

ORDER BELOW EXH. 24 IN R.C.C. 99/2023

(CNR. No. MHNS-2000-0542-2023)

This is an application filed by accused no. 3 seeking his discharge from the present crime.

2. Accused no. 3 contends that he has been falsely implicated. It is argued that in the First Information Report as well as in the supplementary statement of the informant, there is nowhere mention that accused no. 3 had purchased the stolen muddemal in the present crime. It is further contended that in the statements of the prosecution witnesses also, it is not specifically stated that accused no. 3 purchased the stolen property. It is submitted that the alleged stolen muddemal is not recovered at the instance of accused no. 3 and, from the entire set of documents filed along with the charge-sheet, there is no material to show that accused no. 3 has purchased or received stolen muddemal. On this basis, it is argued that the ingredients of Section 411 of the I.P.C. are not attracted against accused no. 3 and he is entitled to be discharged.

3. The applicant has further relied upon the proceedings under Section 55 of the Maharashtra Police Act, 1951, contending that by order dated 06.09.2024 he was externed from the area, but in appeal/revision before the Divisional Collector, Nashik, he came to be acquitted. It is, therefore, submitted that in view of his exoneration in those proceedings also, no case survives against him in the present crime and he deserves to be discharged.

4. The application is opposed by the learned APP. By filing say, it is contended that from the police papers and documents filed along with the charge-sheet, an offence punishable under Section 411 of the I.P.C. is clearly attracted against accused no. 3. The learned APP submits that at the stage of considering a discharge application, the Court is required to look only into the material produced by the prosecution and not into the

documents produced by the accused in his defence. Reliance is placed on the judgment in ***M.E. Shivalingamurthy v. CBI, (2020) 2 SCC 768***, to contend that at this stage, the Court has only to see whether there is a prima facie case or strong suspicion against the accused on the basis of the prosecution material.

5. I have heard both sides and perused the record and proceedings, including the charge-sheet and accompanying documents.

6. From the charge-sheet and the statements of witnesses, it prima facie emerges that the other accused persons committed theft of the muddemal in question and thereafter sold the said stolen property to accused no. 3, who is alleged to have purchased/received the said property knowing or having reason to believe that the same was stolen. Thus, the specific role attributed to accused no. 3 in the police papers is that of a receiver/purchaser of stolen property.

7. It is true that the muddemal has not been recovered at the instance of accused no. 3. However, non-recovery of the property at his instance, by itself, is not sufficient at the stage of discharge to hold that there is no case against him, when there are statements or other material indicating that the stolen muddemal was sold to and received by him. Whether such evidence is reliable, trustworthy and sufficient for conviction is a matter to be tested during trial, by way of cross-examination and appreciation of the entire evidence, and not at this preliminary stage.

8. The contention of the applicant that the FIR and supplementary statement do not mention his name as purchaser of the muddemal cannot be accepted as a ground for discharge, when investigation material, including statements of other witnesses, prima facie shows his involvement. As regards the reliance placed on proceedings under

Section 55 of the Maharashtra Police Act, 1951, the externment proceedings and their result stand on a different footing. The standard of proof, the nature of inquiry and the object of such preventive proceedings are distinct from a criminal trial for a substantive offence under the IPC. Exoneration or relief granted in externment proceedings before the Divisional Collector, Nashik, does not ipso facto wipe out the allegations made in the present criminal case, nor does it bar the continuation of prosecution based on independent material collected during investigation.

9. At this stage, it cannot be held that there is no ground whatsoever for proceeding against accused no. 3. In view of the above discussion, I am of the opinion that the application for discharge filed by accused no. 3 is devoid of merit and deserve to be rejected. Hence the following order:

ORDER

The application at Exh. 24 is rejected.

(R. R. Jadhav)

Date : 29/11/2025.

Judicial Magistrate F.C.,

Court No. 02, Sinnar.