

**COMMON ORDER BELOW EXH-5 AND EXH-1 IN REGULAR
CRIMINAL CASE NO.35/2014**

On behalf of accused matter taken up on board as the accused is said to have selected for military service. The accused needs to furnish details regarding criminal cases. Application exh-5 moved under Section 239 of the Code of Criminal Procedure for discharge of the accused.

02. The allegation against accused is about theft of submersible electric motor worth Rs.6,400/-. The complainant and accused are residing at Javkhede. On suspicion accused has been booked. Therefore, it is contended that on examination of material with charge-sheet, the charge finds groundless. It is therefore, prayed that the accused be discharged.

03. The learned A.P.P. opposed submitting that in the panchanama dated 11.09.2013 reflects that the complainant seen accused dropping the alleged electric motor in the land of complainant. It is seized by the police. Therefore, the charge is not groundless. The accused cannot be discharged.

04. Heard learned advocate Shri.B.B.Palve for the accused and learned A.P.P.Shri.I.V.Shaikh for the prosecution. I carefully considered charge-sheet, documents submitted with the charge-sheet. As per F.I.R. submersible electric motor of the complainant theft by some one during the period 10.08.2013 to 13.08.2013. The theft came to the knowledge when the complainant made attempt to start electric motor in the noon of 13.08.2013. There was no motor in the tube-well. Because the accused was passing from the land of the complainant a day earlier the complainant warned him not to go through the land. The accused alleged to have threatened to see.

05. During investigation and search of the house of accused no electric motor found in the house. As per panchanama dated 11.09.2013, after about a month, the complainant produced said electric motor to the police station at Pathardi. It was seized. The complainant says in panchanama that in the early morning on said day he saw the accused while dropping the electric motor in the land of complainant.

06. On the point of recovery, only recovery is admissible and none of the contents of the panchanama are admissible in evidence. Therefore, portion "the accused dropped electric motor in the land of the complainant on 11.09.2013 and the complainant seen him dropping it" is inadmissible and has no evidencery value.

07. None of the witness seen accused while committing theft, in possession of alleged electric motor. The submission that the charge is groundless, made on behalf of the accused, is acceptable. Even if, the statement of the complainant on record is accepted as true as it is still the accused cannot be convicted. On close scrutiny of the charge-sheet, record with the charge-sheet, I find that the trial would be futile exercise. The matter shall not end in conviction. As such, on examination of the record as contemplated under Section 239 of the Code of Criminal Procedure I find, that the accused is entitled to be discharged. Therefore :

- (i) Accused Rushikesh s/o Uttam Andhale, age - 19 years, resident of Javkhede, taluka Pathardi, district Ahmednagar is hereby discharged from the charge of offence under Section 379 of the Indian Penal Code as per Section 239 of the Code of Criminal Procedure.

- (ii) The bail bonds stand cancelled.
- (iii) On expiry of appeal period, the complainant is to continue custody of electric motor perpetually and the bond, if any, executed by him shall stand cancelled.

Date : 18.06.2015

Judicial Magistrate F.C., Pathardi.