

(CNRNO-MHSNO-40000822024)
ORDER BELOW EXH.19 IN SESSIONS CASE NO.7/2024
(State of Maharashtra V/s. Swapnil Subhash Mane and Ors.)

This is an application moved by accused No.1 for discharge under Section 227 of the Code of Criminal Procedure.

02) Say of prosecution has been called and it is filed below Exh.20.

03) Heard Ld. Counsel for accused No.1, as well as Ld. APP for the State at length in context with documents and the statements recorded during the course of investigation.

04) It is argued by Advocate for accused that, accused no.1 has been charged with the offence under Section 376, 354(A)(1), 323, 506, read with Sec. 34 of Indian Penal Code. The discharge is claimed on the ground that, accused No.1 is innocent. The complainant/ informant herself is absent minded. She is highly educated lady but having no morals. She has made her own parents accused in the present case. The accusation against own parents shows the nature of informant. It is an admitted fact that the marriage of accused no.1 was fixed with informant. The accused no.1 never crossed his limits. He did not ravish informant though alleged by her. The statement of sister of informant clarifies that accused is innocent and no such offence is committed by him. The statement of informant under Section 164 of Cr.P.C. came to be recorded on dt.13/04/2024. There is material omissions and contradictions in the statement recorded under Section 164 of Cr.P.C. by Magistrate as well as statement recorded under Section 161 of Cr.P.C. by police. Said controversy shows false contents of

F.I.R. lodged by the informant. The discharge is specifically claimed on the ground of said contradictions and omissions. It is further alleged that informant's sister has given statement to Magistrate under Section 164 Cr.P.C. which is altogether different than the statement of informant. Moreover it is stated that informant has moved application to S.P. Sangli alleging non registration of F.I.R. However the contents of said application and report lodged by informant are altogether different. Said discrepancies are sufficient to arrive at the conclusion that informant has filed report against the accused with ulterior motive. Accused no.1 never broken the marriage proposal of informant. He never demanded dowry and his family members never shown any dissatisfaction about organization of engagement ceremony.

05) It is specifically stated that in the application given to S.P. Sangli, informant did not disclose that accused no.1 committed rape at her house. However, in her F.I.R. statement informant has stated that accused no.1 committed rape at her own house after she offered cold drink (सरबत) to him. The interse controversy in the contents of application to S.P. as well as F.I.R. to police shows that informant has lodged false complaint against accused no.1. It is specifically submitted that the details of general diary and station diary shows that informant has always caused delay in every process from the phase of recording statement, medical examination and statement before Magistrate. Said conduct of informant shows that she has lodged false complaint against accused no.1. There is no material ground reasonably available against accused no.1 for framing charge for the offences levelled in a charge-sheet. Apart from this it is stated that there is unexplained delay of 2-3 months in lodging report. Said delay itself is a proof of false implication. Hence learned advocate for accused no.1 prayed that accused no.1

may be discharged as charges are groundless.

06) Ld. App for prosecution has submitted in the reply below Exh.20, that the offence is of serious nature and all accused are involved in the commission of offence. Accused no.1 is the prime accused against whom the serious charge of rape and molestation has been levelled. The prosecution have ample documentary evidence against the accused. Sufficient material is produced on record and there is material ground to have suspicion against the accused persons. The prosecution has brought material evidence on record to that effect. Matter is very old. Prosecution is ready and willing to conduct the trial in expeditious manner. It is specifically submitted by learned A.P.P. that the statement of witnesses are sufficient to show that there is sufficient ground to proceed against the accused. The injured and witnesses are only few witnesses of prosecution. Apart from the statement of informant, there are other statements which are material to be considered. Moreover the F.I.R. and statements are the outcome of investigation conducted by investigation officer. The same are required to be appreciated at trial. At the stage of framing of charge, it is difficult to state that allegations are not sustainable. Even if we look at the F.I.R. the statement of informant shows involvement of accused no.1 in commission of offence. Learned A.P.P. placed reliance on the authority in the case of **“Union of India Vs. Prafullakumar Samal (1979) 3 SCC 4”**. In said authority the scope of Section 227 of Cr.P.C. has been considered. The principles regarding consideration of the issue of discharge are elaborated in said authority. Relying upon the same it is stated that prima facie case is made out against accused no.1. The charge is not groundless hence accused cannot be discharged at this preliminary stage. Hence, application is liable to be dismissed.

07) At the backdrop of legal position on the point of discharge, I have gone through the material produced by the prosecution by way of charge-sheet. The accused no.1 has not put forth any documentary material while moving said application. I have gone through the material which is available in the nature of charge sheet. It contains FIR, report lodged by the complainant, panchanama, statement of witnesses and medical report. All these documents combinely suggest the offences levelled against the accused.

08) It is the crucks of the prosecution case that, accused no.1 is the person with whom marriage of informant was fixed. Accused no.2 and 3 are the parents of informant. The contents of F.I.R. have the allegation that the betrothal ceremony of informant was solemnized with accused no.1 on 26th December 2022. The marriage was scheduled to be solemnized on 21st January, 2023. In the intervening period whenever informant met the accused no.1 he tried to in appropriately touch her. She resisted the sexual advances of the accused. On 16th January 2023 while travelling from Kolhapur to Karad, accused no.1 tried to outrage her modesty. On the same day they returned home and when there was nobody at home, the accused no.1 sexually exploited her. She disclosed this incident to her parents i.e. accused no.2 and 3. However they prevented her from disclosing the incident to anyone as the marriage was to be solemnized within few days. On next day accused no.1 came to their house and declared that he will not marry the informant. She insisted for marriage but he refused. The informant tried to convince her parents to lodge complaint against accused no.1 but they refused and beat her. Therefore informant has lodged report against accused no.1 as well as her own parents

i.e. accused no.2 and 3.

