

: ORDER BELOW EXH. 06 IN R. C. C. NO. 118/2019 :
(CNR No. MHRG11-000613-2018)

Accused No. 2 Mohammad Shashad Ansari @ Lalababu has preferred this application for discharge under section 239 of the Code of Criminal Procedure. (For short 'Cr. P. C.').

Brief facts of the case :-

2. The prosecution came with case that the on 08.08.2018 at about 07.00 pm to 09.08.2018 at about 10.00 am, accused Nos. 1 and 2 in furtherance of their common intention, committed theft of batteries, oil tins, mirrors, tool box and CPU in the garage of the informant. Therefore, after the investigation, the present charge-sheet has been filed against present accused No. 2 Mohammad Shashad Ansari @ Lalababu.

3. By way of present application accused No. 2 has sought discharge mainly on the ground that there is no prima-facie case against him. There is no material on record to prove the essential ingredients of the offence alleged against him. He has not committed any offence. He is falsely implicated in this matter by the informant only to harass him and to degrade them in the eyes of society. He submitted that he is working in the garage of accused No. 1 as a welder. He further submitted that on 09.08.2018 he has called the informant and informed her about the theft. Therefore, it is prayed that he may be discharged.

4. The learned A. P. P. for the state has filed say and resisted the application on the ground that court has already taken cognizance. Accused No. 1 has stated in his statement of memorandum that he along with accused No. 2 has committed theft. Therefore, there is sufficient evidence on record to proceed against accused No. 2. It is submitted that once the charge-sheet is submitted trial will have to go and its only at the end of the trial that whether accused are guilty or not can be decided. There is prima-facie evidence for framing of charge against accused persons. Therefore, application deserves to be rejected.

5. Heard the learned advocate for accused No. 2 and the learned A. P. P. They reiterated all grounds set out in the application as well as in the written argument.

6. Points arose for determination along with findings and reasons thereon are as under :

Sr. No.	POINTS	FINDINGS
1.	Whether accused no. 2 has made out case for discharge ?	..Yes
2.	What order ?	..Application is allowed

: REASONS :

7. Having considered rival submissions limited question arises for consideration whether there is a prima-facie material to frame charge and proceed against accused No. 2.

8. The test to determine a prima-facie case could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial start. At the stage of section 239, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

9. Keeping in mind, this legal position I shall now apply the principles enunciated above in order to find out whether there is sufficient material to proceed against the accused No. 2.

10. On the perusal of F. I. R. it seems that previously the complaint was lodged against unknown persons. During investigation accused No. 1 was arrested wherein he admitted that long with his friend he committed theft. Accordingly, his memorandum statement was recorded. After that police arrested accused No. 2. It is pertinent to note that in the F. I.R. of the informant she has stated that accused No. 2 has informed her about the said theft. Further, during investigation police have not seized anything from the accused No. 2. On the perusal of

the statement of memorandum of accused No. 1, it nowhere mentioned that accused No. 1 has committed theft with accused No. 2. After taking into consideration material placed on record, I am of the view that accused No. 2 is made accused only because he is working with accused No. 1.

11. To make an application for discharge is statutory right provided to the accused under section 239 of the Cr. P. C. Therefore, the argument advanced by the complainant that once the trial is initiated, it will be decided only at the conclusion of trial whether the accused is guilty or not, does not hold any merit.

12. From the overall facts of the case, it can prima-facie be inferred that there is no material on record to proceed against accused No. 2. Therefore, so far as offence under section 380 of the Indian Penal Code is concerned, it can be said that, it is not even prima-facie made out from allegations made in the complaint/F. I. R. and the material made available on record. In turn, I answer point No. 1 **in the affirmative** and pass the following order to answer point No. 2 :-

: O R D E R :

1. The application is allowed.
2. Accused No. 2 is discharged.
3. His bail bonds are cancelled.

Mangaon,
Date :- 28.11.2019

(A. C. Rokade)
Judicial Magistrate First Class,
Mangaon, Dist. Raigad.