

	<b>Cri. Case No. 662/2018</b>
<b>LD ADV For the Applicant/Accused</b>	<b>Mr. J R Joshi</b>
<b>LD. A.PP. for the State</b>	<b>Mr. M. C. Maheshwari</b>
<b><u>Order below Exhibit - 24</u></b>	

1. Read the application, perused the case record, and also kept in mind the directions given by the Hon'ble High Court in R/Criminal Misc.Application No. 7989 of 2016.
2. The present application has been preferred by accused no. 3 and thereby prayed to discharge him from the offence alleged to have been committed. Heard the arguments advanced by Ld. Advocate J. R. Joshi, who, as per the averments made in the application, has urged the court to grant the same and discharge the applicant accused in this case. Whereas Ld.A.PP. has advanced arguments on the prosecution side and has strongly objected to the discharge of the applicant accused.
3. With the issue raised before this court, Sec. 239 of Cr.P.C. is relevant, and the same has been reproduced as follows:

**Sec. 239 Discharge**

**If, upon considering the police report and the documents sent with it under section 173 and making such examination if any, of the accused as the Magistrate thinks necessary and after giving prosecution and accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.**

4. The perusal of the provision for discharge reveals that after considering the record of the case and the documents submitted along with such record and after hearing the submissions of the accused and the prosecution, if the court considers that there are no sufficient grounds for proceeding against the accused, the concerned court shall discharge the accused, giving reasons for doing so. If, however, the judge is of the opinion that there is ground for presuming that the accused has committed the offence, he may frame the charge against the accused in writing. At this stage, the court has to consider only the documents produced by the prosecution along with the charge sheet. The accused is not entitled to produce or cause the production of any document at this stage for the consideration of the court.

5. Looking to the complaint, it is alleged that on February 23, 2015, the complainant sought information under the RTI Act asking for certain documents pursuant to which he was given documents. The complainant found that there was a consent agreement entered into on February 21, 2014, wherein the name of the person who had given consent was mentioned as Garasiya Somabhaai, but as such, a photo of Garasiya Somabhaai was not pasted against his name, and a photo of Maheshbhai Savabhai, who is the son of the brother of the complainant, was pasted. The second name is written as Garasiya Ssnklabhaai, i.e., the complainant, but as such, his photo is not pasted against his name, and the photo is of Sanklabhai Kalabhai Bhagora. The third name is written as Kashiben Khengarbhai, and the photo of the person who is pasted against the said name is not known to the complainant, nor is the correct name of the owner of the kasiben Virabhai, who died on September 3, 2009. In the said agreement, the name of the person who has given consent is written as Garasiya Savabhaai Khengarbhai, but a photo of Garasiya Somabhaai is pasted against his name. In this agreement, all the executors are named Jayantibhai Galbabhai Damor, but the complainant does not know the said person, who has been identified. The complainant has alleged that the notary, i.e., the applicant, has not taken and not

verified identification proof of all the persons who had given and taken consent in the said consent agreement dated February 21, 2014. It is further alleged that pursuant to the consent agreement and the document entered on the same day before the Executive Magistrate, the employees of the Bank of Maharashtra have granted a loan of Rs. 4, 00,000 on the land of the complainant. The complainant and his brother have not taken any loans and have not executed any such agreements.

6. The Ld. Adv. for the applicant submitted that the baseless allegations are levelled against the applicant, and the complainant has tried to give criminal colour to civil litigation. The present FIR of the applicant, who is a notary, is not maintainable. It is submitted that, as per the provisions of Section 13 of the Notary Act, 1952, there is a legal bar to taking cognizance against the Notary, Ld. Adv. The applicant further submitted that the FIR is much delayed, which is very fatal, and no proper explanation is given by the complainant. He further submitted that the allegation made in the FIR does not disclose the commission of the offence, the ingredients of the alleged offence are also missing, and there is no chance of conviction at the end of the trial. He further submitted that this is a clear case of false implication of the present applicant by the complainant, and the applicant has to face trial for doing nothing; therefore, the impugned FIR is nothing but a gross abuse of process by the court, which cannot be permitted to proceed further, hence he prayed to allow the present application.

