

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

CRIMINAL REVISION APPLICATION NO. 131 OF 2003

The State of Maharashtra

...Applicant

versus

1. Pravinchandra Jinabhai Patel,
Age: Major, r/o. 232/2B, Plot No.9,
Near Bahinabai Garden, Ring Road,
Jalgaon – 425 002.

2. Anilkumar Jinabhai Patel,
Age: Major, 153, Polan Peth,
Jalgaon – 425 001.

...Respondents

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Mr. R.V. Dhasalkar, A.P.P. for applicant

Mr. R.F. Totala, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 15th APRIL, 2016

ORAL ORDER :

Mr. Totala, learned Counsel submits that respondent No. 2 Anilkumar Jinabhai Patel has expired and death certificate is placed on record, copy of which is already served to A.P.P.

2. The fact about death of respondent No. 2 is not in dispute. In view thereof, proceedings are declared to be abated against respondent No. 2 and stands dismissed.

3. So far as respondent No.1 is concerned, none appears for him, though the matter is adjourned repeatedly.
4. Heard learned A.P.P. None for respondent No.1.
5. Learned Chief Judicial Magistrate, Jalgaon, by an order dated 05/09/2002 passed in Regular Criminal Case No. 527 of 2000 below Exhibits-63 and 66, ordered discharge of the accused person.
6. Feeling aggrieved thereby State has preferred revision application.
7. The prosecution case against the accused is that the accused are manufacturer of fertilizers, which was under the control of Ministry of Agriculture, Government of India.
8. It is then claimed the State Government was providing certain subsidy and so as to encash the same, the accused persons without actually supplying the goods which were manufactured to the various retailers and consequently to the ultimate consumers have fabricated record by showing sale of fertilizer product and claimed subsidy amount from the Government by practising fraud.

9. When the charge sheet was filed, the claim for discharge was moved on the ground that there was no *mens rea* on the part of the respondents to commit crime in question and the fact that High Court has granted pre-arrest bail in favour of the accused. The said contentions are accepted by learned Magistrate, while ordering discharge.

10. Having perused the observations made by learned Magistrate while ordering the discharge, it is required to be noted that the basis as was found for discharge of the offence in question is, the grant of order of pre-arrest bail in favour of the accused by the High Court. The second reason appears to be the ingredients of section are not specified and as such, criminal intention to commit crime is also not brought on record.

11. *Prima facie*, in my view, the view expressed by learned Magistrate is not sustainable in law, particularly in the background of following reasons.

While releasing the accused on pre-arrest bail, the considerations are altogether different than the considerations under Section 227 of the Code of Criminal Procedure seeking discharge of the accused from criminal trial. What is required to be observed

while granting bail is *prima facie* involvement of the accused in the crime in question, whereas ordering discharge, the entire material is against the accused, is required to be considered to be true at its threshold. The said test of consideration and discussing material is not at all looked into by learned Magistrate but merely for asking has proceeded to pass order of discharge.

12. Furthermore, without satisfying with the ingredients qua material placed on the record as against the accused, learned Magistrate has proceeded to pass order of discharge, which in any case, is not sustainable. Hence, the order impugned dated 05/09/2002 is in excess of jurisdiction. As such, same is set aside. The learned Magistrate may consider the application for discharge afresh if prayed by accused or may proceed with the trial.

13. As such, criminal revision application stands allowed in above terms.

[N.W. SAMBRE, J.]