



ORDER BELOW EXH.49 IN RCC No.95/2020

Accused nos.5 has preferred this application for discharge u/Sec.239 of the Code of Criminal Procedure. [For short "Cr. PC"].

Brief facts of the case:

2. The prosecution came with case that accused have no concern with the Gat. Nos.203/1 and 203/1A situated at Shenwad Kd. Tal- Igatpuri. However, accused no.1 and 2 fraudulently mutated their names in the record of right of the disputed property by the mutation entry no.152 and 153. Thus, on the basis of the said entry accused no.1 and 2 have set up their claim over the disputed property. Accordingly, accused no.3 to 5 subsequently purchased the disputed properties. When the informant came to know about the revenue entries, he filed a complaint. After investigation u/s 156 (3) of the Cr.P.C, the present charge-sheet has been filed against the accused.

3. By way of present application accused no.5 has sought discharge mainly on the ground that there is no material on record to frame charge against him and proceed with the trial. It is submitted that after the filing of charge-sheet, the court has taken cognizance only against accused nos.1 and 2 and not against accused nos.3 to 5. It is further submitted that there was no prima facie case to proceed against accused nos.3 to 5. But based on the application dated 23/02/ 2024, the court issued summons against accused nos.3 to 5. It is submitted that the Ld. Court has used extraordinary power to proceed against accused nos.3 to 5. No reasons are mentioned on the basis of which the present accused was summoned. It is further submitted that the investigating officer has found no evidence against accused and therefore, he has mentioned

in the final report that there is no evidence to proceed against accused person. Therefore, it is prayed that he may be discharged.

4. The Ld. APP for the state has filed say and resisted the application on the ground that court has already taken cognizance. There is sufficient documentary evidence on record to proceed against accused no.5. Therefore, application deserves to be rejected.

5. Heard the Ld. APP for the State. The learned advocate for the accused did not appear for argument.

6. Points arose for determination along with findings and reasons thereon are as under:

Sr. No.	POINTS	FINDINGS
1.	Whether the accused no.5 has made out case for discharge?	No.
2.	What order?	Application is rejected.

REASONS

7. Having considered rival submissions limited question arises for consideration whether there is a prima-facie material to frame charge and proceed against the accused no.5.

8. The test to determine a prima-facie case could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial start. At the stage of section 239, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which *ex-facie* disclose that there are suspicious circumstances against accused so as to frame a charge against him.

9. Keeping in mind, this legal position, I shall now apply the principles enunciated above in order to find out whether there is sufficient material to proceed against the accused no.5. It is also settled that at the stage of framing of charge the Court is not required to determine whether the material is sufficient to secure conviction. The Court has only to form a presumptive opinion regarding the existence of the factual ingredients of the alleged offence.

10. In the facts of the present case, considering the allegations regarding the disputed property, the alleged fraudulent mutation entries, the subsequent transactions in favour of Accused Nos.3 to 5 and the documentary material forming part of the charge-sheet, I am of the considered view that the accusation against Accused No.5 cannot, at this stage, be termed as "groundless" within the meaning of Section 239 of the Cr.P.C.

11. The contention regarding the fact that cognizance was initially taken against Accused Nos.1 and 2 and that subsequently summons were issued to Accused Nos.3 to 5 also does not, by itself, furnish a ground for discharge under Sec.239 of the Cr.P.C. The legality and propriety of the order whereby the accused no.5 was brought before the Court would have to be examined in the appropriate proceedings. In the present application, the Court is required to examine whether, on the material available on record, the charge against the applicant can be said to be groundless.

12. Taking into consideration the charge-sheet and statements of witnesses, it would not be proper to discharge accused no.5. As far as the first objection of accused no.5 regarding absence of any material evidence is concerned, it is matter of trial and consequences of the same will have to be considered only after trial. In the result, I am of the considered view that application being devoid of merit needs to be rejected. In turn, I answer point No.1 in

the negative and pass the following order to answer point No.2:

ORDER

The application is hereby rejected.

Date: 12/08/2026

(A.C. Rokade)
JMFC, Igatpuri, Dist. Nashik

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer	: S.R.Bhapkar
Court	: J. M. F. C. & C.J.J.D.at Igatpuri.
Date	: 12-08-2026
Order signed by the	
Presiding Officer on	: 12-08-2026
Order uploaded on	: 12-08-2026