

MHND260004942021



ORDER PASSED BELOW EXH. 31

This is an application by accused under section 239 of Code of Criminal Procedure praying for discharge from the offence punishable under section 379 read with 34 of Indian Penal Code.

2. According to accused, there is civil litigation pending between them and informant. In which civil court granted temporary injunction in their favor. Present case is filed by the informant to counter blast to civil suit. Accused further contended that, there is no eye witness to show that they committed theft of crop from the land of the informant. Hence, prayed to allowed the application and discharge them from the prosecution.

3. A.P.P. filed say over leaf opposed this application on the ground that, reasons mentioned in the application are not sufficient to discharge accused. There is a specific allegation against accused and overt act and specific role of accused in the chargsheet.

4. Read application, say heard learned Advocate for applicant/accused and A.P.P. for state at length.

5. From the perusal of record it shows that, allegation of accused committed theft of crop from the land of informant is on record and prosecution investigated the case. During investigation statements of ten witnesses are recorded. There are several documents are on record which is at serial no. 11 to 22. On the contrary, accused/applicant filed documents of civil litigations between the parties below list Exh. 35.

6. Section 239 of Code of Criminal Procedure deals with discharge of accused, when court comes to the conclusion from the perusal of entire chargsheet. During the course of argument Advocate for accused emphasised upon documents of civil litigations. Now the questions remains as to whether said documents can be considered at the juncture.

7. Hon'ble Supreme Court given guidelines in the case of State of Orissa Vs. Debendrnath Padhi in which Hon'ble Supreme Court specifically stated what is expected to be looked into while dealing with application for discharge. ***State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568.*** Relevant paragraph of Judgement is quoted as follows :

8. Para no. 6 of the judgment reads as at the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. These two sections read as : *Section 227 CrPC* “227. *Discharge*.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.” *Section 228 CrPC* “228. *Framing of charge*.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report; (b) is exclusively triable by the court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

9. Para no. 7 of the judgment reads as Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate to consider “the police report and the documents sent with it under Section 173” and, if necessary, examine the accused and after giving the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

10. Para no. 16 of the judgment reads as All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground

exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect, however, has been adverted to in *State Anti-Corruption Bureau v. P. Suryaprakasam* [1999 SCC (Cri) 373] where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. *The only right the accused has at that stage is of being heard and nothing beyond that.* (emphasis supplied) The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code.

11. As discussed above, Courts has to see only the statements of witnesses and documents filed by prosecution while dealing with application for discharge. Considering the material brought by prosecution in this case. This court is of opinion that accused cannot be discharged and material filed by prosecution cannot be discarded at the threshold. Further the contention of applicant/accused of civil litigation between parties and whether or not present case is counter blast to civil litigation can be considered after conclusion of trial. Hence, I pass following order:-

ORDER

Application rejected.

Sd/-

Place :- Ardhapur
Date :- 24/08/2023

(Q. R. Syed)
Judicial Magistrate First Class,
Court no. 02 Ardhapur.