

MHPU180009862016



ORDER BELOW EXH.11
(Passed on 14.02.2024)

This is an application filed by the accused for discharging him from present case.

02. It is contended in the application that there is no prima facie case against accused under Section 406, 420, 504, 506 of the Indian Penal Code (for short 'the I.P.C.'). Said case is unnecessarily filed against this accused by the complainant only for harassment, recovery of money. The transaction between complainant and accused is of a civil transaction. There is anywhere ingredients of offence under Section 406, 420, 504 and 506 of the I.P.C.. Transaction clearly shows that matter is itself civil nature and police registered the said offence unnecessarily and investigated the same. Police have filed chargesheet. In such situation accused has no option but have to file a discharge application. Hence, this application for discharge.

03. It is further contended that there is no evidence produced by the complainant which constitutes the proximate relation to the offence, no sufficient evidence or material or statement or witnesses on record to show the motive or mens rea guilty intention of the accused to connect the above said crime. There is an only vague allegation by the complainant which does not constitute any offence. The statement of the complainant is self contradictory and he does not furnish details of any investment or payment. The dispute between complainant and accused is civil nature. Considering monetary transaction, accused had applied for anticipatory bail to the Hon'ble Baramati District & Sessions Court was allowed with the reasons that alleged offence is of a civil nature and hence accused is

entitled to get discharge, as there is no prima facie case.

04. It is further contended that if the criminal trial the cardinal principal of criminal jurisprudence are well settled that is a prosecution must stand or fall on own legs. It is obligatory on the prosecution that there must be a prima facie material is required to frame a charge what so ever. Prosecution alleges and said onus of prosecution never shifts in the entire chargesheet only allegations against accused that monetary transaction is not completed in time by accused and cheques given were bounced. Allegations are vague in nature and the allegations cannot take the place of proof and no any believe or assume and presume that these allegations are sufficient to frame the charge. If there is strong suspicion against the accused and the matter remains in the region of suspicion, it cannot take place of proof of his guilt at the conclusion of trial. But the inference which must be drawn is that if there is a strong suspicion existing at initial stage which leads the Court to think that there is a ground for presuming that the accused has committed an offence then it is not open to Court to say that there is no sufficient ground for proceeding against the accused. On all these grounds he prayed for allowing this application.

05. Ld. A.P.P. has strongly opposed and written his say on back side of application itself. He submitted that said application is not maintainable because it is not prima facie case. Provisions under Section 239 of Cr.P.C. itself stated 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 as the Magistrate think necessary and after giving prosecution and the accused an opportunity of being heard, the Magistrate consider the charge

against the accused to be groundless, he shall discharge the accused and record its reasons for so doing". In this context there is no prima facie case for under Section 239 of the Cr.P.C.. That F.I.R. itself stated and informant has been directly alleged to cheat him of Rs.17,20,000/- (Rupees Seventeen Lakhs and Twenty Thousand only). Also accused cheated to other one person as namely Ganesh Baban Gaikwad. This allegation made in F.I.R. directly. Also mentioned the cause of cheating. Also other witnesses namely Pandurang Baban Mhetre has been cheated by accused and his statement is recorded by I.O.. His cheating is about Rs.18,00,000/-. Also another witness Bhimaji Satu Barve is cheated by accused and cheating amount of Rs.2,00,000/-. Also statement is along with chargesheet. Considering all these material on record, question arises that how accused shall be discharged. On all these grounds he prayed for rejection of application.

06. Heard Ld. Advocate for accused Mr. M. J. Pathan and Ld. A.P.P. Shri. S. P. Andhale at length.

07. Written Notes of argument filed on behalf of accused vide Exh.23. Ld. Advocate for accused relied upon following citations :-

1. **Union of India Vs. Prafulla Kumar Samal and another [1979 (3) SCC P]**
2. **Mr. K.Ramakrishna & Ors. Vs. State of Bihar & Anr. On 22 September, 2000.**
3. **Dattatreya Samant Vs. State of Maharashtra 1981 Cr.L.J. 1819 (Bombay)**
4. **Public Prosecutor Vs. T.D. Khajanalli [1980(2) ALT 138]**
5. **Rama Swamy Gounder Vs. State [1981 Cr.L.J. 1054 (Madras)]**

**6. Ajay Kumar Parmar Vs. State of Rajasthan
[2012 (12) SCC 406]**

08. Ld. A.P.P. has relied upon **Gajanan Modku Meshram Vs. State of Maharashtra (Criminal Application (Apl) No.363 of 2014) (2015 ALL MR (Cri) 1555) [In the Hon'ble High Court of Judicature at Bombay (Nagpur Bench) decided on 22.01.2015]**.

09. I have perused case laws cited by accused and prosecution. The ratio laid down therein have been taken into consideration.

10. Perused R & P, it shows that chargesheet has been filed on 09.05.2016 and it is registered on 10.05.2016. My Ld. Predecessor has issued process against accused for offence p/u/s.420, 406, 504 and 506 of the I.P.C. on 10.05.2016. Accused remained absent, hence, N.B.W. issued against him on time to time by my Ld. Predecessor. On 23.11.2018 accused appeared through his Advocate and got cancelled his N.B.W.. Then on same day my Ld. Predecessor has framed charge against accused for offence p/u/s.420, 406, 504 and 506 of the I.P.C. vide Exh.5. Accused pleaded not guilty vide Exh.6. Then accused has filed Criminal Revision No.4/2019 on 15.02.2019 for setting aside the charge framed against him. That Revision Application was partly allowed on 11.10.2019. Charge framed dtd.23.11.2018 was set aside with discretion that liberty be given to accused to file discharge application, hear the accused and prosecution, on point of framing of charge and then proceed further according to law.

11. Thereafter, present application has filed on 13.03.2020. So far aspect of prima facie evidence to constitute the offence as

alleged against the present accused is concerned, it can be seen from what has been alleged in the F.I.R. and gathered during the subsequent investigation by the police. That there is a something which can be said against the accused. So as to proceed further in the case against him.

12. If the allegations made in the complaint or the statement of witnesses recorded in support of same taken at their face value do not disclose essential ingredients of an offence or where the allegations in the complaint are patently absurd or inherently improbable or where the complaint suffers from fundamental legal defects such as want of sanction and the like. Then process issued by Magistrate can be quashed and set aside.

13. Perused R & P, chargesheet, documents filed along with it, it is seen that statement of complainant (report), documents, statement of 14 witnesses, documents, F.I.R. etc.. All these documents shows the involvement of accused in commission of present crime. Therefore, allegation made in the complaint and statement of witnesses in support of the same taken at their face value disclosed essential ingredients of an offence. Therefore, at this stage it cannot be appropriate to say that no sufficient material available on record to frame a charge against present accused. Hence, in view of above discussion, there is no substance in the contention of accused in the present application. Hence, the application deserves to be rejected. In result, I pass following order :-

ORDER

1. The application stands rejected with cost of Rs.1000/- (Rupees One Thousand only) be credited to the Government on or before next

date.

2. Accused namely Amit Mohan Jagtap is directed to remain present on next date for framing of charge without fail.

Date :- 14.02.2024.
Place :- Daund.

Sd/-
[**Smt. J. S. Khedkar-Goyal**]
J.M.F.C., Daund, Dist. Pune.

CERTIFICATE

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

Name of Steno	:-	P. D. Jagatap.
Name of the Court	:-	Smt. J. S. Khedkar-Goyal, J.M.F.C., Daund, Dist. Pune.
Order date	:-	14.02.2024.
Order signed by the Presiding Officer on	:-	14.02.2024.
Order uploaded on	:-	15.02.2024.