

MHPU2000206
62021**Order Below Exh. 80 In R.C.C. No. 513/2021****The State of Maharashtra Shikrapur Police Station****Vs****Dattatray & Ors.****(Passed on 20/02/2023)**

This is an application filed by the accused/applicant namely Vikas Prakash Thite for discharge him under Section 239 of the Cr.P.C. It is contended that, applicant is prosecuted for offence punishable under section 420, 465, 467, 468, 386, 120(B), 504, 506 read with 34 of the Indian Penal Code. After completion of investigation police have filed charge-sheet in respect of alleged crime. He further contended that there is no prima-facie evidence to frame charge against the accused under Section 420, 465, 467, 468, 386, 120(B), 504, 506 read with 34 of the Indian Penal Code. He stated that no case is made out against the applicant. Applicant has been falsely implicated only on suspicious ground. He further stated that there is nothing material in the charge-sheet to show that applicant played any active and vital role in the present crime. He further submitted that except the confessional statement of applicant. Nothing incriminating against the applicant which is inadmissible and hit by Section 24 of the Indian Evidence Act. Applicant contended that, version of the complainant is not trustworthy and concocted story has been made by him before the police. Accused/applicant has not motive to commit present crime. He contended that prima-facie case is Civil nature, this case should have been registered as Civil Case instead of Criminal Case. There is no any incriminating recovery or discovery at the hands of present applicant. Entire investigation is completed and charge-sheet has been filed in alleged offence. He further submitted that in the present matter disputed property has been sold by informant to third person without being informed by the

informant to all accused who are being prosecuted before the Hon'ble Court in alleged offence. So, registered case against the accused is null and void. He further contended that applicant is having old aged parents and he is the only bread earner in his family. Hence, prayed to discharge him.

02. Ld. APP filed his say on overleaf of this application. He resisted present application by submitting that prima-facie case made out against the applicant. He further submits that there is ample material available on record to frame charge against the applicant. He lastly submitted that accused is involved in commission of the crime as per charge-sheet. Hence, urged to reject the application.

03. Perused application and say filed thereon. Perused entire charge-sheet and all the documents appended alongwith charge-sheet meticulously. Heard both sides at length. Ld. Advocate for accused submitted that his application under Section 239 of Cr.PC be treat as argument on present application. Learned APP argued that a applicant is the identification witness in the present crime. Prima-facie case is made out against the accused. Therefore, prayed for rejection of application.

04. From the application and say and the arguments of both sides following points are arose for my determination.

Sr.No.	Points	Findings
1	Whether the charge against applicant is ground less?	In the negative.
2	What Order?	As per final order-

REASONS

As To Point No.1

05. In the present case the accused wants to discharge from the present crime on the ground that, there is no material against him to frame the charge. Therefore, before further discussion it may be necessary to consider the provision to discharge the accused. Section 239 of Cr.P.C. provides for discharge of accused.

Section 239 of the Code of Criminal Procedure Provides as under -

06. Section 239 of the Code of Criminal Procedure provide as under -

“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 thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing”

07. Therefore, now it is necessary to consider whether there is any ground to framed the charged against the accused or charge is groundless.?

08. Ld. Advocate APP relied on the judgment of Hon'ble Apex court in **Sajjan Kumar Vs. Central Bureau of Investigation (2010)9 SCC 368** wherein Hon'ble Supreme Court held that, the concerned judge has to consider all the records of the case, the documents placed, hear the submission of the accused and the prosecution and if there is not sufficient ground for proceedings against the accused he shall discharge the accused by recording reasons.

09. The case of prosecution is that, all the accused in furtherance of the common intention dtd 29/07/2021 prepared forged power of attorney of land belongs to the informant and witnesses. Thereafter, on next day they prepared false sale deed in favour accused Rahul Gaikwad and Vijay Ghavate. It is alleged that thereafter accused no.6 demanded Rs.40,00,000/- from informant and witnesses. According to the case of prosecution, the role of present accused is, he is attesting witness to the document i.e. irrevocable power of attorney dtd 29/07/2021 and sale deed dtd 30/07/2021.

10. I have gone through the charge sheet and disputed power of attorney and sale deed on record. On perusal of the document it shows signature of the applicant/accused on the document. At this juncture only the prima facie evidence has to be considered. As per section 239 of Cr.P.C. on perusal of document it shows charge against the accused is groundless then court may discharge the accused. In the case in hand, disputed document copy of power of attorney and sale deed are filed on record. It bears signature of present applicant accused. Whether it was signed by accused actually or not can be determined only after trial. At this stage, signature of the accused on the copy of power of attorney and sale deed is sufficient to frame the charge against the accused under the alleged offences. Therefore, point I answered to point no.1 in negative.

As To Point No.2

11. In the light of above discussion and in view of the observations made by the Hon'ble Apex Court in the case of Sajjan Kumar Vs. Central Bureau of Investigation and wording of the Section 239 of Cr.PC, it is very clear that offences levelled against the applicant are not groundless. Therefore, applicant failed to made out his eligibility for being discharged. Hence, I proceed to pass following order-

ORDER

01. The application Exh. 80 is rejected.
02. Charge be framed against accused accordingly.

Date – 20/02/2023

(P.S.Sonkamble)
Judicial Magistrate First Class
Ghodnadi, Tq.Shirur, Dist.Pune.

CERTIFICATE

I affirm that the contents of this P. D. F. file order are same word for word as per original order.

Name of the Court Ghodnadi (Shirur)	:-	P.S.Sonkamble Judicial Magistrate First Class,
Name of the Steno	:-	M. B.Marathe
Date	:-	20/02/2023
Judgment signed by presiding officer	:-	20/02/2023
Judgment uploaded on	:-	20/03/2023