

State of Maharashtra Vs. Subhash Waman Chavan and Another

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Court : Mumbai Aurangabad

Decided On : Dec-17-2012

Judge : M.T. Joshi

Appeal No. : Criminal Revision Application No.203 of 2012

Appellant : State of Maharashtra

Respondent : Subhash Waman Chavan and Another

Judgement :

Oral Judgment:

Heard both sides. Rule. Rule is made returnable forthwith. Heard finally, by consent of the parties.

2. Aggrieved by rejection of application for permission to carry further investigation in the crime under Section 173(8) of the Code of Criminal Procedure, the State has preferred present Criminal Revision Application.

3. In sum and substance, the allegations in Sessions Case No.107 of 2008 pending on the file of Addl. Sessions Judge, Parbhani are that the present respondents - accused had cheated the son of complainant by issuing bogus appointment order due to which, son of complainant has committed suicide.

4. Initially, charge sheet was submitted only for the offence punishable under Section 306 read with 34 of Indian Penal Code. The prosecution, upon committal of the case, filed application for addition of charge for the offence punishable under Section 420 of Indian Penal Code i.e. for cheating by taking amount of Rs.One lac for giving service to the son of complainant. The learned Sessions Judge, upon hearing both the sides, allowed the said application on 20th September, 2010 and directed that said charge be added. Thereafter, on 18th October, 2010, the prosecution filed an application on which impugned order was passed. The prosecution submitted that though there are allegations of cheating in the complaint, crime was initially registered for the offence punishable under Section 306 read with 34 of Indian Penal Code. Now, cognizance is also taken and charge is also framed for offence under Section 306 read with 34 of Indian Penal Code. However, detailed investigation in regard to added charge was not carried by the Investigating Officer and therefore, permission may be granted to carry further investigation in crime under Section 173(8) of the Code of Criminal Procedure.

5. Respondents accused opposed that application. Learned Sessions Judge rejected the application on the ground that after framing of additional charge, three witnesses were already examined and thereafter, said application came to be moved. The stage of making further investigation has already gone and therefore, request of prosecution cannot be considered.

6. Learned APP for the present applicant submits that there is no stage as such for carrying further investigation under sub-section 8 of Section 173 of the Code of Criminal Procedure. Since the charge was added by order dated 20th September, 2010, the next application came to be filed instantly on 18th October, 2010. Even upon addition of charge, retrial can be ordered under the provisions of the Code of Criminal Procedure. Therefore, merely because some witnesses are to be examined, there cannot be rejection of the application.

7. On the other hand, learned counsel for the respondents submits that in view of subsection 8 of Section 173 of Cr.P.C., no permission is required to be granted to carry further investigation. Further, the accused -respondents are harassed by

protracting the case. He submits that the learned Sessions Judge has rightly found that there was no necessity to carry further investigation and rejected the application filed by the prosecution.

8. In my view, taking into consideration the date of passing of order of addition of charge for the offence punishable under Section 420 of Indian Penal Code and thereafter, filing of application by the prosecution for permission to carry further investigation and also taking into consideration the fact that no prejudice would be caused to the accused - present respondents if further investigation is carried since they are already released on bail, the learned Sessions Judge ought to have allowed the application. There is no stage as such, as observed by the learned Sessions Judge for carrying the further investigation.

9. The material that is required to be taken into consideration at the time of framing of charge and the material that is required to be considered while deciding the matter on merit, either convicting or acquitting the accused, are to be considered by different angles and at different stages. At the time of framing of charge, the Court is required to take into consideration as to whether there is any prima facie material to frame the charge. However, at the time of final decision, the prosecution is required to prove said charge beyond the reasonable doubt.

10. In all these circumstances, in my view, the order of learned Sessions Judge is required to be set aside and instead, permission is required to be granted to the prosecution to carry further investigation and put material before the learned Sessions Judge in a prescribed time frame.

11. In the circumstances, following order :

A] Criminal Revision Application is allowed.

B] The order of learned Sessions Judge is, hereby, set aside. Instead, permission is granted to the prosecution to carry the investigation and put the material before the learned Sessions Judge as regards charge for the offence punishable under Section 420 of Indian Penal Code.

C] This exercise, however, be concluded within a period of six months from the date of this order.

D] Needless to say that liberty to the accused - respondents to apply for cross-examination of the witnesses already examined as regards charge under Section 420 of Indian Penal Code, would always be there, in the facts and circumstances of the case.

E] Rule is, accordingly, made absolute.

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