

**RCC No. 243/2008**  
**State / Dhiraj @ Munna**

**Order Below Exh.168**

This application is filed by accused No.5 Harish S/o Amolchand Munot u/s 239 of the Code of Criminal Procedure for discharging the accused No.5. Harish Munot.

2. It is contended by the applicant/accused that he is doing a business in Nagpur city. He stands prosecuted in the instant case for the offence punishable under section 420, 467, 468, 471, 114 R/w Section 34 of the Indian Penal Code vide crime No.165/1999 registered with the Police Station Wadi, Nagpur on the basis of the alleged complaint lodged by Shri Daulat Laxman Ramteke. He further contended complainant made a trap and seized 30 TRF Luna from the Truck bearing registration No. MH-12-UA-4006 standing on godown and 11 TRF Luna from M/s Ajanta Motors, Medical Square, Nagpur. They have also seized 9 octroi receipts and after verifying they found that the said receipt were mentioned in the said truck (Onion Goods) and deposited the tax on onion which was mentioned in the said receipt and thereafter some correction found on particular receipt and saved the octroi which was more than the paid by the said dealer therefore police has registered the above offence.

3. It is further submitted that the applicant/accused made a accused as he was the owner of the M/s Ajanta Motors, Medical Square, Nagpur. It is contended by applicant/accused that he has not saved any octroi the receipt were collected by authorities which was given by accused No.1 Dhiraj who was commission agent, he used to deposit the amount on

every truck of the said dealers and he used to correct the receipt and shown to the accountant of the dealer therefore, accountant immediately issued the amount to the said agent on regular basis but the said agent is the maker of the particular receipt and he having conspiracy with the NMC employee and therefore the fraud made by the accused No.1 and not the applicant/accused.

4. It is further contended that after due enquiry and the investigation is also satisfied the main culprit of the said offence therefore, the NMC Nagpur suspended their respective employee therefore, the said offence registered by the police is not connected with the present applicant/accused. He further submitted that the police authority arrested the accused No.1 on 14.10.1999 and recorded his confessional statement and stated that Raju Kohade, Shyamrao Lanjewar and Vikas Raut are working with him as a helper at Naka No.10 and passing the truck by showing the goods are onion and deposited Rs.100/- and taken a receipt this is the work of those three persons and thereafter the accused No.1 Dhiraj by using blue colour pen and erase the name of onion over the receipt and mentioned the name of the particular agency and quantity of two wheeler and also mentioned as per new octroi mentioned the figure over a particular receipt. Accused No.1 Dhiraj by showing the said receipt to the dealer/ employee who has having authority/ cashier paid the amount to the accused No.1 Dhiraj. Hence, it is crystal clear and according to the confessional statement everything down by accused No.1 Dhiraj and not the present applicant/accused. Applicant/accused has deposited the receipt with the police for fair investigation. The investigation officer has prepared panchnamas of different dealers, recorded the statement of witnesses of

different point and different work regarding the said offence but nothing is come out from the stated of said person against present applicant/accused.

5. It is further submitted that the applicant/accused lodged the FIR on 29.09.1999 in PS Imamwada against accused No.1 Dhiraj and others when applicant/accused came to know such thing is going on which was against the law. PS Imamwada registered crime No.196/1999 u/s 420, 468,471 of IPC. The entire matter main accused and main culprit is the Dhiraj and police authority implicated the applicant and given the colour of the case. The whole case is depended on documentary evidence and police has seized entire relevant document with respect of the alleged crime. The said section are not applicable to the present applicant/accused and illegal act committed by any person whereas from the material available on record there is absolute no sufficient Existing ground to proceed against the present applicant/accused. The police authorities without verifying the truth arrested the present applicant/accused and filed the charge sheet against him. It does not disclose the existence of ingredient for the alleged offence any link or nexus between the applicant with the alleged crime. Hence, he prayed to discharge the applicant/accused.

6. The learned APP has filed say at Exh.169 and submitted that the bilty of the goods brought alongwith the requisite fees for octroi clears the vehicles at the octroi post and reimburse the fees from the agency-owner. Thus, there is direct nexus between accused No.1 being the commission agent and the present applicant/accused being dealer in two wheelers in order to clear and evade the requisite octroi fees in furtherance of common intention, the accused No.1 has cheated the NMC octroi and forged and

fabricated the octroi receipt. Thus, this applicant/accused has wrongfully gained money. Even after such forged and fabricated octroi receipts, this applicant/accused has not brought it to the notice of NMC octroi officials. It only came to the light when the goods were seized from his show room and godown, this applicant/accused has pretended that he is ignored about the forgery cheating and innocent. Hence, he prayed to reject the application.

7. Perused the application and say. Heard both parties. Advocate Shri P.K. Bezalwar argued for accused no.5 Harish Munot that no role is attributed to the present applicant in the FIR. He further argued that there is no evidence against the applicant/ accused in the present crime. He lastly prayed to discharge the present applicant/accused.

8. Heard learned APP Smt. Sangita Goge for State. From the record, it appears that from the record that there is direct nexus between accused No.1 being the commission agent and the present applicant/accused being dealer in two wheelers in order to clear and evade the requisite octroi fees in furtherance of common intention, the accused No.1 has cheated the NMC octroi and forged and fabricated the octroi receipt. Considering the above facts and circumstances of the case, the application for discharge of the applicant/accused is hereby rejected.

9. On perusal of the FIR, seizure panchanamas, statement of witnesses and documents on record, it appears that accused No.1 Dhiraj who was commission agent, he used to deposit the amount on every truck of the said dealers and he used to correct the receipt and shown to the accountant of the dealer therefore, accountant immediately issued the amount to the said agent on regular basis but the said agent is the maker of

the particular receipt and he having conspiracy with the NMC employee and therefore the fraud made by the accused No.1 and not the applicant/accused. So also when the applicant/accused known about this fraud, he lodged the FIR against accused No.1 in police station Imamwada. There is no prima facie material and grounds on record to show the involvement of this applicant/accused in the commission of alleged offences and to frame the Charge of alleged offences against this applicant/accused. It does not disclose the existence of ingredient for the alleged offence any link or nexus between the applicant/accused No.5 Harish S/o Amolchand Munot with the alleged crime.

10. It is held by the Hon'ble Apex Court in the case of "Union of India vs. Prafulla Kumar Samal (reported in 1979 (3) SCC,4) wherein the Hon'ble Apex Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their fact value establish the ingredients constituting the said offence. The Apex Court in para 9 and 10 its judgment issued guidelines which are reproduced below.

*"(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or*

*not a prima facie case against the accused has been made out.*

- (2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.*
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experience judge can not act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basis infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

11. It is pertinent to note that applicant/accused No.5 has filed xerox copies of his account which discloses that he had paid all the tax amount. Further he also filed the complaint before this complaint. Complaint also filed the alleged octroi receipts, it receipts discloses overwriting. After scrutinizing all the fact the present applicant/accused

No.5 has lodged report against accused No.1. Under these facts and circumstances, the instant application for discharge of accused No.5 Harish S/o Amolchand Munot is liable to be allowed. Hence, I proceed to pass the following order.

**ORDER**

1. Application vide Exh.168 for discharge of accused No.5 Harish S/o Amolchand Munot is hereby allowed. He be discharged from this case.
2. Case be proceeded further against remaining accused.

Dtd. 12.11.2021

(S.B.Pawar)  
Chief Judicial Magistrate, Nagpur.