

MHRT010003772023



IN THE COURT OF ADDL. SESSIONS JUDGE, RATNAGIRI.
(Presided by A. M. Ambalkar, Addl. Sessions Judge, Ratnagiri)

Sessions Case No. 15/2023.

The State Of Maharashtra

Prosecution

Vs.

Pandharinath V. Amberkar

Accused

ORDER BELOW EXH.10.

(Decided on 05.03.2024)

1. The applicant/accused Pandharinath Vidhaydhar Amberkar filed this application u/s.227 of Cr.P.C. for discharge and submitted that, the applicant has not committed any offence. As per the prosecution story the deceased Shashikant was proceeding by his two wheeler Activa from Kondiwali to Rajapur and he reached near Hotel Sawarswati and at that time, accused from coming from opposite direction and he has given dash to the said two wheeler of deceased. It is also alleged that accused was driving his four wheeler by wrong side of the road. It is also alleged that the accused deliberately and intentionally gave dash to deceased's two wheeler by coming from wrong side. As such it is alleged that it is homicidal death caused by the accused. It is also

alleged that accused was having grudge against deceased as he published news against the accused.

2. As such the I.O. has filed false charge-sheet against accused when there has been no material to connect the accused with the offence punishable under section 302 of IPC when even if, it is assumed that there was dash of two vehicles, one of deceased's and other of accused at the most section 304(A) of IPC will attract and not the offence under section 302 of IPC.

3. The prosecution *prima facie* must establish the intention of accused and motive behind it to commit murder of deceased. The prosecution failed to do so. The FIR is belated which clearly indicates its being concocted and manipulated. The earliest station diary entry which is prior to lodging FIR, there has been no allegation of committing murder. It was purely an accident. There is variance in the medical evidence and ocular testimony. The witness Terwankar is prepared witness.

4. The application runs into six and half pages. Most of the points are repeated. Some detailed description of medical evidence and the discussion on phone call and the nature of evidence of Terwankar is shown in details. Therefore, it is not reproduced. Finally, the applicant prayed to discharge the applicant from the offence punishable under section 302 and 201 and section 4 of The Maharashtra Media Persons and Media Institutions (Prevention of Violence and damage or Loss to

Property) Act, 2017 and matter be sent to Magistrate Rajapur for framing charge under section 304-A of IPC.

5. I.O. and the Ld. APP filed their say at Exh.11. The say filed by I.O. also runs into 5 and half pages and having very minute details of evidence collected by him in respect of motive of accused to commit murder of deceased reporter of news paper, use of vehicle, intention of the accused, previous dispute, the publication of news by deceased, the details of phone calls, the report of accident called from expert, etc.

6. Ld. APP also strongly resisted the application and submitted that there is sufficient material in the charge-sheet to frame the charge against accused for the offence punishable under section 302 of IPC. It is also submitted that by considering the entire material in the chargesheet this Court rejected the application for bail. This clearly indicates that there is sufficient material in the charge-sheet to proceed further against accused by framing charge u/s. 302 of IPC. Finally, he prayed to reject the application.

7. Heard Ld. Advocate Shri. P. P. Nene for the applicant extensively and Ld. APP Shri. A. A. Phansekar for the state also at length. Ld. Advocate for accused also produced notes of arguments.

8. Ld. Advocate for the applicant relied upon following

judgments.

- 1) Union Of India Vs. Prafulla Kumar Samal & anr., AIR 1979 SC 366
- 2) Pradeep Kumar Vs. State of Karnataka, 2010 Cri.L.J. 2672
- 3) Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, 2008 ALL MR (Cri) 3222 (S.C.)
- 4) Shri. Hitesh Kishorechand Raithatha & Ors. Vs. State of Maharashtra & Anr., 2008 ALL MR (Cri)3445

9. Ld. APP Shri. A. A. Phansekar for the state relied upon following judgments.

- 1) State of Tamil Nadu by Ins. Of Police, Vigilance and Anti Corruption Vs. N. Suresh Rajan and Ors., 2014 Cri.L.J.1444 SC
- 2) State of Rajasthan Vs. Ashok Kumar Kashyap, AIROnline 2021 SC 210
- 3) Amit Kapoor Vs. Ramesh Chander & anr., 2012 4 AICLR 418
- 4) Bhawna Bai Vs. Ghanshyam & ors., AIROnline 2019 SC 1671
- 5) State of Maharashtra, Etc. Vs. Som Nath Thapa, Etc., AIR 1996 SC 1744

10. As far as discharge in case of Session triable case is concerned, section 227 of Cr.P.C is required to be taken into consideration. Section 227 of Cr.P.C is reproduced as follows:-

“If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against

the accused, he shall discharge the accused and record his reasons for so doing.”

