

ORDER BELOW EXH. 13

1] By the present application accused is seeking for discharge in connection with C.R. 142/2015 registered at Dehuroad Police Station for offences punishable under section 420 of IPC and Section 66 (c) & (d) of Information and Technology Act.

2] It is averred that, the accused is having social institution which is engaged in taking various programmes in respect of educational and health of children through various Government and Semi Government offices. It is further contended that, there was no financial transaction between informant and accused and she has not used any photos for monetary consideration. The charge sheet prima facie does not disclose any cheating or fraud. Moreover, Hon'ble Supreme Court has struck down section 66 (d) of IT Act, therefore accused cannot be prosecuted under said section. For said purpose Ld. Advocate relied on case of **Shreya Singal Vs. Union of India WP No. 167/2012** decided by Hon'ble Supreme Court on 24.03.2015. Even, there is nothing on record to show that, offence under section 66 (c) of IT Act has been committed. The present case was filed to settle the personal score and with ill-intention, therefore accused be discharged from said offences.

3] Ld. APP opposed the application by filing reply. It is contended that, the charge against accused has been already framed on 22.08.2019 and there are specific allegations in FIR and written complaint, therefore prima facie case is made out. Hence, application be rejected.

4] Perused application, say and record of case. Heard Ld. APP and Ld. Advocate for accused.

5] At the outset, it is pertinent to note that, the present application is

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filed under section 239 of Cr. P.C. However, in present case the charge is already framed at Exh. 9 and thereafter present application came to be filed after about 4 years. Section 239 of Cr. P.C. is applicable before framing of charge when accused appeared in the matter. There is no provision in Code of Criminal Procedure for discharge of accused in warrant trial cases after charge has been framed. Therefore, at this stage, the present application is not maintainable and liable to be rejected.

6] Even otherwise, the grounds raised by accused that, there is no financial transaction and he has not used said photographs for any monetary consideration are matter of trial and at this stage mini trial cannot be conducted to decided said objection. The grounds raised by accused are grounds of his defence and he can raised same during cross examination and recording statement under section 313 of Cr. P.C.

7] So far as, section 66 (d) of IT Act is concerned, there is nothing on record to show that, said section is struck down. The case law relied by accused does not suggest that, said section is struck down by Hon'ble Supreme Court. Hence, the submission on behalf of Ld. Advocate for accused are not sustainable.

8] In light of aforesaid discussion, it is clear that, the accused is not entitled to be discharged and present application is liable to be rejected. Hence, I proceed to pass the following order.

ORDER

The application at **Exh. 13** is hereby rejected.

Sd/-

(A.S.Agrawal)

6th Jt. Judicial Magistrate First Class,
Vadgaon Maval, Pune

Date :- 20/10/2023

CERTIFICATE

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

Name of the Stenographer	G. B. Mitha,
Name of the Court	Shri. A. S. Agrawal, 6 th Jt. C.J.J.D. & J.M.F.C., Vadgaon Maval, Pune
Date of Order & Judgment	20/10/2023
Order/Judgment Signed by the P.O. on	20/10/2023
Judgment/Order uploaded on	20/10/2023