

Order below exh.16 - 1 - Sessions Case No.68/2019

Order below exh.16 in Sessions Case No.68/2019

1. Present application has been placed for discharge of accused No.2 under section 227 of The Code of Criminal Procedure.

2. Accused No.2 Sandeepkumar contended that, he has played no role in this crime story, despite chargesheet has been filed and now case is even committed to this Court on the base that all accused have committed offence of murder punishable under section 302, 341 r.w.s.34 of IPC, under section 135 of Maharashtra police Act and under section 3/25 of Indian Arms Act.

3. Brief facts of the prosecution case are as under:-

Informant Bhagyashree Kambale is wife of deceased Bhikaji. Rani is her daughter. Accused Rushikesh was having one sided love affair with Rani. Rushikesh was frequently harassing her. One day accused Rushikesh threatened informant to return his money or otherwise to perform marriage. Even Rushikesh started harassing her family members for demand of money. On 18-04-2019 father Bhikaji had gone to his work place. While returning at about 08.00 p.m. accused Rishikesh shot him dead and committed his murder. FIR of informant wife came to be registered before Ratnagiri Rural police Station vide C.R.No. 62/2019. Chargesheet came to be filed after due

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investigation.

4. By way of present application accused No.2 contended that, from the perusal of chargesheet no evidence is appearing against him. Therefore no charge can be framed against him.

5. Heard Adv. Shri.N.G. Shinde for accused No.2 and PP Shri. P.S.Shetye for the prosecution.

6. Section 227 of The Code of Criminal procedure speaks that,

Section 227: Discharge

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.

7. Thus chargesheet and submissions of both parties are to be considered while adjudicating the aspect of discharge under section 227 of the Code.

8. Adv.Shri. N.G. Shinde for accused No.2 vehemently

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contended that no incriminating evidence against present accused can be analysed from all 34 statements of witnesses. He relied on precedent of **Hon'ble Supreme Court** in the matter of State of UP Vs. Sanjay Singh LAWS (SC) 1994 (1) 115. Wherein it is observed that, mere suspicion of motive cannot serve as a sufficient ground for framing the charges. During discussion it was also observed that, mere association of all accused at one time is not adequate to prove conspiracy. To cause blast this statement APP Shri.P.S. Shetye relied on the statement of witness Prafulla Mohan Mohite and contended that pistol used by accused No.1 was bought by him from accused Nos.2 and 3. It has come in the statement of Prafulla Mohan Mohite that, on that day witness Prafulla was present along with all 3 accused. Accused No.3 handed over one bag to accused No. 2. Accused No.2 by teasing the bag handed over it to accused No.1. Accused No.1 opened the bag and he found pistol inside the bag. Under these circumstances, ld. APP for the State contended that, there is criminal conspiracy in between 3 accused.

9. I found only this much of investigation appearing against accused No.2. APP submitted that, there was criminal conspiracy in between all accused. However, chargesheet filed by officer in charge of Police Station is not stating about any conspiracy. Section 120 B of IPC is not levelled against present accused. No doubt in view of precedent of **Hon'ble Supreme**

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Court in the matter of State of Gujarat Vs. Girish Radhakrishna Varde, 2014 ALL MR (Cri)341 SC, alteration and addition of Sections can be made at the time of framing of charge. However these views are not applicable in present case in hand because there is no evidence of criminal conspiracy appearing against any accused. During investigation also no remote document is produced to show that accused Nos.2 and 3 had conspiracy of committing murder.

10. In addition to this, prosecution has come up with the case that, there was common intention in between accused to commit murder. However admittedly at the time of actual incident accused Nos.2 and 3 were not present there. In absence of these, it is improper to frame charges under section 34 against this accused. It cannot be said that, in furtherance of common intention all accused have committed murder.

11. No doubt bank account details of all accused are included in the chargesheet, which are prima facie sufficient to show that there was transfer of money from one account to another, may be for purpose of pistol. However for said purpose charge under section 3 r.w.25 of Indian Arms Act would suffice the purpose.

12. Thus from entire police papers it clears that evidence

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would be deficit to conduct trial of accused Nos.2 and 3 if they are charged under section 302, 341 r.w.s.34 or under section 302 along with section 120 B of IPC. They can be charged under the provisions of Indian Arms Act only. Hence I pass following order.

Order

1. Application is partly allowed.
2. Accused No.2 as well as accused No.3 are discharged from having committed an offence punishable under section 302 r.w.s. 34 or under section 302 along with Section 120-B of IPC.

Date:- 09-12-2019

(L.D.Bile)

Additional 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. 68/2019
Name of Stenographer	:-	Mrs.V.S.Kulkarni.
Name of Court	:-	Additional Sessions Court, Ratnagiri.
Dictated by the P.O.on	:-	09/12/2019
Order signed by the P.O. on	:-	09/12/2019
Order digitally signed by the P.O.on	:-	09/12/2019

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Order uploaded on

:- 09/12/2019