

ORDER (below Exh. 13)
(Passed on 17th July 2019)

1] This is an application by the applicant/accused praying for discharge under Sec. 239 of the Code of Criminal Procedure, 1973.

2] The applicant/accused submits that he has been falsely implicated in alleged defalcation and is indicted with the offences punishable under Sections 409, 467, 468 & 471 of the Indian Penal Code, 1860. There are overt allegations that the applicant/accused fabricated the documents i.e. challans without being supported by corollary payments and as such, committed misappropriation. The applicant/accused further submits that the allegedly misappropriated amount has been deposited by him with the concerned department. Thereby, he needs to be exonerated from the alleged offences. Accordingly, the discharge of accused is implored for.

3] The learned prosecutor resists the application by submitting that there is overt material to show that the applicant/accused has committed defalcation in respect of an amount of royalty to the tune of Rs.13,75,535/-. The said amount ought to have been remitted to the Government in the official transactions. However, the accused converted the same for his own use. So also, he has fabricated the entries and

challans. There is sufficient material to frame the charge against the accused. In the corollary, he does not deserve the discharge.

4] The Ld. Adv. Shri Lodalliwar for the accused vehemently argues that as the defalcated amount has deposited by the applicant/accused, he need not be saddled with any criminal prosecution. To buttress, he places reliance on **Pandurang -v- State of Mah. (Criminal Revision Appln. No.130/2014, the Hon'ble High Court of Judicature at Baombay, Nagpur Bench, Nagpur)** and **Dagadu -v- State of Mah. reported in 1982 Cri.L.J. 1866.**

5] While appreciating merits of the present application, it needs to be noted at the outset that the applicant/accused solely rests his claim of discharge on the fact that the defalcated amount has been deposited by him with the concerned department. The learned Adv. Shri Lodalliwar places reliance on Government circular dated 6th of May, 1976 as is referred to, in the aforesaid case laws. It is needless to mention that as per the said circular, the misappropriated amount needs to be paid / deposited, by the delinquent 'within one month from the date of misappropriation being noticed'. We are respectfully bound by the aforesaid case laws. The sole question that needs to be addressed as of now, is whether the amount misappropriated has been paid by the applicant/ accused / delinquent within

one month from the date of misappropriation being noticed. The available material shows that there was audit ensued in respect of the present defalcation. It culminated in the report (of the auditor) dtd 20.11.2017. The said audit report is annexed with the statement of applicant/accused. The applicant/accused had participated in the said audit and has been thoroughly aware of the report. It may, thereby, be inferred that the defalcation herein was surfaced on 20.11.2017. In the corollary, the misappropriation herein has been within the notice of applicant/accused since 20.11.2017. As per the circular afore-mentioned, the applicant/accused was expected to pay the defalcated amount on or before 20.12.2017. However, it is glaring from record that no such payment has been made by the applicant/accused within one month from 20.11.2017. On the contrary, the available document shows that there was payment made by applicant/accused on 13.06.2018, 13.07.2018 and on 17.07.2018. Admittedly, this is not the payment within one month from 20.11.2017. Thereby, no prima facie shelter can be taken of by the applicant/accused, of the Government circular supra.

6] It is further pertinent to note that the applicant/accused does no where make it clear as to when he came to know about the alleged misappropriation. Had the said date been made clear by the applicant/accused, the period of one month would have well been reckoned. However, the same is not done by the accused. Therefore, this Court is left

with no option but to hold that the said period of one month starts from 20.11.2017. On that count, the payment of defalcated amount, as is tried to be taken shelter of by the applicant/accused, is of no avail. In the same analogy the afore-stated case laws, with great respect are of no help to the applicant/accused.

7] The bare perusal of available material particularly the audit/enquiry report as afore-mentioned does in categorical term coupled with report and material, as is culled out during investigation, show prima facie complicity of the accused in the commission of alleged offences. The same, thereby, warrants framing of charge and trial to ensue against the applicant/accused. The claim of discharge in this behalf is devoid of merits. The application thereby needs to be rejected. Hence, the order.

ORDER

The application is rejected.

Place : Gadchiroli
Date : 17.07.2019

Sd/-
(B. M. Patil)
Chief Judicial Magistrate,
Gadchiroli
MHGA03-1164