

**RCC No. 41/2018
State Vs. Jatin****Order below Exh. 4**

1. This is an application filed by accused Jatin Rajubhai Patel under section 239 of Code of Criminal Procedure(for short 'Cr.P.C.'). Accused is seeking for the discharge from the offences punishable under section 420, 417, 406, 506 of Indian Penal Code(for short 'IPC').

2. Before going to decide this application it is necessary to know the facts of prosecution case and those are as follows :-

(i) A complainant Naresh Karkade has filed the private complaint i.e. complaint instituted otherwise than on police report against the accused and prayed for the direction under section 156(3) of Cr.P.C. against the accused for the offence punishable under section 420, 417, 406, 506 of Indian Penal Code(for short 'IPC'). Accordingly, on 17.05.2017 the application of complainant was allowed and thereby crime No. M1/2017 for the offence punishable under section 420, 417, 406, 506 of IPC was registered against the accused. The investigating officer has filed charge-sheet i.e. final

report on 20.04.2018 against the accused for the offence punishable under section 420, 417, 406, 506 of IPC.

(ii) It was the case of complainant that he is well acquainted with the accused and due to the friendly relations the accused has borrowed the hand loan of Rs. 1,25,000/- (One Lakh Twenty Five Thousands) from the complainant in the year 2016. For the security of loan accused has given the cheque bearing No. 877608 of his bank account maintained at Bhandara Urban Co-operative Bank Ltd., Branch Pauni. It is the case of complainant that the said cheque was dishonored due to the closing of account by the accused. Therefore, complainant has filed the complaint against the accused and prayed for the direction under section 156(3) of Cr.P.C.

3. In instant application it is the contention of the accused that the investigating officer(I.O.) has filed the bogus and illegal charge-sheet as the charge-sheet does not speak or specify the role of accused in the said crime under the relevant or alleged sections. He further submits that it was the duty of the I.O. to ensure that whether the transaction of hand loan took place between the

complainant and accused. He further submits that the I.O. has not filed the report of handwriting expert or the original copy of cheque with the charge-sheet. The accused also raised an objection that the I.O. has not collected the documents from the bank of complainant and accused which would show that complainant had really submitted the said cheque in the bank for encashment.

4. It is the contention of the accused that complainant has not specifically mentioned the date, time and place regarding the amount of money given to him by the accused. He further submits that the complainant had never demanded the said amount from the accused by issuing demand notice. He further submits that the complainant is try to harass the accused with the illegal motive and taking the undue advantage of Court and police machinery to extract the money from accused. He further submits that the another complaint case i.e. RCC No. 40/2018 was also filed against accused by the complainant namely Ashish Fulbandhe with the same allegations which are made in this complaint. The complainant Naresh Kakde and Ashish Fulbandhe are good friends and there is enmity between the accused and said

complainants since last 5 to 6 years.

5. Accused further submits that he has never borrowed the loan or any type of amount from the complainant and therefore, he has never issued a cheque to the complainant. He further submits that the account No. 416 of Bhandara Urban Co-operative Bank Ltd., Branch Pauni is a current account of the firm namely B.F.Patel and said firm was originally owned by Kiran Bhailal Patel and due to the personal differences between the Kiran Bhailal Patel and accused the said firm was closed on 01.11.2016. The original pass book and cheque book of said firm was submitted and handed over to the said bank at the time of closing of current account. Lastly, accused submits that he has not committed any offence under section 420, 417, 406, 506 of IPC and prima-facie charge-sheet does not show any kind of role of accused in the crime. The allegations made by the complainant are baseless, groundless or without any solid evidence. Therefore, accused prayed to discharge him from the offence punishable under section 420, 417, 406, 506 of IPC.

6. The Ld. APP filed her say below Exh. 6

wherein she has mentioned that the offence was registered due to the direction and order given by the Judicial Magistrate Court under section 156(3) of Cr.P.C. Investigation officer has filed the charge-sheet after giving the cogent and ample evidence. The F.I.R. and statement of witnesses as well as documentary evidence clearly shows that the accused borrowed the loan of Rs. 1,25,000/- from the complainant. The accused has not repaid the money borrowed and deliberately given the cheque of account which was closed. The intention of the accused was to cheat with the complainant. Ld. APP further submits that at the stage of framing of charge Court may not meticulously judge the truth/veracity and effect of evidence as to the guilt of accused.

