

MHRG030000842020



**R.C.C. No. 81/2020**

(Mayur Kashinath Gharat Vs. Sunil  
Janardan Pednekar and Ors.)

**CNR No. MHRG030000842020**

**:: ORDER BELOW EXH. 153 IN R.C.C. NO. 81/2020 ::**

**01.** Perused the application and the reply filed by the complainant at Exh. 163. Heard the learned advocates for the accused and the complainant.

**02.** Accused Nos. 1 to 4 and 6 to 8 have filed the present application under Section 245 of the Code of Criminal Procedure, seeking discharge.

**03.** The applicants / accused contended that the present complaint has been filed by the complainant alleging that he was assaulted by the accused persons on 04/03/2010 at about 8:30 p.m. when he had gone to purchase medicines for his mother. It is alleged that the attack was due to his rejection of a proposal from the daughter of Accused No. 1. In this regard, C.R. No. 24/2010 was registered with Uran Police Station for offences punishable under Sections 324, 323, 504, 506(2), and 34 of the Indian Penal Code against Accused Nos. 1 to 4.

**04.** It is further contended that thereafter the complainant filed a private complaint before the J.M.F.C., Uran bearing R.C.C. No. 24/2010 for offences punishable under

Sections 307, 324, 323, 354, 504, 506(2) read with Section 34 of the I.P.C. Subsequently, the case was transferred to this Court on 25/09/2020.

**05.** It is further submitted that process was issued against the present accused for offences punishable under Sections 143, 147, 148, 323, 324, 504, 506(2), 509 read with Section 149 of the I.P.C. The complaint was dismissed in respect of offences under Sections 307 and 354 of the I.P.C. The case was also dismissed against Accused No. 9 and abated against Accused No. 5.

**06.** The applicants contended that the evidence of the complainant, his father, and the doctor is being recorded. From the record of C.R. No. 24/2010, it appears that both the police case and the present complaint are based on the same facts, date, place, and incident. It is submitted that the present complaint is filed only to harass the accused and contains exaggerated and improved allegations, including offences under Sections 307 and 354, along with addition of new accused persons. Therefore, it is argued that the accused cannot be prosecuted twice for the same cause of action, and hence they should be discharged.

**07.** The complainant opposed the application by filing a say at Exh. 163. It is contended that in C.R. No. 24/2010, not all accused persons were arraigned as per the complaint, and therefore the present private complaint was filed. The case instituted on police report is proceeding only against four

accused, whereas the present complaint is filed against nine accused persons.

**08.** The complainant has examined himself, his father, and the doctor. As per the evidence, it appears that the accused assaulted the complainant and the witnesses and abused them. It is further contended that a counter case has also been filed regarding the same incident. From the evidence, there is sufficient material to frame charge, and even a revolver has been seized from the spot. Therefore, considering the gravity of the offence, the application deserves to be dismissed.

**09.** For proper adjudication, it is necessary to refer to Section 245 of the Code of Criminal Procedure, which reads as under:

Section **245** – When accused shall be discharged:

- (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.
- (2) Nothing in this section shall prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded, he considers the charge to be groundless.

**10.** On perusal of Section 245 Cr.P.C., it appears that

after considering the evidence under Section 244, if no case is made out against the accused which would warrant conviction if unrebutted, the Court may discharge the accused.

**11.** I have perused the evidence of the complainant at Exh. 19. It appears that the complainant has deposed that on 04/03/2010 at about 8:50 p.m., when he had gone to a medical store, he was assaulted by the accused persons, namely Sunil Pednekar, Pravin Pednekar, Mahesh Baldi and Ganesh Patil. Accused Sunil Pednekar was carrying a revolver, which he placed on the complainant's chest and threatened to kill him. Thereafter, other accused persons, namely Anchal Mukadam, Nilesh Patil, Madhav Kulkarni, and Sagar Ghosalkar, also assaulted him. Due to the assault, he became unconscious. Thereafter, his parents came to the spot.

**12.** Kashinath Gharat (CW-2) has also been examined, who has supported the incident as an eyewitness. The complainant has also examined the doctor (CW-3), who has deposed regarding the injuries sustained by the complainant.

**13.** From the evidence on record, it appears that if the same remains unrebutted, it would warrant conviction against the accused. Therefore, there is sufficient evidence to frame charge against the accused for the alleged offences.

**14.** The main ground for discharge is that a State case is already pending against the accused and therefore the present complaint is not maintainable. In this regard, it is necessary to refer to Section 210 of the Cr.P.C., which deals with the

procedure to be followed in cases where there is a complaint case and a police investigation in respect of the same offence.

**210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.**

1. When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation.

2. If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

3. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police

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report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

15. On perusal of Section 210 Cr.P.C., it appears that if the police report does not relate to all the accused in the complaint case, or if the Magistrate does not take cognizance of the offence on the police report, he shall proceed with the complaint case.

16. In the present case, the police case is filed only against four accused persons, whereas the present complaint is filed against nine accused persons. Therefore, as per Section 210 Cr.P.C., the complaint case can proceed.

17. It appears that both cases are being tried simultaneously. Therefore, the bar under Section 300 Cr.P.C. (regarding double jeopardy) is not applicable at this stage, as the State case is still pending and both matters are being tried together.

18. Hence, the grounds raised by the accused for discharge are not tenable. Hence, considering the above reasons, I pass the following order :

**:: ORDER ::**

The application for discharge filed by Accused Nos. 1 to 4 and 6 to 8 under Section 245 of the Code of Criminal Procedure is hereby **rejected**.

Alibag.  
Date : 09/04/2026.

( M. B. Attar )  
Chief Judicial Magistrate,  
Raigad Alibag