Order below Exh.29 in R.C.C. No.193 of 2024
(Passed on this 17th day of December, 2024)
State Vs Chandrakala & Ors.
CNR.NO.MHLA060010842024

Accused No.1 to 3 have filed the present application under Section 239 of the Code of Criminal Procedure (in short 'the Cr.P.C') to discharge them from offences punishable under Sections 420, 406, 467, 468, 504 read with 34 of The Indian Penal Code (in short 'the I.P.C').

02. Accused No.1 to 3 submitted that, they reside at Mauje Ahmedpur, Tq.Ahmedpur, Dist.Latur. So, the informant has no concern with them. Further, in the alleged proceeding, the Investigating Officer and in-charge officer has not mentioned the date on the final report. Also, the final report of the investigation which is filed in Court reveals that the accused cheated the informant and witnesses with a total amount of Rs.30,50,000/-. Also, the informant has stated in information report that accused cheated him by taking Rs.29,10,000/-.

03. Further, in the alleged proceeding, the informant has made false and fabricated case by stating in information report dated 27.07.2023. Also, on 29.05.2023, the informant has given application in the name of Dy.S.P., Police station, Ahmedpur. In the alleged proceeding, there are two information reports and different supplementary statements of informant.

04. Further, in the alleged proceeding, the supplementary statement of informant is recorded on 05.10.2023. From the two information reports of informant, there does not appear that accused committed the alleged offences. So, the accused persons cannot be charged for that.

05. Further, in the information report, there was total Rs.27,30,000/- of six persons. But, in the information report it is mentioned that all women have not paid Rs.29,10,000/- and the plot has not been given. Also, it is mentioned therein that the witness has taken money from accused to give plot of witnesses.

06. Further, it is mentioned in the information report that, the money of accused is taken by the informant. The money of accused is taken by the informant and prosecution witnesses and filed false and fabricated case against the accused persons and a false chargesheet is filed against them.

07. Further, it is mentioned in the information report that, "माझ्याकडील जमा रक्कम रु. १,४०,०००/-". But the said fact is not stated in the application dated 29.05.2023. Also, in the supplementary statement dated 05.10.2023 it is mentioned "बुलढाणा बँकेत सोने ठेवुन रोख रक्कम घेतलेले रु.१,४०,०००/-". But the said fact is not stated in the information report dated 27.07.2023. So, the information report is doubtful. Also, it is mentioned in the information report that, the informant obtained loan of Rs.2,30,000/- from HDFC Bank. But the said fact is not stated in the information report. Further, in supplementary statement, it is mentioned that load has been obtained from HDFC Bank of Rs.2,00,000/- and the said amount is given to Nandu Kadam. So, there is discrepancy in the amount mentioned in information report and supplementary statement. It is seen that, the said amount is given in the hands of Nandu Kadam. But it appears that police have not taken any action against him. Further, the statements of Aashabee Fakir, Shivdas Bharde, Ashok Bharde are recorded false. So, the alleged offence is false and fabricated. Hence, he prayed to allow the application.

08. Ld APP filed her say on the overleaf of the application. She contended that, the alleged offences are serious in nature. After perusal of FIR and statement of witnesses, it is crystal clear that there is direct evidence and specific name is mentioned in the complaint. Prima facie, there is evidence against all accused. There is no ground to discharge the accused, so this application is not tenable. According to charge-sheet, there is evidence against all the accused and all are conjointly liable to the alleged offences. Considering all these, it appears that accused persons have cheated the informant. Therefore, she prayed to reject the application.

R E A S O N S

09. Perused application, say thereon and record of the present proceeding. Heard Ld Advocate Shri D.S. Peste for accused No.1 to 3 and Ld APP Shri S.S. Hudage for the State.

10. Ld Advocate on behalf of accused No.1 to 3 argued at length and submitted that, the total amount mentioned is Rs.5,20,000/-. The complaint is of 27.07.2023. The false chargesheet is filed against the accused. He argued that, there is mentioned about the money taken in information report but the informant has not stated the specific names of accused therein.

There is contradiction in respect of amount in complaint. Further, he argued that, the statement of Ashok Ram Bharde if perused appears that Ramesh has kept Rs.3,70,000/-. If the statements of Sakhubai and Laxmibai are perused, it appears that the informant has taken money of the accused. So, the charge levelled against the accused are false. Hence, he prayed to allow the application.

11. Ld APP for the State submitted that, his argument be treated as per the say filed on the present application. The matter is pending for framing of charge. Meanwhile, the accused No.3 has filed the present application. Further, she argued that, there is deception of Rs.29,10,000/-. Hence, she prayed to reject the application.

12. For better discussion of the present application, it is useful to extract Section 239 of the Cr.P.C which reads as under :-

> ***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 groundless, he shall discharge the accused, and record his reasons for so doing.*

13. According to this provision, the accused No.1 to 3 shall be discharged where the Magistrate consider the offence alleged against them to be groundless. Therefore, at this juncture it is necessary to see whether the charge levelled against the accused No.1 to 3 in the present case are groundless. In the present case, it is alleged that the accused No.1 to 3 have committed an offence punishable under Section 420, 406, 467, 468, 504 read with 34 of the I.P.C. On perusal of the first information report and statement of witnesses, it is seen that the serious allegations are made against the accused No.1 to 3. The specific name of the accused No.1 to 3 are mentioned in the first information report. However, at this stage no inference can be drawn that the statement of witnesses is false. Prima-facie there are sufficient grounds to proceed against the accused No.1 to 3 to frame charge for offences punishable under Section 420, 406, 467, 468, 504 read with 34 of the I.P.C. and the charges levelled against them are not groundless. Therefore, I am of the view that at this stage without evidence of witnesses, it would not be proper to discharge the accused No.1 to 3 from the alleged offences. Hence, the application is liable to be rejected. Accordingly, I proceed to pass the following order.

O R D E R

The application **(Exh.29)** is rejected.

DISTRICT COURTS MAHARASHTRA

Digitally signed by KANCHANKAUR GADIWALE
Date: 2024.12.18 14:04:21 +0530

Place :- Ahmedpur.
Date :- 17.12.2024.

(K.B. Gadiwale)
Jt. Judicial Magistrate First Class,
(Court No.04), Tq.Ahmedpur
Dist.Latur.