

MHWS070006312015

RCC No. 75/2015

State Vs. Manoj Sawalkar & Others



Order Below Exh.74

(Passed On 12/08/2024)

This is an application filed by the accused persons under section 239 of the Criminal Procedure Code, 1973 for discharge.

2. It is the contention of the accused that the FIR has been registered against the accused for the offence punishable under section 420 and 406 of the Indian Penal Code, 1860 by one Rajusingh Laxman Rathod. The said FIR is registered only against the accused No.1. It is further contended that the informant has not lodged any complaint to the police station instead of this he filed written complaint to the office of Sub-Divisional Police Officer, Karanja. In the said complaint, it is alleged that the ward of the complainant and 48 other persons had taken admission for the course of B.A.M.S. in SSUD Ayurvedik College, Koli Karanja in the month of October-2012. For that purpose Rs.3,50,000/- were paid by each student. And Rs.1000/- was paid as a monthly fee and in addition to practical fee etc. In spite of that no student had received a hall ticket for the examination, therefore the said complaint was lodged.

3. It is the contention of the accused that the said complaint lodged by the parents is undated and without following the proper

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procedure of filing of FIR. Hence, the present charge-sheet is illegal. Moreover, it is contended that the admissions were given by the college as per the interim order passed by the Hon'ble High Court. There was no any malpractice. Thus, the said writ petition was dismissed by the Hon'ble High Court. Thus, it is the contention of the accused that there is nothing in the charge-sheet to frame the charge against the accused for the offence punishable under section 420 or 406 of the IPC. No accused has induced any witness to deliver any amount. On these grounds, accused prayed to discharge them.

4. The say of the prosecution was invited. The prosecution has filed his say on the back leaf of the application contenting that the cogent and circumstantial evidence as well as documentary evidence are available on record. From the case paper Sr.18 to 25, it reveals that there are affidavits of the victims, who has failed a lumpsum amount to the accused. All the accused have dishonestly induces informant as well as witnesses. All the ingredients of section 406 and 420 are fulfilled. Therefore, the application is liable to be rejected.

5. Before discussing the merits of the application it is pertinent to note that the charge-sheet is filed in the year 2015, the application is filed on 19/10/2019. The prosecution has filed his say on 29/12/2022. Since then the matter is fixed for the argument on the present application. Many times the counsel for the accused appeared and submitted that there are chances for the compounding of the offence. But, till today nothing has been came on record regarding the compounding of offence. Hence, considering the

time for which the matter is pending, I am going to decide the present application on merit.

6. It is the settled principle that for considering the discharge application, the court is required to see if the prima facie ingredients of the offence alleged are made out from the record of the case. In the case of **Bhavanabai Vs. Ghansham in Cri.Appeal No.1820/2019** Hon'ble Supreme Court has observed in para 19, *"at the initial stage of framing of charge the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which if put to trial, could prove him guilty. All that the court has to see is that the material on record and the fact would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."*

7. On this background from the perusal of allegations in the charge-sheet and the contents of FIR, it reflects that the students have taken admission in the college. For the year 2008-2009 for B.A.M.S. course and paid a lumpsum amount of Rs.2,00,000/-, Rs.3,50,000/-, Rs.3,00,000/-, Rs.3,45,000/-, Rs.3,85,000/- and so on. From the bare perusal of the reading of statement of the informant, it is seen that accused have induced the informant and other parents of the students to pay the admission fees. There is an affidavit of accused No.1 on record, wherein it is stated that he has received the amount from the parents with a description of amount and the names of the parents. From these documents, it is prima facie seen that the accused has a connection with the offence. The allegation made in the

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charge-sheet prima facie established the offence against all the accused. Therefore, I am of the opinion that there is prima facie material available on record which is sufficient to frame charges against all the accused. Hence, the present application is deserves to be rejected. Consequently, I pass following order

ORDER

1. Application is rejected.
2. Fixed the matter for framing of charge against all the accused.

Date:- 12/08/2024.

(Supriya N. Pund)
Judicial Magistrate First Class,
(Court No.2), Karanja (Lad).

CERTIFICATE

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

Name of Steno. :- D. V. Daware, (Stenographer Grade - III)

Court Name	:- Jt.Civil Judge (Jr.Dn.) and J.M.F.C., Karanja. Dist. Washim.
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Date :- 12/08/2024

Order signed by the :- 12/08/2024
presiding officer on

Order uploaded on :- 12/08/2024