



ORDER BELOW EXH. 38 IN REG. CRI. CASE NO. 27/2014

This is a case for the offences punishable u/s. 466, 467, 468, 218, 471 r/w. 34 of the Indian Penal Code, 1860 (*Hereinafter referred to as 'the IPC'*). By this application, the accused No. 1 is praying to discharge him from the alleged offences vide section 239 of the Code of Criminal Procedure, 1973 (*Hereinafter referred to as 'the Code'*). In the application it is contended that he has no concern with the alleged crime and he has been falsely implicated in the case. On consideration of entire charge-sheet, nothing incriminating material is put forth before the Court in order to prima-facie prove to guilt of the accused. Further, if the allegations are seen, those are concerning to the act of accused No. 1 in discharge of his official duty and as such, considering bar put vide section 197 of the Code, no cognizance can be taken against the present accused for the alleged offence. Thus, he is liable to be discharged from the case and prayed accordingly.

2. The application is strongly resisted by the ld. APP by filing say to the backpage of application itself. Wherein it is contended that, the accused has prima-facie role in the commission of alleged crime. Stage of cognizance is already gone away. Therefore, she prayed to reject the application.

3. Heard Shri. K.G. Patil, the ld. advocate for the accused No. 1 and Smt. N.D. Chavhan, the ld. APP at length.

4. Smt N.D. Chavhan for this purpose placed her reliance on the law laid down by the Hon'ble Apex Court in *Onkar Nath Mishra and Ors., Vs. State of NCT of Delhi, (2008) 2 SCC 561*.

5. To analyse the question kept before the Court, it is very necessary to see section 239 of the Cr.PC. which runs as under:-

'239. when accused shall be discharged :

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.'

6. A plain reading of the section would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punish by him.

7. As rightly submitted by the ld. A.P.P., the ambit of section 239 of the Code and the approach to be adopted by the Court while exercising the powers vested in it under the said provision is discussed by the Hon'ble Supreme Court in the case of *Onkar Nath* (Supra) wherein it is held that,

“It is trite that for the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all ingredients constituting the alleged offence. At that state, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material

which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

8. Turning to the record of the case, on perusal of the record annexed with the charge-sheet it can be seen that after considering the entire prosecution story it does not make the situation to think the Court that the charge against the accused persons is groundless.

9. Whether, the alleged act of accused No. 1 inviting prosecution was really falls within the ambit of his official duty would be a matter of trial. Moreover, once the Court has taken cognizance of the offence by issuing process against him for the alleged offence, it is presumed that, the Court has applied its mind before ascertaining the question that, whether process should be issued against accused No. 1 or not. Further, in criminal Jurisprudence, this Court has no power to review its own order by traveling back. As such, I found no substance in the said submission of the accused No. 1. In fact while considering any application of discharge under section 239 of the Code of Criminal Procedure, it is not expected to look into the evidence of the defence filed if any. Therefore, there is no substance in the application and it is liable to be rejected at threshold. Hence, following order.

ORDER

The application below Exh. 38 stands rejected.

Date : 04/02/2022

(A. C. Birajdar)
Judicial Magistrate, First Class,
(1st Court), Chandgad.

CERTIFICATE

I affirm that the contents of this P. D. F file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. P.W.Ghodekar, L. G. Stenographer.
Name of Court	Shri. A. C. Birajdar, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	04/02/2022
order signed by the P. O. on	04/02/2022
order uploaded on	05/02/2022,