
(2014) 06 BOM CK 0072

In the Bombay High Court

Case No : Criminal Application No. 6730 of 2013

Govind Baba Goud Kondalwar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321
Penal Code, 1860 (IPC) — Section 189, 294, 332, 34, 352

Citation : (2014) ALLMR(Cri) 3644 : (2014) 3 BomCR(Cri) 417

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : A.A. Ansari, Advocate for the Appellant; P.P. More, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The applicants are the original accused in C.R. No. 14/2003 registered with Police Station, Bhokar, Dist. Nanded for the offence punishable under sections 352, 353, 332, 189, 294, 504, 506 read with 34 of the Indian Penal Code, 1860, The investigating agency after completion of its investigation, filed Charge-Sheet before the Court and case is registered as R.C.C. No. 349 of 2003. In the said criminal case, charge was framed against the present applicants for the offences punishable under sections 353, 189, 294, 504, 506(2) read with 34 of the Indian Penal Code, 1860. The prosecution has examined one witness in support of its case. During pendency of said trial, the present applicants approached the Government for withdrawal of prosecution u/s 321 of the Code of Criminal Procedure, 1973. The said statement of fact is made in paragraph No. 2 of the present Criminal Application that the Government Authorities after applying the mind and after considering the nature of the offences, by order dated 25th January, 2005 passed an order of withdrawal of the prosecution. The said order is at Exh. "A" on record.

2. It appears that on the basis of said order dated 25/1/2005, the learned Addl.

P.P. for the State on 28th March, 2012 moved an application u/s 321 of the Code of Criminal Procedure, 1973 and requested the Court that permission be granted to withdraw R.C.C. No. 349 of 2003. Obviously, no objection was given by the present applicants, who are accused in CR No. 14/2003.

3. The learned trial Magistrate bestowed his thoughtful consideration to the said application. Primarily, the learned Magistrate found that there is no independent satisfaction of the learned A.P.P to invoke the provisions of section 321 of the Code of Criminal Procedure, 1973. Also, the learned Magistrate has considered the nature of the offences and ultimately he rejected the said application on 28th March, 2012.

4. The said order was challenged by the present applicants by preferring Criminal Revision application bearing No. 4/2012 before the learned Addl. Sessions Judge, Bhokar. The Revisional Court also concurred with the findings recorded by the learned Magistrate and on 21st November, 2013 rejected Cri. Revn. Appln. No. 4/2012. Against the said concurrent findings, the present Criminal Revision Application was moved and this Court on 4th February, 2014 was pleased to stay the further proceedings before the learned Magistrate.

5. I have heard extensively the learned Counsel for the applicants. She vehemently submitted that, both the courts below have committed an error in not granting the permission to withdraw the prosecution, by exercising the powers u/s 321 of the Code of Criminal Procedure, 1973. She further submitted that, all the formalities to invoke the provisions of section 321 of the Code are duly complied with. She submitted that prejudice is caused to the applicants by rejecting their application.

6. The learned Counsel appearing for the applicants and learned A.P.P. for the State took me in details through the order dated 28/3/2012 passed by the learned Magistrate as well as order dated 21/11/2013 passed by the learned Addl. Sessions Judge, Bhokar.

7. I found that, both the courts below have considered the aspects in detail. The courts below have also considered the nature of allegations made against the present applicants. Further, both the courts below have rightly arrived to the conclusion that there is nothing on record to show that the learned Prosecutor has applied his mind before moving the application u/s 321 of the Code of Criminal Procedure, 1973. It appears that, the Superintendent of Police, Nanded has also not sent its report, as it could be seen from the application Exh. No. 57 itself. If all facts are considered in its true perspective, the only conclusion that can be drawn is that, both the courts below have rightly rejected the application moved by the learned Prosecutor before the learned Magistrate, warranting no interference, at this stage. Hence, Criminal Application deserves to be rejected. Needless to mention, interim stay granted by this Court is vacated and the learned trial Magistrate is directed to decide the case on its own merit as expeditiously as possible, since the case is of the year 2003. Criminal Application

is dismissed.