

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 589 OF 2016

BHARATI SANTOSH KULKARNI
VERSUS
SAU.PRATIMA PANKAJ MOGHE AND ANR.

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Advocate for Petitioner : Shri Paranjape Prakash S.
APP for Respondent 2/ State : Shri S.G.Karlekar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2016

Per Court:

1 The Petitioner is aggrieved by the order dated 11.04.2016 passed by the learned Magistrate by which the application Exhibit-35 filed by the Petitioner seeking discharge has been rejected on two counts. Firstly that the predecessor of the learned Magistrate has already come to the conclusion, after recording the evidence before framing the charge, that there was enough material to proceed against the accused. It is, thereafter, the charge was framed. Secondly, once the charge is framed and if the accused is aggrieved by the framing of the charge, remedy available is to challenge the order of framing of charge which is said to be dated 06.12.2014.

2 Shri Paranjape, learned Advocate for the Petitioner, while strenuously criticizing the impugned order, submits that the statement of the accused in English and Marathi version as is available from the record, is the document which does not inspire confidence. He submits that there is no date on the said document. The said document is at page 35 of the petition paper book. The date 23.06.2015 appearing on the said document, is the date on which the certified copy was prepared. He further points out a serious aspect which is that the signature of the accused on the English as well as Marathi version is totally missing and as such, the Petitioner/ accused is unaware as to when the said Statement of Accused was prepared. It is stated that no charge was explained to the Petitioner and hence, the Petitioner denies the said document.

3 Considering the above, I am of the view that the Petitioner could challenge the order of framing of the charge and raise the ground that there is no date on the Statement of Accused and it does not bear the signature of the accused. As observed by the learned Magistrate, remedy available to the Petitioner would be in the form of putting forth a challenge under Section 397 of the Code of Criminal Procedure.

4 In the light of the above, this Criminal Writ Petition is disposed of by leaving it open to the Petitioner to avail of the statutory

remedy. All the grounds and contentions are, therefore, kept open.

5 In the event of limitation being applicable to the proceedings under Section 397 of the Code of Criminal Procedure, time spent by the Petitioner in this Court from 26.04.2016 till the passing of this order, shall be a good ground in support of condonation of delay.

kps

(RAVINDRA V. GHUGE, J.)