

MHGA010005712021



IN THE COURT OF SESSIONS AT GADCHIROLI

(Presided over by Shri. Uttam M. Mudholkar)

(Additional Sessions Judge)

Sessions Case No. 53/2021

Rajat Sitaram Gurnule

**... Applicant /
accused no.6**

..Versus..

State of Maharashtra,
Through- PSO, P.S. Gadchiroli
Tahsil & Dist. Gadchiroli

... Respondent

Adv. Shri S.T. Thakare for the applicant/accused no.6
APP Shri N.M. Bhandekar for State

Oral Order Below Exh. 8

(Passed on 23.11.2021)

1] This is an application moved by applicant/accused No.6 Rajat seeking his discharge under Section 227 of the Criminal Procedure, Code (for short 'Cr.P.C.').

2] It is contended that the authorities of Gadchiroli police have registered offences under Sec. 143, 188, 290, 291, 341 & 353 read with Sec. 149 of the Indian Penal Code and Sec.135 of Mumbai Police Act against present applicant/accused and his associates. There is no even prima facie evidence against the present applicant/accused

and even the evidence collected by the investigation agency is not trustworthy. The documents placed along with the charge-sheet would show that there is no material to presume commission of alleged offences by the present applicant/accused. Similarly, it is further contended that the name of the present applicant/accused has been inserted without there being his involvement in the commission of the said offences. Apart from this, he has been selected in the arm force and his training is completed. However, due to the existence of the charge-sheet he may not be continued in the service. As such, the applicant/accused deserves to be discharged in the present case. On these grounds, it is prayed that applicant/ accused Rajat be discharged in the present case.

3] The Ld. APP Shri. N.M. Bhandekar contested the application by filing his reply below Exh. 8 itself. It is contended that the accused is alleged to have committed serious offences and his name appears in the FIR as well as statements of several witnesses. The material in the charge-sheet demonstrates active participation of the applicant/accused and the case deserves for framing of charge even against the present applicant/accused. On these grounds, rejection of the application has been prayed for.

4] Perused the application, reply, record of the case and extensively heard learned advocate Shri. S.T. Thakare for the applicant/accused and learned A.P.P. Shri. N.M. Bhandekar for the State. It was vehemently submitted by Learned Adv. Shri Thakare for the applicant/accused that there is no evidence to connect the accused with the alleged offences and therefore, he deserves to be discharged. He further submitted that the date on which the alleged offences are alleged to have been committed, was concessional one whereon the

competent authority had permitted the carrying of procession on account of immersion of Goddess Durga. Similarly, the applicant/accused and his associates were simply dancing in the procession and they have in no way obstructed the performance of duty by the police and as such the application of Sec.353 of I.P.C. is misplaced. On the contrary, the action of the police was coercive. He further submitted that the police authority has no power to stop the playing of D.J. and even otherwise it is not the case of the investigating agency that the sound of the D.J. was beyond the permissible limit. The entire story of commission of the alleged offences reflected in the charge-sheet is full of contradictions. Lastly, he submitted that if the applicant/accused is not discharged his service career may get ruined. On these grounds, he requested to discharge the present applicant/accused. Per contra, Learned APP Shri Bhandekar vehemently submitted that there is prima facie evidence against the applicant/accused and therefore, he cannot be discharged. As such, he requested to reject the application.

5] I have carefully gone through the application, reply, the documents tendered on record by the applicant/accused and the charge-sheet. There is no dispute about the fact that the accused and his associates are alleged to have committed the offences as mentioned above.

6] Since the present applicant/accused is seeking discharge under Sec.227 of Cr.P.C., the scope of the same and the settled legal position needs to be looked into. So far as the scope of Section 227 of the Cr.P.C. is concerned, the legal position is very much clear that, if the trial Court is satisfied that a prima facie case is made out, then charge has to be framed.

7] In this respect useful reference of the decisions of the Hon'ble Supreme Court in the following cases can be made.

A] **State of Maharashtra Vs. Soma Nath Thapa** reported in (1996) 4 SCC 659, wherein the Hon'ble Supreme Court has held that,

if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Hon'ble Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

B] **Palvinder Singh Vs. Balwinder Singh and others** reported in (2008) 14 SCC 504 wherein it is held that,

the charges can also be framed on the basis of strong suspicion. That, marshaling and appreciation of evidence is not in the domain of the Court at the point of time.

C] **Dilawar Balu Kurane Vs. State of Maharashtra** reported in **AIR 2002 SC 564** Supreme Court of India, wherein it is observed that,

*“In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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 out. Where the material placed before the court discloses **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. By and large 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 justified to discharge the accused and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros & cons of the*

matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar 53 Sama & Another (1979 3 SCC 5)].”

