



ORDER BELOW EXH.1
(Passed on 12/05/2026)

Perused the record of the case. Heard learned APP In the present case the investigation officer of P. S. Pusad city has filed the charge-sheet against the accused namely Sk. Akbar Sk. Gaibu for an offence punishable under section 392 of the Indian Penal Code (hereinafter referred as IPC for short).

2] In the present matter in order to secure the presence of accused, time to time summons and warrants were issued against accused. The notices to surety was also issued. However, the prosecution failed to secure the presence of accused till today. As the prosecution failed to secure presence of accused proclamation under section 82 of the Code of Criminal Procedure (hereinafter referred as CrPC for sake of brevity and convenience) was published against him. In spite of proclamation, accused failed to remain present before the court. Thereafter, in order to record evidence under section 299 of CrPC, summonses were issued to the witnesses.

3] The prosecution has examined in all one witness i.e. PW1 Vijay Khandu Jagdale who appears to be an informant in this case. The prosecution failed to secure the presence of other witnesses in spite of several opportunities.

4] I have gone through the record of the case minutely. It appears that, in the present case the accused is charge-sheeted for an offence punishable under Section 392 of IPC. It is alleged by the prosecution that the accused had committed theft of mobile and cash amount by wrongfully restrained informant and putting him in fear of instant hurt by showing him knife.

5] PW1 informant namely Vijay Jagdale deposed that, The alleged incident was happened in 2008 in front of Mungsaji lodge in between 09:00 to 10:00 am. On the day of incidence, he was going to Karla from his native. At that time, he was alone. When he came to the spot of the incident, he quarreled with one person who stolen his mobile and cash amount. Thereafter, he lodged the report with the police station. The informant has admitted his signature upon the report and printed FIR. However, he denied the contents mentioned in it. He further stated he could not identify the person who stolen his mobile and cash amount.

6] As the witness did not support the prosecution, the learned APP seek permission to ask leading questions to the witness. During examination, he denied all the adverse questions put toward him.

7] I have gone through the section 239 of the Cr.P.C. This section provides that, when the accused shall be discharged. This section provides that, if upon considering the police report and the document send it under section 173 and making such examination, if any, of the accused, as the magistrate thinks necessary and after giving the prosecution and the accused an

opportunity are being heard, the magistrate consider the charge against the accused to be groundless, he shall discharge the accused and record his reason for so doing. A plain reading of section 239 of Cr.P.C. shows that, the court trying the case can direct discharge of the accused if it consider that, the charge against the accused is groundless. The expression “groundless” means that, there is no ground for presuming that, the accused has committed an offence or is guilty. In order to hold a charge groundless there would either be no iota of evidence or the evidence should contra indicate error in assuming cognizance of offence. The material place should not make out or should not be sufficient to make out a prima-facie case against the accused then the accused has to be discharge. The real test for determining whether the charge should be consider groundless under section 239 of Cr.P.C. is what where the materials are such that, even if unrebutted, no case make out whatsoever.

8] Considering the material evidence available in this case, it appears that, there is no prima-facie evidence against the accused. The most material witness in this case, PW1 informant though admitted the theft of mobile and cash amount but he did not utter any single word against the accused and not supported the prosecution case at all. Perusal of record it appears that, there is no identification parade conducted by the prosecution for the identification of accused by the material witnesses. Therefore, I am of the view that, in the present crime even if the entire case is unrebutted, no case made out against the accused which would warrant their conviction. In the above circumstances, it is

desirable to dispose of this case on the ground that, there is no sufficient material to prosecute the accused. The charge against the accused to be groundless in absence of incriminating evidence against the accused. Hence, in view of above reasons I pass following order -

ORDER

1. The accused namely Sheikh Akbar Sheikh Gaibu is discharge vide section 239 of the Code of Criminal Procedure for an offence punishable under section section 392 of Indian Penal Code.
2. Bail bond of the accused, if any, be canceled.
3. The NBW issued against the accused be called back from the concern Police Station.
4. The seized muddemal mobile is given to the informant. After appeal period is over, the possession of the mobile be kept with the informant permanently.
5. The seized cash amount of Rs. 500/-, as the informant did not claim it, be credited to the government.
6. The seized muddemal knife being a weapon be sent to the District Collector Yavatmal for necessary action as per law.

Date : 12/05/2026

(G. G. Chonde)
Judicial Magistrate First Class,
Pusad