

RCC No. 243/2008  
State/Nikhil Kusumgar

**Order Below Exh. 173**  
**( Passed on 10.02.2023)**

Accused No. 3 Nikhil Naresh Kusumgar has filed application for discharge u/sec. 239 of Cr.P.C..

2. It is averred in the application that the applicant /accused No. 3 is doing business in Nagpur. It is alleged against him that he imported vehicles in the city of Nagpur by evading Octroi. The Octroi Inspector Daulat Laxman Ramteke has lodged complaint alleging that one Dhiraj Godghate has prepared forged and fabricated document and misused the same and cheated the octroi department. Therefore, Crime No. 165/99 registered for the offence punishable u/sec. 420, 467, 468, 471, 114 r/w 34 of IPC.

3. It is further averred in the application that the investigating officer has not found anything that could directly implicate accused No. 3 for the said offence. Accused No. 3 has no direct nexus with commission of the crime. The allegations made in the chargesheet against accused No. 3 are incorrect. The alleged offence is not made out against the accused. All the allegations made in the charge sheet are against the main accused i.e. Dheeraj Godghate. The allegations made against accused No. 3 are baseless. Hence, prayed that accused No. 3 be discharged.

4. The learned APP has filed say and resisted the application. It is

contended that the prosecution has filed two receipts issued in the name of accused No. 3 in which correction had made. It shows that accused No. 3 has knowledge about the fact and to avoid to pay octroi and for personal gain he has committed the crime. Prima facie accused No. 3 is involved in the alleged offence hence, application filed by accused No. 3 be rejected.

5. Heard Ld. Adv. for accused No. 3 and A.P.P.. From rival contentions of both the parties, following points arise for my determination, my findings thereon with reasons are as under :-

<u>Points</u>	<u>Findings</u>
1. Whether accused No. 3 is entitled for discharge ?	... No.
2. What order ?	... As per final order.

#### REASONS

6. Perused documents on record. Charge sheet No. 36/2000 is filed on 15.05.2000 against accused No. 1 Dhiraj Golghate, accused No. 2 Rajiv Kohale, accused No. 3 Nikhil Kusumger, accused No. 4 Prakash Jain, accused No. 5 Harish Munot (discharged), accused No. 6 Jawahar Rawal, accused No. 7 Y. Jagannathan, accused No. 8 Shailendrasingh @ Bablu (present applicant), accused No. 9 Doma Kamble, accused No. 10 Ashok Junghare(abated) and accused No. 11 Sudhakar Hud(Abated), accused No. 12 Anil Somkuwar, accused No. 13 Dnyaneshwar Gaikwad, accused No. 14 Shankar Ukad and accused No. 15 Harilal Tambe (abated). It is alleged against accused No. 1 to 15 that in furtherance of their common intention, statutory obligation of paying octroi duty was not fulfilled by accused No. 1 to 15 and they misrepresent goods as "Onion" and not "30 vehicles Luna"

for which Rs. 6000/- octroi duty was required to be paid however, they paid only Rs. 100/- and evaded to pay octroi duty as per rule and thereby committed an offence of cheating and forgery and therefore charge sheet is filed against them for the offence punishable u/sec. 420, 467, 468, 471, 114 r/w 34 of IPC.

7. The learned adv. for accused No. 3 argued that he is not at all involved in the alleged offence. Accused No. 1 Dhiraj Golghate was the Commission Agent. He used to deposit the amount on every Truck of the dealers and used to collect the receipts and deposited to the Accountant of the dealer. Accused No. 1 did conspiracy with NMC employee and committed alleged fraud.

8. The learned adv. for accused No. 3 has placed his reliance in the case of **Guru Bipin Singh Vs. Chongtham Manihar Singh** reported in **Manu/SC/1783/1996** wherein it was held that, "*Complaint against the appellant u/sec. 465 and 468 r/w sec. 420, even allegations made in complaint if true, do not make out case for forgery. Complaint does not make out the case under any of three sections namely 420, 465 and 468. It may be pointed out that 468 is intimately connected with 420 and 465.*"

9. The learned adv. for accused No. 3 argued that it is alleged that accused No. 1 Dhiraj Godghate has prepared forged and fabricated document therefore, in view of the above referred decision the offence u/sec. 420, 465, 468 can be made out against accused No. 3.

10. I have perused FIR No. 165/1999 wherein it has specifically

alleged that accused No. 3 is the owner of M/s. N.K. Kusumgar. He alongwith one P.K. Jain, Proprietor of Aditya Auto Agency prepared two forged receipts of Octroi and in furtherance of common intention with accused No. 1 evaded octroi duty. It shows that there are specific allegations against accused No. 3 regarding cheating and forgery. Therefore, with due respect above referred decision is not applicable to the present fact of the case.

11. Prosecution has filed show cause notices issued to the accused, invoices, bill for octroi slips. It appears that in the column of description of goods in octroi slips, goods mentioned as "Onion" and scribing the word "Onion" written word "Luna". It prima facie shows that octroi receipts were manipulated and forged and present accused has knowledge about the said manipulation. Merely filing statement of account, showing that amount was already paid to the Agent for paying octroi duty is not sufficient. It is necessary to find out whether accused No.3 was also getting commission in evasion of octroi duty and whether he was also involved in the alleged offence.

12. Admittedly, company is not impleaded in the charge sheet however, that is not the ground to discharge the accused for cheating and forging the documents for evasion of octroi duty. Though later on owner/Manager of Ajay Motors Pvt. Ltd. has filed FIR against accused No. 1 for the offence of cheating and forgery, merely filing of FIR cannot be a ground to discharge accused from the present case. Whether accused was actively involved in the alleged offence or not, it can be find out during the trial. Fact finding trial is very necessary hence, at this stage I am not

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inclined to discharge the accused No. 3 from the present case. Hence I answer the point No. 1 accordingly.

**As to Point No. 2 :-**

13. In view of discussion about point No. 1, I pass the following order :-

**ORDER**

Application is rejected.

Nagpur.  
Date :10.02.2023

(S.T. Dande)  
Chief Judicial Magistrate,  
Nagpur.