

MHRG120001482021



R.C.C./32/2021

State of Maharashtra Vs. Salim P. Govani

**ORDER EXH.30**

This is an application under section 239 of Code of Criminal Procedure for discharge of accused.

2. Heard learned APP and learned advocate for accused.
3. The sum and substance of application and submission for accused advocate is that as per prosecution Circle Officer, Nandgaon lodged report against accused alleging that accused is owner and in possession of landed property Gut No. 64/4 situated at village Kashid Tal. Murud wherein he made construction of house admeasuring 84 square meter after 2000. In the report to police it is mentioned that in 7/12 extract of land S.No.64/4 there is entry about Farm House in other right column. It is alleged that accused did not reply to notice and committed offence under Sec. 52,53,54,55 of Maharashtra Regional Town Planning Act, 1966 and Sec. 15 of Environment Protection Act.
4. Accused submitted that there is no sufficient evidence to proceed against accused. The complaint filed against accused is false . The Circle officer has no right to file complaint against accused. Therefore, there is bar to take cognizance as per Sec. 19 of the Environment Protection Act, 1986. There is no prima facie material came on record which reflects accused role in the commission of offence. On these grounds accused prayed to allow the application.

5. Learned APP filed his say on application itself. Sum and substance of say and submission of learned A.P.P. is that, the documents and statement of witnesses produced with chargesheet depicts that accused has made unauthorized construction. The notice was served to accused. After collection of proper evidence present chargesheet came to be filed against accused. As there is prima facie material against accused, case needs to be proceed against accused for framing charge. As per Sec 15 of Environment Protection Act 1986 the Sub-Divisional Magistrate has also filed private complaint against accused which is clubbed with present case U/sec. 210 of the Cr.P.C. Lastly, learned APP prayed to reject the application.

6. It is settled principle that while adjudication application for discharge, the court is not expected to consider the defence of accused, lacuna in investigation or even any sort of document placed on record by accused. Court should consider only the material placed on record by the prosecution. In other word, court must only consider that, all the allegation in prosecution case are supposed to be true, then whether ingredients of offence are attracted and accused can be convicted.

7. Perusal of record depicts that as per inspection list, in regard illegal construction and infringement of CRZ rules show cause notice dated 12-06-2015 was issued to accused and served on 23-06-2015 through care taker of accused. In the application accused did not mentioned about non receipt of notice nor he pleaded that he had replied to said notice.

8. It is the contention of accused that as per 7/12 extract there is entry of Farm House in other right column. In this regard it can be seen that with the police paper mere photo copy of 7/12 extract. Further, as per mutation entry No.1884 at the time of entry of farm house in 7/12

extract the owner of S.No.64/1A + 4A was Shobha Manoj Virani. In such circumstances said 7/12 extract can not be considered and relied on at this stage. Said point can be decided after adducing of evidence by both parties.

9. Accused alleged that complaint is not filed by any authorized officer. However, as per record, Sub Divisional Magistrate, Alibag who is authorized officer has instituted private complaint (RCC 41/2018) against accused for the same offence and said private case is clubbed with the present case under Sec. 210 of the Cr.P.C for common trial. As per Gazette of India dated 10-11-2010 the Sub Divisional Magistrate is empowered to exercise power conferred by clause (a) of Section 19 of the Environment Protection Act, 1986. Therefore, there is no substance in submission of accused that complaint is not filed by any authorized officer.

10. As per F.I.R., panchanama, statement of informant and witnesses there is allegation that after 2000 accused has made unauthorized construction of 84 square meter on property Survey No..64/4 A-3,A1 total area of 0-40-0 H.R. situated at Kashid, Tal.Murud and it is within 120 meter from sea line. Thus, at this stage there is sufficient material to proceed against accused.

11. Considering the discussion as above, I do not find any ground to discharge the accused. Hence, I pass following order.

**ORDER**

Application is rejected.

Date : 22-09-2025

sd/-  
(G.R.Tiwari)  
Judicial Magistrate First Class,  
Murud