

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 2008 OF 2010.

Ramesh Malukdas Gaur ..vs.. State of Mah. thr.PSO,P.S.Gittikhadan,Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.S.P.Bhandarkar, Adv. for the applicant.
Mr.S.M.Uikey, APP for respondent no.1.

**CORAM : A.B.CHAUDHARI AND
P.N.DESHMUKH, JJ.**

DATED : MARCH 23, 2015.

Mr.Bhandarkar, learned counsel for the applicant vehemently contended that the complainant did not have any locus standi to file FIR and it was concerned department who could have put criminal law in motion and not the complainant. He further stated that the FIR lodged by the complainant was out of personal animosity and was mala fide.

It is further submitted that though the charge-sheet has been filed, the fact remains that the charge-sheet is vitiated by the mala fide action at the behest of the complainant and therefore the case is covered by the parameters as laid down by the Apex Court in the case of **State of Haryana and ors. ..vs.. Bhajanlal and others**, reported in **1992 Supp(1) SCC 335**. He therefore submitted that exercise of power under Section 482 of the Code of Criminal Procedure in the instant case is required to be made for securing justice.

Per contra, learned Additional Public Prosecutor opposed the application and argued that after investigation the

charge-sheet has been filed with all necessary papers and it involves a lot of exercise to find out whether there is really a breach of trust or as the case may be and therefore the jurisdiction under Section 482 of the Code of Criminal Procedure should not be exercised.

We have heard the learned counsel for the rival parties. We have perused the entire record including the charge-sheet. Upon perusal of the record and upon hearing the learned counsel of both the sides, we are of the opinion that the applicant should be relegated to the alternate remedy available under law i.e. making of an application under Section 227 of the Code of Criminal Procedure for discharge since charge-sheet has been eventually filed. The reason is, it is not possible for us here to appreciate the evidence that is collected by the Investigating Agency and filed along with the charge-sheet which is pending before the Trial Court.

Learned counsel for the petitioner has contended that there is no even prima facie case made out against the applicant. We think it would be appropriate to allow applicant to file application for discharge before the Trial Court. In that view of the matter, following order is inevitable.

ORDER.

Criminal Application (appln) No.2008 of 2010 is partly allowed.

The applicant is relegated to the remedy of filing application for discharge before the learned Trial Court.

All the points raised in the instant application are kept open for being canvassed before the Trial Court.

If such application for discharge is made, the same shall be expeditiously decided by the learned Trial Judge.

Interim order to continue for another one week.

JUDGE

JUDGE

Chute.