It is equally unfortunate that a retired A.C.P. should have associated himself with the incident of manhandling media men. All the same this does not imply that the prosecution had collected enough material to justify framing of charge against present petitioners. The petition is, therefore, allowed and the prayer of the petitioners for discharge from Criminal Case bearing No. 311/PW/2008, pending on the file of Metropolitan Magistrate, 4th Court at Girgaon, Mumbai is granted.