

(2011) 08 BOM CK 0221

In the Bombay High Court

Case No : Criminal Application No. 3303 of 2011

Rajendra Sitaram Bhoknal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(a), 22, 27, 8

Citation : (2012) BomCR(Cri) 98

Hon'ble Judges : Davare Shrihari P., J

Bench : Single Bench

Advocate : S.K. Shinde, for the Appellant; Y.M. Kshirsagar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Davare Shrihari P., J.—Heard learned Counsel for the parties. Rule. Rule made returnable forthwith. With the consent of learned Counsel for parties, taken up for final hearing.

2. The applicant i.e. original accused no. 1 has preferred the present application u/s 482 of the Code of Criminal Procedure, praying that the order dated 25-7-2011, passed by the learned Ad hoc Assistant Sessions Judge, Sangamner, below Exhibit 19 in Sessions Case No. 2/2007, rejecting the application for discharge of the applicant (original accused), be quashed and set aside.

3. It is the contention of the applicant (original accused) that the Taluka Police Station, Sangamner, registered a complaint bearing Crime No. III-26/2006 against the applicant and two other accused, under sections 8, 20(a) and (b), 22 and 27 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (For short, hereinafter referred to as "NDPS Act"), on the ground that the accused planted cannabises (Ganja Tree) in their field bearing Survey No. 36/4 situated at village Nimaj (Taluka : Sangamner, District: Ahmednagar), and on that basis,

panchanama came to be prepared on the same day i.e. 30-8-2006.

4. The applicant contends that after receipt of investigation papers from the Investigating Officer, the applicant filed application at Exhibit 19 for discharge u/s 227 of the Code of Criminal Procedure, below Exhibit 19 on 23rd March, 2009, contending that the land Survey No. 36/4 does not belong to the applicant and the same is not owned by him, but it is owned by accused Nos. 2 and 3, and also contending that partition has taken between said accused Nos. 2 and 3, and the applicant, long back, and further contending that there is separate ration card of the applicant. It was also stated in the said application, that the applicant was not even co-owner of the said land Survey No. 36/4. However, the said application for discharge preferred by the applicant was rejected by the learned Ad hoc Assistant Sessions Judge, Sangamner, by passing order thereon on 25-7-2011 for the reasons stated therein. Hence, being aggrieved and dissatisfied by the said order, applicant has preferred the present application for the prayers as set out herein above.

5. I have perused the contents of the application for discharge preferred by the applicant i.e. original accused No. 1, Exhibit 19 before the learned trial Court on 23rd March 2009, and also perused contents of the impugned order dated 25-7-2011, and heard learned Counsel for the parties, and admittedly, offence under sections 8, 20(a) and (b), 22 and 27 of the NDPS Act was registered against the applicant i.e. original accused No. 1, and accused Nos. 2 and 3 on 30th August 2006, and 7/12 extract produced by the applicant in the name of accused nos. 2 and 3 pertaining to land Survey No. 36/4 dated 2nd September 2006 i.e. later to the registration of the offence, and therefore, there is substance in the observation made by the learned trial court in the impugned order dated 25-7-2011, that according to the prosecution, during investigation it is made out that the accused No. 1 i.e. applicant herein is concerned with the above said field Survey No. 36/4 and the prosecution has right to adduce evidence against the accused and the said aspect can be dealt with at the time of trial after giving due opportunity to the parties to adduce evidence in that respect, and hence, learned trial Court has rightly rejected the application for discharge and no interference therein is called for in the present application.

6. Besides, learned trial Court has rightly observed in the impugned order dated 25-7-2011, that while considering the application for discharge, the defences raised by accused No. 1 need not be looked into and only after the trial, a view could be formed whether accused is involved in the offence or not, and consequently, rightly rejected the said application for discharge and no interference therein is warranted in the present application.

7. In the circumstances, present application bears no merit and applicant has failed to make out prima facie case to invoke inherent powers u/s 482 of Cr.P.C., and therefore, present application deserves to be rejected. In the result, present criminal application sans merits and same stands dismissed. Rule stands discharged.