

	<p><u>ORDER BELOW EXH. 37</u> The State Vrs. Venkat Gunale & Ors. passed on 05th September, 2023 CNR No.MHLA060018132016.</p>
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01. This is an application filed by the applicant accused No.02 to discharge him under Sec. 239 of the Cr.P.C. It is the contention of the applicant that, complaint filed by the complainant does not disclose any offence against said applicant. The entire charge-sheet, statement of witness and document on record does not disclose role of accused in alleged offence. The present accused and accused No.01 are living separately since 11 years. It is his further contention that, the civil suit filed by the complainant bearing R.C.S. No.78/2015 is also dismissed by the Court. The accused No.02 has no any concerned with ancestral property. He is Doctor and running his own hospital at Ahmedpur. There is no specific allegation nor any direct evidence is available in charge-sheet to frame the charge against this accused No.02. The complainant has falsely involved the name of present accused to defame him. The present applicant is innocent person and has been falsely implicated in the above case. The report under Sec.173 of the Cr.P.C. shows that there is no *prima facie* case against the accused to connect him with the present crime. He is neither signatory nor witness of the alleged fabricated document. Therefore, there is no sufficient material on record to

prove the ingredient of Section 420, 416, 418, 463, 464, 467, 468, 471 r.w. Sec. 34 of the IPC, and therefore, prayed to allowed the present application.

02. The Ld. counsel of State filed his reply on the said application and resisted the application by submitting that, perusal of complaint and statement of witnesses shows that, present accused is participated in the present crime. Therefore, he prayed to reject the application.

03. Perused record. It shows that, the informant namely Venubai @ Shantabai Tulshiram Nadarge lodged report against accused namely Venkat Naraba Gunale, Shashikant Venkat Gunale, Sopan Bharat Kolhe, Shaikh Husen Shaikh Mohammad, Vishvanath Venkat Gunale, Avantika Venkat Gunale and Ashabai Baburao Kamble. It is her contention in the report that, deceased Naraba Ramji Gunale was her father. She is having one brother and three sisters, out of which two sisters namely Indirabai and Parvatibai have already been died. The sister namely Padminbai and brother Venkat is alive. It is her further contention that, they are having ancestral property including house, plot and landed properties. After demise of her father, the land S.No.52/1 Area 02 H 92 R came to be mutated in the names of brothers and sisters and remaining properties is in the

name of her brother Venkat and his wife and their children as namdhari/nominally. She has filed one civil suit for partition bearing R.C.S. No.78/2015 which is pending in the concerned Court. It is her further contention that, during pendency of said suit, her brother and all other accused with intention to deprive them from their share executed registered relinquishment deed on 20/01/2015 in favour of accused No.01 at Ahmedpur. All accused have prepared false and bogus document, used photographs of accused namely Avantikabai and one other female, affixed their photographs pretending that, they are informant and her sister and did forged signature and thumb on the relinquishment deed, prepared false I.D. proof, nebulous I.D. proof and by using those I.Ds registered the document by pretending that, identification was given by person namely Sopan and Husen. Accordingly, the name of informant and her sister came to be deleted from 7/12 extract. When the informant went to collect the 7/12 extract, she came to know about said incident. Therefore, she lodged the present F.I.R.

04. Heard Ld. Counsel of the accused Shri. Musane, Ld. counsel on behalf of State. They both argued as per their contention in application and in reply of said application. Perused record. After going through the whole record, the relinquishment deed, prima

facie reveals that, in front of the name of Padminbai Madhavrao Patewar the photograph of accused No.07 is appearing while in front of the name of Venubai @ Shantababi Tulshiram Nagarge, the photograph of accused No.06 is appearing. Further, it appears that, on the basis of said relinquishment deed the names of informant and her sister came to be deleted from the 7/12 extract.

05. The allegation leveled against the accused are, in furtherance of their common intention the said offence have been committed. Admittedly, the present applicant is not party to the relinquishment deed; but the statement of witnesses recorded by I.O. prima facie showing the involvement of present accused in the offence. Therefore, in view of relinquishment deed on record as well as statement of witnesses recorded by the I.O., it would not be proper to discharge the applicant at this initial stage.

06. The applicant kept reliance on citation of the Hon'ble Supreme Court in Criminal Appeal No.1661 of 2009, March 15, 2022, *Gadadhar Chandra v. The State of West Bengal*, in which the Hon'ble Supreme Court has observed that, "common intention contemplated by Section 34 of IPC pre-supposes prior concert. It requires meeting of minds. It requires a pre-arranged plan before a man can be vicariously convicted for the criminal act of another. The

criminal act must have been done in furtherance of the common intention of all the accused." Further in Criminal Appeal No.1584 of 2021 [@ SLP (CRL.) NO.11816 OF 2019] *Jasdeep Singh @ Jassu Vrs. The State of Punjab*, the Hon'ble Supreme Court has observed that, "Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him at par with the one who actually committed the offence."

The above observation of the Hon'ble Supreme Court is not useful for the applicant in the present case as in both the cases appeal came to be filed before the Hon'ble Supreme Court, after full fledged trial, while in the case in hand, it is at very initial stage. Therefore, in view of above discussion and considering the initial stage of the case and the material available on the record, it would

not be proper to allow said application, in the result, present application is rejected.

Date :05-09-2023.

(A.S. Jarude)
Judicial Magistrate First Class,
(Court No.02), Ahmedpur.