

CNR : MHSN03-000170-2012

Order below exh. 60 in Reg. C.C. No. 56/2012

(State of Maharashtra Vs. Sunil Kabadage etc.)

This is an application filed by accused Nos. 2 and 3 to discharge them vide section 239 of the Code of Criminal Procedure.

2] In short, it is the case of accused Nos. 2 and 3 that, they have charge sheeted for the offence punishable u/s 406 r.w. 34 of the Indian Penal Code and u/s 14 of the Employees Provident Fund Act 1952. It has been alleged that the provident fund of the employees was not deposited in their account. On perusal of the record, prima facie it appears that the charge against accused Nos. 2 and 3 is found to be groundless. The accused persons were not in any manner entrusted with the property nor they were having any dominion over property nor they have dishonestly misappropriated nor converted their own use of that property nor dishonestly used nor disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged nor any legal contract, express or implied which has made touching the discharge of the trust. Further it has been contended that the applicant /accused never deducted the employees contribution from the wages payable to the employee for credit to provident fund. The Vasantdada spinning mill was established in the year 1970. It was running in losses due to recession in the textile market from 1993. It was not even able to pay arrears of electricity charges. The

accused have taken most care to run the spinning mill for welfare their employees. The economic condition of the said mill was so rust. The mill could not pay any taxes and salaries from September 2001 for want of sufficient funds. The deduction of the amount of fund merely shown on the paper. It was not actually deducted. On 30/10/2001 it was informed to the Commissioner of Provident fund at Kolhapur that amount of provident fund would be paid after financial aid from the Government. Actually the amount of provident fund was not deducted but merely shown as deducted as to keep the account of arrears of provident fund. In such circumstances it can be said that there is no prima facie case against the accused. Hence they are entitled for discharge of the charge.

3] The learned Assistant Public Prosecutor has filed his say at exh. 61 and resisted the application. He contended that the present application is baseless and devoid of merits. Accused No. 1 had filed an application vide exh. 42 for discharge. It was rejected by the Court. There is sufficient evidence for frame charge against accused. Hence he prayed for rejection of the application.

4] Heard the prosecution and learned advocate for the accused. Perused the record.

5] Following points arise for my determination and I have recorded my finding on them for the reasons recorded thereunder.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether charge against the accused is groundless?	No
2.	What order?	The application is rejected

: REASONS :

As to point No. 1

6] I have gone through the record. Informant namely Shivaji Namdeo Patil working in the office of provident fund has filed report against accused persons. On the basis of said report, the offence bearing No. 9/2002 came to be registered against the accused. After completion of the investigation the charge sheet came to be filed against accused on 25/05/2004 in the Court of Judicial Magistrate F.C. Miraj. Thereafter vide order below exh.1 the case is transferred to this Court. The charge is framed against accused vide exh. 32. An accused No. 1 filed an application at exh. 42 for discharge. It came to be decided on 03/12/2014. The said application came to be filed on 17/01/2017.

7] While dealing with the application u/s 239 of the Code of Criminal Procedure, it is the duty of the court to look into whether there is ground for presuming commission of offence or whether the charge is groundless. The word groundless means there was no ground for presuming that the accused is guilty. When there is no ground for presuming that the accused has not committed an

offence, the charge must be consider as a groundless. The Court required to see whether the prima facie case pertaining to the commission of offence was made out or not. While dealing with the discharge application, the Court has to consider the report of the prosecution, documents of both sides and the arguments of both sides.

8] At the stage of framing of the charge u/s 240 of the Code of Criminal Procedure, it is to see whether prima facie case regarding the commission of the offence is made out or not. The question whether the charge has been proved or not can be determined only after evidence is recorded in the case.

9] In this case, the charge is framed against the accused vide exh. 32 on 11/11/2011. While framing of the charge, the Court considered that there is sufficient material on record to frame the charge and therefore, the charge is framed. Since 11/11/2011 the said order has not been challenged by the accused before the appropriate authority. Accused No. 1 filed an application for discharge vide exh. 42. After span of two and half years of the decision of exh. 42, the present application is came to be filed. It is filed at belated stage.

10] The learned advocate for accused Nos. 2 and 3 submitted that the alleged amount of the provident fund has been

deposited by the liquidator therefore accused entitled to discharge from the said offence. The alleged incident has been taken place in the year 1999. The amount was deposited in the year 2017 by the liquidator. The accused have not deposited the said amount. While making submission on behalf of accused learned advocate placed his reliance on the ratio laid down by Hon'ble Bombay High Court in the case of **Provident Fund Inspector Vs. M/s Andersen Marine Pvt. Ltd 2010 (1) Acquittal 6 (Bom.)**. I have gone through the aforesaid proposition of law. In that case the acquittal of accused is challenged by the Provident Fund Inspector. In case in hand, accused filed an application for discharge. Therefore, at this juncture the aforesaid case law is not applicable to the present case.

11] The alleged incident has been taken place in the year 1999. The report was lodged in the year 2002. It is the case of the prosecution that the accused No. 2 being the Chairman and accused No. 3 being Chief accountant was responsible to deposit the said amount. However, inspite of deduction of the amount, it has not been deposited to the provident fund account. The accused raised plea of inability due to financial problem. However, the plea of the accused can be considered at the time of final adjudication. While deciding the application under section 239 of the Code of Criminal Procedure, the court has to see only whether the prima facie case made out or not. On perusal of the record it seems that, there is sufficient record and therefore charge has been framed. Then

application filed by accused No. 1 was rejected by my learned predecessor. In such circumstances, it cannot be said that the charge against the accused is groundless. I therefore, answer point No. 1 in the negative.

As to Point No. 2 -

12] I answered point No. 1 in the negative. The charge is already framed. Hence the application deserves to be dismissed. Therefore, I pass the following order.

: ORDER :

The application is rejected.

Sd/-

Sangli.

[Vinod R. Patil]

Date: 05/04/2018

Chief Judicial Magistrate, Sangli.