

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
BENCH AT AURANGABAD.  
CRIMINAL APPELLATE JURISDICTION.**

**Criminal Revision Application No.212 Of 2014.**

Balkishan Meena s/o Birdhilal Meena.

**Versus**

The State of Maharashtra.

**Appearance       =>**

Mr. Shyam C. Arora, Advocate for the Applicant.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra.

**CORAM       :       V.M. DESHPANDE, J.**

**DATE         :       6<sup>th</sup> FEBRUARY, 2015.**

**Per Court :-**

The applicant has filed present Criminal Revision Application challenging the order dated 12<sup>th</sup> August, 2014 passed by the learned Additional Sessions Judge, Parbhani below application Exhibit - 21 filed in Sessions Case No.145 Of 2011 whereby, the learned Judge of the Court below rejected application Exhibit -21 filed under Section 227 of the Code of Criminal Procedure for discharge.

[2]         I have heard Mr. Shyam Arora, learned counsel for the applicant in extenso. He has relied upon decision of Hon'ble Apex Court in a case of State of Maharashtra V/s. Dr. Budhikota Subbarao, reported in (1993) 3 Supreme Court Cases 339.

[3]         His only argument before this court is that since the offences alleged to have been committed by applicant while acting in the discharge of

his official duty, as such a public servant, his commission or omission as a public servant will be covered under Section 197 of the Code of Criminal Procedure and, therefore, unless and until there is previous sanction, entire proceedings are vitiated.

[4] The First Information Report was lodged against the present applicant for the offences punishable under Section.s. 395, 342 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act. However, while presenting the charge sheet, the applicant was charged only for the offences punishable under Section.s. 395, 342 of the Indian Penal Code. The case is pending on the file of the learned Additional Sessions Judge, Parbhani. In the said Sessions Case, the applicant moved application under Section 227 of the Code of Criminal Procedure for discharge.

[5] Mr. Shyam C. Arora, learned counsel submitted that on the date of incident, the applicant found first informant alongwith other persons playing gambling. Though he accosted them, due to pressure, he did not book any of them.

[6] Thus, it is absolutely clear that there is nothing on record to show that, at the relevant time, the present applicant was acting or purporting to act in the discharge of his official duty as such a public servant. All the submissions made by the learned counsel for the applicant are in the nature of defence. Defence will have to be considered by the Court at appropriate time.

[7] At the time of framing of charge, it is not necessary for the prosecution to establish beyond all reasonable doubt that the accusation

which they are bringing against the accused person is bound to be brought home against him. The purpose of Section.s. 227 and 228 of the Code of Criminal Procedure is to ensure that the court should satisfy that the accusation made against the accused is not frivolous and there is some material available to proceed against him.

[8] In the present case, perusal of the First Information Report against the present applicant reveals that some persons were playing cards and present applicant who is Inspector of Railway Protection Force with other staff members came there and then they caught all those persons. However, no legal action was taken against those persons, who were playing cards. First Information Report further proceeds that the applicant and other staff abused the first informant and search of his clothes were taken and Rs.500/- and gold ring of 0.5 Grams was taken from the first informant. This accusation clearly shows that these acts of the applicant, cannot be the part of discharge of his official duty and, therefore, he is not entitled for the protection.

[9] In that view of the matter, I see no reason to interfere in the impugned order. Criminal Revision Application dismissed. However, it is made clear that, it shall be open for the present applicant, during trial to establish all his defences.

**(V.M. DESHPANDE, J.)**