7. The Ld. APP submits that the chance should be given to the prosecution to uphold the story by examining the prosecution witnesses, no prejudice be caused to the accused as the accused has ample opportunity to tender his defence by cross examining the witnesses during the evidence. Therefore, she prayed to reject the application.

8. Heard Ld. Adv. for the accused Shri D.L.

Deshmukh he vehemently submitted the facts of the case. It was his contention that the prosecution has not filed the original cheque in the matter till date. Therefore, the charge cannot be framed against accused. Therefore, he prayed to discharge the accused. Ld. APP submits that the opportunity to lead the evidence should be given to the prosecution. There is sufficient material against the accused to proceed. Therefore, she prayed to reject the application.

9. Perused the section 239 of Cr.P.C. it clearly shows that the Magistrate has power to discharge the accused persons, if Magistrate thinks necessary that the charges against the accused are groundless. While deciding the charges alleged against the accused are groundless, the Magistrate can take into consideration only documents which are filed with the final report i.e. section 173(2) of Cr.P.C. There are various judgments of Hon'ble Supreme Court and High Court wherein it was held that what precautions or principles should be followed while deciding the discharge application and those are as follows:-

(a) That the Judge while considering the question of framing the charges under Section 227

of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made.

(b) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(c) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

10. Considering the above legal position discussed in the section 239 of Cr.P.C. and the final report filed by the police in present case it clearly shows that while deciding the discharge application the Court has to peruse the police report and documents send alongwith it under section 173 of Cr.P.C. In that context Hon'ble

Supreme Court has discussed in the case of **State of Orisa Vs. Debendra Nath Padhi, (2005) 1 SC 568 : (AIR 2005 SC 359)** it is calculate to eliminate harassment to the accused persons when the evidential material gathered after investigation fall short of minimum legal requirements.

11. In instant case it is admitted that the present complaint was instituted otherwise than on police report and after the order of Magistrate the offence was registered against the accused. On perusal of statement of witnesses and the xerox copy of cheque in question it appears that cheque was of the account of accused. No doubt at this stage of case it cannot be determined that whether the handwriting on the cheque was of accused or whether the cheque was bogus. It cannot be determined at this stage that the account bearing No. 416 was not in the name of accused and theory of accused regarding the Kiran Bhailal Patel and the firm B.F.Patel was not believable. Therefore, there is need of detail evidence moreover at this stage of case it is not expected to file the original cheque by prosecution. Therefore the original cheque in question is not filed on record, would not be the reason to allow the application of

accused. The seizure panchnama shows that it was seized from the complainant moreover there is a cheque return memo, therefore, at this stage it is prima-facie clear that there is role of accused in instant crime. The I.O. and Ld. A.P.P. submits that cheque in question is send for the handwriting expert and in that context there is a correspondence letters. Therefore, it cannot be said that the original cheque is not on record and accused is entitled for the discharge. The the Ld. Adv for accused relied on the judgment of Hon'ble Supreme Court **Vikram Johar Vs. State of Uttar Pradesh & Another AIR 2019 (SC 2109)**. I have gone through the judgment wherein Hon'ble Supreme Court has discussed the duties of the Court at the time of deciding the discharge application. The Hon'ble Supreme Court has discussed various case laws in the cited authority. However, the facts and circumstances of the cited authority and case in hand are totally different. Therefore, with the due respect to the judgment of Hon'ble Supreme Court, I am of view that the cited authority is not applicable to this case.

12. Considering the above discussion and the material available on record, I am of view that the

reasons mentioned in the application for the discharge of accused are not sufficient. I am of view that, in instant case there is prima facie material against the accused. Therefore, application deserves to be rejected. Accordingly, I pass the following order :-

Order

1. The application is rejected.
2. The case is old one, therefore, accused is directed to remain present on the next date for framing of charge.

Date : 01/09/2022

(S. N. Patil)
Judicial Magistrate, F.C.
(Court No.2) Pauni.