

MHKO110013272008



Reg Cri. Case No.06/2008.
(CNR No.MHKO110013272008)

Order Below Exh.139.

Present application is filed by accused No.03 – Ashok Janardhan Petkar (henceforth referred to as applicants) under Sec. 245(2) of Code of Criminal Procedure (in short Cr.P.C.)

02. It is contention of applicant that, the complainant has filed present complaint against him as he was the director of the society. It is further contended that, he has not committed any offence. On perusal of entire complaint it seems the allegations are made only against accused No. 1 and 15. As far as the applicant is concerned there is only omnibus statement made against him and he is added as accused only because he is director. The applicant has not taken any part in day to day affairs of society. Moreover, complainant failed to produce any legal evidence in support of his allegations. Therefore, the present applicant is not liable for criminal action against him. Hence, it is prayed that the applicant be discharged from the present case.

03. Even after giving ample opportunities, complainant failed to file his say on the present application. Hence, as per the order passed on the present application dated 05/03/2023, the present application is proceeded further without the say of complainant.

04. Perused application. Heard both the parties.

05. Learned advocate for the complainant submitted that, he does not have any objection to pass appropriate order, in view of order of writ petition.

06. The present case is instituted otherwise than on police report. The present application is filed under Sec. 245 of Cr.P.C. Under Section 245(1) of Cr.P.C., If, upon taking all the evidence referred to in Sec. 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out each, if unrebutted would warrant is conviction, the magistrate shall discharge him. Under Sec. 245(2) nothing in the section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge would be groundless.

07. In present complaint still evidence is to be lead but as stated under sub Sec. (2) of Sec. 245 nothing shall deemed to prevent a Magistrate from discharging accused at any previous stage of a case if, for reasons to be recorded by such magistrate, he considers charge to be groundless. Now let us see the contents of complaint and documents filed by complainant. It seems in the complaint the applicants are shown as directors of the society. Allegations in the complaint seems to be basically only against accused No. 1 and 15. In the complaint it is mentioned that false loan case was sanctioned in name of complainant showing him as a proprietor of Hotel Vanrai. Further complainant came to know

accused No. 1 and 15 by hatching conspiracy between 09/11/1998 till 07/12/1998 has withdrawn loan amount of ₹1,50,000/- from above sanction loan. But against present applicant the only statement is that he is director of the society. I have also gone through documents filed along with (Exh.03) by the complainant. Even after going through the said documents it is also not clear as to what is the prima-facie evidence against the applicant brought forward by filing the present documents. So also Hon'ble Bombay High Court in Writ Petition No. 2946/2010 has quashed order of issue process, passed against directors i.e. original accused No. 2, 4, 5, 6, 7, 8, 9, 11 and 13. As far as the said accused are concerned their role is similar to that of present applicant. Because of the order of the Hon'ble High Court passed in the Writ Petition No. 2946/2010 and its observations, all the materials the charge against the applicant seems to be groundless. Only because he is director, he can not be compelled to face trial without prima-facie evidence and hence he deserves to be discharged from present case. Hence, the order.

ORDER.

1. Application is allowed.
2. Accused / applicant No.03- Shri. Ashok Janardhan Petkar is discharged for offences punishable under section 408, 409, 418, 420, 462, 467 and 468 read with 34 of Indian Penal Code, vide section 245(2) of the Code of Criminal Procedure.
3. Bail bond of accused / applicant no.3 stands cancelled.

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4. Application is disposed off accordingly.

Date : 11/08/2025.

(Shrinivas A. Kulkarni)
Judicial Magistrate First Class,
Peth-Vadgaon.