11. On perusal of section 227 of CrPC, it is clear that the Sessions Court is supposed to take into consideration the record of the case and the documents submitted therewith. Further, the Sessions Court is expected to hear the accused and prosecution in that regard. And thereafter, if Judge considers that there is no sufficient ground for proceeding against accused, he shall discharge the accused and while passing discharge order, Judge shall record his reasons for doing so.

12 On perusal of charge-sheet and the documents produced therewith, it is clear that the I.O. has collected sufficient material i.e., the details of spot of incident which is the part of spot panchanama, statement of eye witness Suryakant Terwankar which shows the manner of incident occurred, news paper cuttings showing the news published by deceased against the accused. The evidence in respect of phone calls of mobile of accused and mirror images of the mobile of the accused and statement of witnesses in whose presence accused made such conversation which indicates his intention, the crash investigation report from expert etc.. In fact the charge-sheet runs into 1800 pages consisting of bulk of documents.

13. As far as submissions on behalf of learned advocate Shri. Nene for the accused is concerned, he relied upon various judgments. In case of Union of India (cited supra) the Hon'ble

Apex Court observed that the test to determine a *prima faice* case to the naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. 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, but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

14. In case of Pradeep Kumar (cited supra), it appears that the I.O. could not collect the material to attribute *mens ria* to the accused and the said offence of punishable under section 304(II) of IPC. It is clear from the facts of the case that the facts of this case in hand are absolutely different. In case of Yogesh (cited supra) similar view has been taken as taken in Union of India's case.

15. In case of Hitesh (cited supra), it is observed by Hon'ble Lordship that framing of charge is not empty formality and it requires consideration of material on record.

16. Ld. APP also relied upon various judgments. In case of N. Suresh Rajan (cited supra), it is observed by Hon'ble Apex Court that "*it is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the*

ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out.”

17. In case of Ashokkumar Kashap (cited supra) it is observed by Hon'ble Apex Court that at stage of framing of charge or considering discharge application mini trial is not permissible and valuation of evidence on merits is not expected. In case of Amit Kapoor (cited supra) the Hon'ble Apex Court distinguished the provisions under section 227 and 228 of CrPC.

18. In case of Bhavanbai (cited supra) the Hon'ble Apex Court observed that final test of guilt is not to be applied at the stage of framing of charge. In case of Som Nath Thapa (cited supra), it is observed by Hon'ble Apex Court that there must exist ground for presuming that accused has committed the offence. It is also observed that if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction, the conclusion is required to be that the accused has committed the offence and at the stage of framing of charge probative value of the materials on record cannot be gone into.

19. The arguments advanced by learned advocate Shri.

Nene tends to show that the Court shall analyze the quality of evidence on record. So in other words, the accused expect the Court to evaluate the evidence produced by the I.O.. The thousands of documents produced on record indicate clearly that the accused was having grudge against the deceased who was continuously publishing news against the accused in respect of Refinery project. The bulk of documents as referred in preceding paragraph, it is clear that accused was having *mens ria*. There is sufficient material collected by I.O., ie., statement of witnesses which can be said to be having probative value to attribute motive to the accused for eliminating the deceased who is reporter by profession.

20. Therefore, after going through the material collected by I.O. in the charge-sheet and the documents produced by him, I am of opinion that that material is sufficient which raises enough ground for proceeding against the accused. The application has no substance and it is liable to be rejected. Hence, I proceed to pass following order.

ORDER

Application Exh.10 is hereby rejected.

Date: 05.03.2024

(A.M. Ambalkar)
Addl. Sessions Judge, Ratnagiri.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		Sessions Case No.15/2023 Order below Exh.10
Name of Stenographer	:-	Shri.Rajesh G. Rahate
Name of Court	:-	Addl. Sessions Judge, Ratnagiri.
Date of Dictation	:-	05.03.2024
Order signed by the P.O. on	:-	05.03.2024
Order uploaded on	:-	05.03.2024