

ORDER BELOW EXH.1
(Passed on this 29th July 2021)

Perused the case record. The accused is charge-sheeted for the offence punishable under Section 122(c) of The Maharashtra Police Act, 1951.

2] On perusal of record it appears that the accused was found on public place (open place) in suspicious condition. Further, it is not the case of prosecution that at the relevant time accused was found armed with dangerous instrument, having his face covered or otherwise disguised, with intent to commit offence. So, also accused was not found in dwelling house or other building or board any vessel or boat. There is no document filed on record by the investigating officer that accused is habitual thief or at the time of alleged incident he was found in possession of any instrument of house breaking.

3] In order to attract Section 122 (c) of The Maharashtra Police Act, 1951, the prosecution is burdened to prove that the accused is found in dwelling-house or other building or on board any vessel or boat, in between sunset and sunrise, and failed to satisfactorily account for his presence at the said spot. However, in the present case, it is alleged by the prosecution that at the time of incident accused was found on public place (open place) and not in the dwelling house or other building. Hence, considering factual aspects of this matter, it is apparently seen that the ingredients essential for attracting the provision under Section 122(C) of The

Maharashtra Police Act, 1951 are no the matter. Hence, it can be seen that even if the case proceed against accused, the end result would be the acquittal of the accused.

4] Therefore, I am of the view that to proceed with the present matter is futile exercise. Hence, to avoid fruitless proceeding, it would be just and proper to invoke the power given under Section 258 of the Code of Criminal Procedure, 1973, to stop the proceeding and to release the accused. Considering peculiar facts and circumstances of this case, I am inclined to pass following order-

ORDER

1. Proceeding is hereby stopped vide Section 258 of the Code of Criminal Procedure, 1973.
2. The accused is hereby discharged.

Date : 29/07/2021.

(Smt.P.C. Phatale)
3rd Judicial Magistrate First Class,
Pimpri, Pune

CERTIFICATE

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

Name of the Stenographer :- M.P. Ambure

*Court :- Smt. P.C. Phatale 3rd J.M.F.C., Pimpri
Pune.*

Date :- 29/07/2021

*Order signed by
the Presiding Officer on :- 29/07/2021*

Order uploaded on :- 29/07/2021