D) **Dr. Dattatraya Narayan Samant Vs. State of Maharashtra** reported in **1982 Cr.L.J. 1025 Bombay High Court** , wherein the decision of the Hon'ble Supreme Court in the case of “Union of India v. Prafulla Kumar Sama” reported in [1979 (3) SCC 5)], the earlier decision of the Supreme Court in State of Bihar v. Ramesh Singh (1977 Cri LJ 1606) was heavily relied upon and followed, but he Supreme Court has further laid down various principles which are to be taken into account at the time to framing of the charge. Under the provisions of the S. 227, four principles were laid down. It was so observed in that case :-

"(1) That the Judge while considering the question of framing the charges under S. 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 out;

(2) Where the material placed before the Court discloses 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.

(3) 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.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which, under the present Code, is a senior and experienced Court cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and

cons of the matter and weigh the evidence as of he was conducting a trial."

8] Thus, it is clear that, the Hon'ble Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the prima facie case as made out by the prosecution. Having regard to this settled position of law let us scrutinize the material placed on record.

9] It can be gathered from the FIR that on 20.10.2018 the accused and his associates were dancing in the procession by playing D.J. and when the police persons directed them not to play the D.J., they behaved in an arrogant manner with them and in order to prevent seizure of the sound system, the same was allowed to be disappeared from the spot with the help of the remaining accused persons. Similarly, while the police persons seized those articles and were carrying the same to the police station, their way was obstructed and the seized material by the police was not allowed to be carried to the police station and some of them alighted on the said vehicle and threatened police that they will not allow them to carry the seized material and as such obstructed them in the performance of their official duty. The FIR is clearly worded and the name of applicant/accused figures prominently and as one of the active participants in the commission of the alleged offences. During the course of investigation, the investigating authority has recorded the statements of several witnesses including Sunil Besarkar, Sudhir Bawanwade, Vasant Gurnule, Chandrabhan Chaudhary, Vishwanath Pendam, Kishor Dhanfole, Sandip Zanjad, Ghanshyam Gavture, Gautam Sahare, Vilas Urade, Shrihari Gaurkar, Laxman Mohurle, etc. The contents of these statements are in tune with the offensive

activities that have been reflected in the FIR. The spot panchanama demonstrates that the sound system and other instruments worth Rs.4,32,800/-, which were found at the scene of occurrence, were taken into custody. Thus, the collective reading of the above discussed evidence demonstrates the complicity of the present applicant/accused in the commission of alleged offences. It was tried to be submitted by Learned Adv. Shri Thakare for applicant/accused that the action of police in the seizure of the sound system was unauthorised and therefore the resistance to the same by the applicant and his associates does not amount to commission of any offence. In the light of the evidence reflected in the charge sheet I have carefully considered the submission and record. Under the provisions of Mumbai Police Act and under Cr.P.C. the police authority has got every power and authority to stop the unruly activity or behaviour. There is nothing in the law to prevent the police authorities from seizing the sound system if the same is being played in the fashion of causing nuisance to the public and environment. Even if for the sake of argument it is assumed for a while that the police authority had no such power to seize or stop the playing of the sound system, the issue should have been resolved by the applicant and his associates by resorting to legal modes. Prima facie, it appears from the charge-sheet that the police authority was initially prevented from seizing the sound system and when it was seized, the way of the police authority was blocked and an attempt was made to take into custody, by the accused and his associates, the seizure of articles effected by the police machinery. These activities on the part of applicant/accused and his associates fulfills the requirements of the Sec.341 & 353 read with 149 of I.P.C. and 135 of Mumbai Police Act, at least. Apart from this, since Sec. 149 of I.P.C. has been applied, each of the accused

would be liable for the act committed in prosecution of common object, by each member of the unlawful assembly. Therefore, for every action of each member of the assembly the other members would be liable. Therefore, now it cannot be said that the present applicant/accused was simply dancing in the procession and was not participant for remaining activities as alleged in the charge-sheet.

10] Thus it is crystal clear that at this stage there is strong prima facie evidence against the present applicant/accused demonstrating his active involvement in the commission of the alleged offences. There is no axe to grind against the present applicant/accused by the informant or investigation officer and therefore, absolutely there is no possibility of implication of the present applicant in the false case. Thus looked at the evidence on record from all these possible angles and particularly from the above discussion as well as the ratios/principles laid down in the judgments cited supra, it would be crystal clear that this is not a fit case to discharge the present applicant/accused from the accusations leveled against him in the charge-sheet. So far as the submission of Learned Adv. Shri Thakare that in the event of not discharging the present applicant/accused from the allegations in the charge-sheet he would loose the job is concerned, the applicant/accused should have been vigilant and should have behaved like a civilized and law abiding citizen. At one point of time, he cannot behave otherwise and at the next point of time he cannot plead with folded hands for saving his service career. Therefore, the said emotional appeal cannot be upheld. In the result, the application deserves to be rejected. In the light of the above discussion and to meet the proper ends of justice, following order is passed :

ORDER

1. Application of Exh.8 in Sessions Case No.53/2021 stands rejected.

Date : 23.11.2021

(U.M. Mudholkar)
Additional Sessions Judge,
Gadchiroli