09) It is specifically contended by accused no.1 that informant has extorted money from him and her family members tried to resolve the differences, she lodged report against them also. The father and sister of informant have sworn affidavits adverting to the behaviour of informant and falsified the allegations levelled in the F.I.R. The accused no.1 has lodged report against informant alleging the offence of extortion and threatening.

10) I have gone through all these submissions made by learned advocate for accused no.1. It appears to be somehow surprising that informant lodged report alleging accusations against her own parents also. However, there is no straight jacket formula or universally applicable moral that parents can never commit offence or even a daughter cannot make false allegations against her parents. Each case needs to be decided on its own merits. Therefore I have not biased myself any stereo types.

11) I have gone through the available record i.e. the F.I.R. , spot panchanama, verification panchanama of mobiles of informant and accused no.1. I have also gone through the medical report and statements of witnesses like Shivani Tanaji Jadhav, Amol Netaji Bhingardive, Shukrana Ayub Jamadar, Mahesh Raghunath Sawant, Komal Kadam and Subhash Chavan, etc. The medical reports suggest signs of sexual intercourse however no external injury. Having no external injury cannot be a ground for discharge of accused unless other evidences are considered. The offence of rape is a serious offence. It requires a proof beyond reasonable doubt. At the same time, accused cannot be discharged at the initial stage on the ground of surmises or certain discrepancies or interse

controversies in the statement of witnesses. The statement of witnesses recorded under Section 164 Cr.P.C. as well as 161 Cr.P.C. are placed on record. They can be considered as material substance but not as evidence. Certain discrepancies are well evident. However merely relying upon said discrepancies we cannot arrive at the conclusion that they are intentional discrepancies due to non occurrence of incident. Moreover, it is also clear that unless the prosecution is allowed to tender evidences and record testimonies of witnesses, the part of contradictions or omissions cannot be proved. Said stage has yet not arrived. The contradictions and omissions in statements recorded under Section 161 and Section 164 Cr.P.C. can be relevant in determining whether there is sufficient ground to proceed against the accused. While contradictions and omissions may be relevant for impeaching the credibility of witnesses during trial, at the discharge stage, the Court's primary focus is on determining whether there is a prima facie case against the accused to frame charge. The question is whether charges are groundless. The material charges are regarding rape, molestation, causing injury and extension of threats. The statement of informant have all allegations regarding commission of said offence. Therefore it cannot be said that the charge is groundless. In exercising jurisdiction under Section 227 of Cr.P.C. a judge cannot act merely as post officer or mouth piece of the prosecution. He has to consider the broad probabilities of the case considering total effect of evidence and documents produced before the Court. At present juncture, I found no material substance in the submission of advocate for accused no.1 that the charges are not prima facie made out. The material placed on record by the prosecution is at present sufficient to frame charge. The contention regarding contradictions and omissions can be considered on merit after prosecution is allowed to tender evidence and defence side is allowed to cross-

examine the witnesses.

12) It is pertinent to note that trial is yet not commenced and the statement of complainant and other witnesses are required to be appreciated at trial and at the stage of framing of charge, it is difficult to state that allegations are not sustainable. The FIR as well as complainant's statement and other statement shows involvement of accused in the present crime. Referring the principles enumerated by Hon'ble Apex Court in the Case of '**Union of India V/s. Prafulla Kumar Samal, (1979) 3 SCC 4**', it is submitted that the scope of Section 227 of Cr.PC. needs to be considered while deciding the application. The Judge while considering the question of framing charges has undoubtedly vast power to sift and weigh the evidence for limited purpose of finding out whether a prima-facie case against the accused has been made out or not. Where the material placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing charge and proceeding with the trial.

13) At present juncture, there is nothing on record to show that these witnesses have not supported complainant's case. Even if the sole statement of complainant or FIR is considered, it shows prima facie material for framing of charge. It is settled principle of law that the allegations levelled against the accused in the charge sheet are to be proved by the prosecution on the touchstone of evidence. The defence side also gets opportunity to disprove the charges levelled against them. However, at the initial stage, when the charge sheet shows sufficient material against the accused, we cannot arrive at the conclusion that the statements are false and all the witnesses have given statement in revengeful manner. Said fact can be a part or formed part of conclusion while deciding the case

on merit after full-fledged trial. The trial is yet not commenced so we cannot rush to a conclusion that the statements of witnesses are false and all of them are interested witnesses.

14) Hence, in view of aforesaid discussion, I have arrived at the conclusion that the application moved by accused No.1 having no merit is liable to be rejected. Resultantly, I proceed to pass following order :-

ORDER

Application stands rejected.

Date: 03/09/2025.

(A. H. Kashikar)
Additional Sessions Judge,
Islampur.

CERTIFICATE

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

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| Name of the Stenographer | : | S.W.Pathan, Steno, (Grade-I) |
| Court Name | : | Adhoc District Judge – 1 & Addl. Sessions Judge, Islampur. |
| Date | : | 03/09/2025 |
| Signed by P.O. on | : | 04/09/2025 |
| Uploaded on | : | 04/09/2025 |