

MHPU090001862019 	The State of Maharashtra vs. Laxman Rambhau Damse & anr.
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Order Passed Below Exh.38 in R.C.C. No.32/2019

[dt.30/06/2026]

This application is filed by accused No. 1 Laxman Rambhau Damse under section 239 of the Code of Criminal Procedure.

2] The contents in the application in short are as follows:-

The complainant has filed complaint against accused under section 420, 406, 463, 464, 465, 468, 471, 504, 506, r/w 34 of the Indian Penal Code. Accordingly crime was registered with Pimpri police station. As per contention of accused, accused no.1 is the brother of accused no.5 . Accused no.1 has no concern with alleged crime. There is no specific allegation against this accused in F.I.R and also there is also prima facie evidence found against this accused during investigation. No ingredients under section 420, 406, 463, 464, 465, 468, 471, 504, 506r/w 34 made out against accused, there is no prima-facie evidence against accused and also not sufficient material produced by the prosecution to connect the accused for the said offence. There is no prima-facie case made out or circumstantial evidence against accused. Hence applicants entitled to be discharged from this

case.

3] The Ld. APP. filed her say at Exh-43 and resisted the application. According to her prima-facie from the contention of complainant and statement of witnesses it appears that all accused are cheated to the complainant. There is sufficient material for framing charge against the accused. The accused are not entitled for the relief of discharge and hence, application may be rejected.

4] The complainant has filed his say at Exh-41 and resisted the contention of present application. According to him the complainant has filed present complaint against all accused. F.I.R., statement of witnesses and documents filed along with chargesheet discloses that prima facie case against all the accused. Hence, he prayed for reject the discharge application.

5] Ld. Advocate for accused argued as, present complaint is devoid of any merit from the averments in the complaint no offence of cheating was made out against accused no. 1. Thus, the applicants deserve to be discharge from the present complaint. In support of his contention, he relied on ratio laid down in following case-

- i. Imtize Ahmed v/s State of M.P 1997 Cr.L.J.1844 M.P.
- ii. S.K. Kashyap and others V/s State of Rajasthan 1971 Cr.L.J. 832(SC) etc.

6] Heard Ld. APP. She argued as per her say. I have gone through the documents produced along with the charge-sheet and case law submitted on behalf of accused. As per complaint of complainant, the accused no.1 and 2 used to talk before complainant that they were capable to get petrol pump to the complainant. They had also talked that a petrol pump at village Taje could be allotted to the complainant. The complainant paid Rs. 50,00,000/- to the accused no.1. thereafter from the time to time the accused no.2 has been representing that the process of allotment of petrol pump to the complainant was in progress. Ultimately, it was revealed to the complainant this was fraud. Petrol pump was not allotted. Thereafter, various meetings were held for refund of money in presence of all accused. When complainant felt cheated he has filed complaint against accused. After perusing the complaint, documents along with charge-sheet and statements of the witnesses recorded during investigation, it reveals that the complainant and witnesses have specifically stated about accused have committed cheating and there are number of allegations of cheating against accused no.1. There are number of allegations which indicate that accused no. 1, who initially met the complainant and made representation that the petrol pump could be allotted to him. The complaint prima facie discloses the roll of the accused no. 1 in giving false promises of getting petrol pump in the name of original complainant.

7] Section 239 of Cr.P.C. provides that if upon

considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused and after giving the prosecution and the accused an opportunity of being heard if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. The plain meaning of expression “groundless” shows that no reasonable person can come to the conclusion that there was/is any ground whatsoever to sustain the charge against the accused.

8] Further, the plain reading of the provision of section 239 of Cr.P.C. shows that on the basis of the police report and documents sent with it under section 173 of Cr.P.C. only it is for this Court to see whether the charge against the present accused to be a groundless or not. Though the said provision provides opportunity of hearing needs to be given to the accused as well as prosecution, but the overall provision shows that the said opportunity of hearing is confined to the police report and the documents sent along with it under section 173 of Cr.P.C. So, the Court cannot go beyond the charge-sheet and documents produced along with it. The documents, statements produced with charge-sheet prima-facie reveals that there are allegation of cheating against accused No.1. Further, at this stage of the matter, the case of the prosecution cannot be decided on merits. If that application is considered at this stage, then, it will amount the decision of the case, which is not expected under section 239

of Cr.P.C. At this stage, as this Court is required to see whether ground for presuming commission of offence exists or whether the charge is groundless or whether a *prima-facie* case pertaining to the commission of the offence is made out or not.

9] After perusing the first information report and complaint, it appears that there are specific allegations about the cheating and threatening against accused. In such circumstances, when there are specific allegations against accused no.1, it cannot be said that the charge against them would be groundless. The question as to whether charge framed against the accused will be proved or not is a question of merits and cannot be decided at this stage. In such circumstances, unless the matter is decided on merits, only on the ground that false allegation made against them, it cannot be considered that the charge leveled against the present accused is groundless, vague and they are entitled to discharge. Hence, I proceed to pass the following order:-

ORDER

The application at Exh.38 stands rejected.

Pimpri
Dt.30/06/2026

(T. S. Mahadik)
Judicial Magistrate, First Class,
Pimpri

C E R T I F I C A T E

“ I affirm that the contents of this P D.F file Judgment / Order are same word for word as per original Judgment.

Name of Steno : Vaibhav G. Fulari

Court Name : Smt. T. S. Mahadik
Judicial Magistrate First Class,
Pimpri, Pune.

Date : 30/06/2026

Judgment/Order signed by
presiding officer on : 30/06/2026

Judgment Order upload Date : 30/06/2026