



ORDER BELOW EXH.24 IN R.C.C. NO.973/2019
(Delivered on 15/02/2025)

CNR-MHPU23-003968-2019

This is an application moved on behalf of applicant/accused no.4 Jyostna Santosh Lokhande and accused No.5 Malan Kaluram Lokhande to discharge them from the offences levelled against them vide section 239 of the Criminal Procedure Code. As per their contentions, the present charge-sheet is filed against them for the offences punishable under section 143, 147, 148, 447, 427, 323, 324, 504 and 506 r/w. 149 of Indian Penal Code. (In short I.P.C.). They have no concerned with present offences. They both are ladies and accused no.5 is senior citizen. They have no role in the present crime. The material on record is not made out prima facie case against them. Charges levelled against them are groundless. There is absolutely no material or evidence against them to proceed further. Merely lodging F.I.R. against them does not constitute any ground to prosecute them. The informant has civil dispute with accused. To take revenge informant implicated these applicants in false crime. Hence, they prayed to allow the application.

02. Ld. APP on behalf of state filed say and strongly opposed the application. He denied the contents of application and submitted that, F.I.R. contains the name of accused no.4 and 5. Eye witnesses also stated name of these applicants in their statement recorded under section 161 of Cr.P.C. The available

material on record prima facie establishes the case against present applicants. There are sufficient grounds to frame charge against applicants. Hence, he prayed to reject the application.

03. Heard Ld. Counsel Shri.B.M.Tambe for accused no.4 and 5 and Ld. APP Smt.K.D. Sonavane for state. Upon rival pleadings of the parties following points arise for my determination along with reasons to follow as under: -

<u>Sr. No</u>	<u>POINTS.</u>	<u>FINDINGS.</u>
1.	Whether accused no.4 and 5 are entitled to discharge under section 239 of the Code of Criminal Procedure ?	No.
2.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 AND 2

04. On going through the first information report in the context of allegations made against accused, it appears that on 26/06/2019 at about 10.30 p.m. at village Markal in Gat no.1265 informant had gone to inspect his land, accused no.1 to 5 along with unknown 20 to 25 persons unauthorizly entered in his land and caused damage to his property by trying to demolish wall compound and half constructed room. When informant and his brother Shubham asked accused why they demolished their compound, all accused abused, threatened and beat them. Accused no.1 Sunil Lokhande broke front glass of informant's car bearing No.MH-14-CX 5209 by using wooden stick. He and his brother sustained injuries and they have

obtained police memo for taking treatment in hospital.

05. Ld. Counsel for the applicants argued that, there is no sufficient material to proceed against applicant no.4 and 5. No specific role of applicants is mentioned in F.I.R. or even 161 statements of the witnesses. Charges against them are groundless. In support he relied on **Union of India vs. Prafulla kumar Samal and Ors. 1979 3 S.C.C** wherein it is held that,

“in exercising the jurisdiction under section 227 the special judge, which under the present code is a senior and experienced Court cannot act merely as a post office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. While considering the question of framing charges under this section, he has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. By and large however, if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion”

06. On the other hand, Ld. APP argued that, charge-sheet reveals the sufficient grounds to proceed against applicant. The documents and statement recorded under section 161 of the Cr.P.C. of the witnesses made prima- facie case against applicant. Hence, he requested to reject the application.

07. In the backdrop of argument advanced on behalf of both the sides. I have gone through the record. Investigating officer recorded the statement of witnesses under section 161 of Cr.PC. Shubham Lokhande, Akshay Lokhande, Prashant Lokhande, Omkar Lokhande and Walmik Kotwal. These witnesses in their 161 statement stated the role of accused no.4 and 5. Their statement shows that along with other co-accused, accused no.4 and 5 also present there and they framed unlawful assembly common object of which is to cause damage to property of informant. All accused abused and threatened informant and his brother Shubham. Accused also caused damage to the front glass of car of informant.

08. Though it is seen that, there is no overt act or active participation of applicants in commission of present crime, they were associated with other accused to abuse and gave threat to informant and his brother. Moreover, to establish the offence of unlawful assembly mere presence of accused is sufficient. Prima facie it is seen that accused no.4 and 5 were associated with other accused and they were members of unlawful assembly. They shared common object/common intention with other accused.

09. I have gone through the above cited Judgment. In reported Judgment considering the peculiar facts and circumstances, it is held that prima facie case is not made out against accused and they are liable to be discharged. In present case, as I discussed earlier F.I.R. and statement of witnesses recorded under 161 of the Criminal Procedure Code prima facie shows involvement of accused No.4 and 5 in present crime. At

this stage I find prima facie material on record against accused No.4 and 5. However, facts and circumstances of reported case and instant case are different. So, with due respect ratio laid down in above reported case is not applicable to present case.

10. In view of above discussion, I conclude that prima-facie evidence is available on record to frame charge against accused no.4 and 5. Prosecution deserves an opportunity to prove the charges. All the charges levelled against accused no.4 and 5 are not groundless. It is not just and proper to discharge applicant by invoking section 239 of Cr.P.C. Hence, application deserves to be rejected. I pass the following order:-

ORDER

Application is rejected.

Rajgurunagar-Khed
Date : 15.02.2025

(S.B.Naiknavare - Garad)
Judicial Magistrate First Class,
Rajgurunagar-Khed, Dist. Pune