7. In my view, the contention regarding the delay in lodging the FIR and its explanation are not material to deciding the present application because the accused is not entitled to be discharged if no explanation is furnished by the prosecution for causing delay in lodging the FIR. While deciding the discharge application, the court has to consider whether there is sufficient evidence to frame the charge against the accused, but the Ld. Adv. for the applicant has vehemently contended that, so far as the present applicant is concerned, the court can take cognizance of the offence only on the basis of the complaint filed

by the authorised officer as per Section 13 of the Notary Act. So, it is required to see the legal provision. The provisions of Section 13 of the Notary Act provide as follows:

**Section.13**

**(1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon the complaint in writing made by an officer authorized by the Central Government or a State Government by general or special order in this behalf**

**(2) No magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.**

If the allegation against the present applicant is viewed with the above provision, the present applicant has notarized the consent agreement without verifying any identification proof. The present applicant is the notary, as per the aforesaid allegation in the complaint; it appears that the alleged act was done in the exercise of his functions as a notary. On clear reading of the above provision of the Act, this Court, as a Judicial Magistrate first class, has the power to try the offence committed by a notary during his performance as a notary. But if a notary has committed any offence during the exercise of his functions as a notary, the court can take cognizance of an offence only on the basis of the complaint made by the officer authorised by the central government or the state. In cases where the provision expressly prohibits taking cognizance without a written complaint from an authorised officer, a written complaint means a written complaint as per Section 2(d) of the Code of Criminal Procedure, which does not include the police report.

8. A notice has been issued by this court to the investigating officer, who has appeared before this court and submitted that the crime was reported to the

Law Department at that time of commission of offence . Documentary evidence has also been produced by the investigating officer vide mark 27/A and 27/B. Mark 27/A is the letter to the Home Department seeking permission to arrest the present applicant, and Mark 27/B is the order of I. D Patel the competent authority, and the joint secretary. The joint secretary has made an order under the power conferred by Section 13(1) of the Notary Act, wherein the police inspector of the respective police station has been authorised to file a complaint against the notary. The said order is dated December 7, 2013. It appears that this is general order made in connection with this present offence. So it is clear that the legal department has given the authority to file the complaint In the said order, but pursuant to the said order instead of filing written complaint, charge-sheet has been filed by the Circle police inspector,

Apart from this, the applicant, including the other accused, has been summoned on the basis of the charge sheet. Thus, it cannot be said that the complaint has been lodged by the authorised officer against the present applicant as per the order of the government. So it is clear that the provision of Section 13 of the Notary Act has been violated here. Further, as per the above provision, when the cognizance is barred, the issue of whether the prima facie case has been made against the present applicant is not required to be discussed.

**In case of Mohd. Yusuf Kalavat vs. State of Gujarat wherein it is held by the Hon'ble Gujarat High Court**

**(5.1) Considering the aforesaid decision of the Hon'ble Supreme Court, the complaint/F.I.R. cannot be quashed and set aside considering the section 13 of the Notaries Act, 1952. At the most, Section 13 of the Notaries Act, 1952. can be made applicable at the time of taking cognizance by the concerned Court/Magistrate. From plain reading of Section 13of the Notaries Act, 1952., it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence against the Notary.**

**‘ A plain reading of Sec.13 makes it clear that the complaint against a Notary in exercise or purported to exercise of his functions under the Act has to be made in writing by an officer authorised by the Central Government or the concerned State Government by general or special order in this behalf. Unless a complaint is made in the manner prescribed, no Court is empowered to take cognizance of the offence. This view finds support from the objects and reasons behind the said provision, Which reads thus:**

**From the objects and reasons, it is apparent that even if an offence is committed by a Notary while acting or purporting to act in the discharge of his functions under the Act, a complaint can be lodged only as provided under Sec 13 of the Act. Thus, any offence committed by a Notary acting or purporting to act in the discharge of his functions under the Act would fall within the ambit of the Section and a Court can take Cognizance of such offence only if the complaint is made in the manner laid down in the section**

**In R/Criminal Misc. Application No.20274/2019, wherein it is held by the Hon’ble Gujarat High Court**

**14. Here in this case, no cognizance can be taken against the present applicant in terms of section 13 of the Notaries Act. 1952 It is apparent from the provision of section.13 of the Notaries Act that if the offence is committed by Notary while acting or purporting to act in the discharge of his functions under the Act, a complaint can be lodged only as provided under section.13 of the Act and the Court can take cognizance of such offence only if the complaint is made in the manner laid down in the section. .... Since the law does not permit cognizance of offence without following prescribed procedure against the Notary which is a condition precedent ...,**

8. Thus, since the applicant is a notary and the alleged act is alleged to have been committed during his duty as a notary, as there is a legal bar to taking cognizance of the offence against the Notary, cognizance cannot be taken against the present applicant on the basis of a police report, and when cognizance cannot be taken against the accused, I am of the considered view that no charge can be framed against the accused.

9. In light of the discussion made above, the present application deserves to be allowed. Hence, the following order is hereby passed.

**Order**

- The present application is hereby granted.
- The applicant, i.e., the accused no.3, Mr.Rameshchandra Amratlal Joshi, is hereby discharged from the charges levelled against him.

No order as to cost.

Pronounced in open court.

Date: 26/10/2023.

(Shaileshkumar Ganpatlal Parmar)

(GJ01146) JMFC, Amirgadh