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

CRIMINAL APPLICATION (APL) NO.851 OF 2016

Ramesh s/o Laxmanrao Aakode,
Aged about 60 years, Occ. Retired,
R/o Near Gajanan Maharaj Mandir,
Santabai Yadav Nagar, Chandur,
Tq and Dist. Amravati

..APPLICANT

VERSUS

State of Maharashtra,
Through Dy. S.P. Anti
Corruption Bureau, Akola

..RESPONDENT

Mr S.V. Sirpurkar, Advocate for applicant;
Mr V.P. Gangane, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th March, 2017

ORAL ORDER

In Special Case No.5 of 2013, the charge for offences punishable under Sections 7, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 came to be framed against the applicant by learned Sessions Judge/Special Judge, Akola on 7th October, 2015. Prior to framing of the charge, application Exh.10 came to be moved by the applicant, purporting the same to be under Section 239 of the Code of Criminal Procedure (for short "Cr.P.C.") for discharge. The said application came to be moved on 27th July, 2015, i.e. prior to the date of framing of the charge.

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2. In the aforesaid background, learned Counsel appearing on behalf of the applicant would urge that once an application for discharge under Section 239 of Cr.P.C. was preferred, the least that was expected from the learned Sessions Judge was to first decide the application for discharge and then to frame a charge. According to him, learned Special Judge has committed an error by not deciding the application for discharge first and by framing the charge, which has caused prejudice to the applicant. According to him, the order of framing of charge passed below Exh.10 is liable to be quashed and set aside with directions to the learned Special Judge to decide the application Exh.10 seeking discharge afresh.

3. Learned Addl. Public Prosecutor opposed the prayer on the ground that once the charge is framed, an application Exh.239 of the Cr.P.C. Is not maintainable and according to him, the learned Special Judge has rightly passed impugned order in the matter.

4. Considered rival submissions. It is rightly pointed out by Mr Shirpurkar, learned Counsel appearing on behalf of the applicant that the application for discharge was moved prior to the date of framing of charge, i.e. on 27th July, 2015. Though the said application was moved, it appears that the Say of the prosecution was called, however, the applicant – accused has not chosen to argue the same. Rather, from the order of framing of charge, it has to be inferred that the applicant – accused had appeared before the learned Special Judge, who accordingly framed charge, even at that point of time the application for discharge was not

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persuaded by the applicant. In paragraph 11 of the present application, a categorical statement is made that the learned Counsel who represented the applicant before the learned Special Judge had lost sight of the fact that the application for discharge was pending.

5. The cumulative effect of the aforesaid conduct of the applicant – accused as could be inferred is, that the applicant has not persuaded his application when the charge came to be framed, but has submitted to the jurisdiction of the Court for framing of the charge. Once the charge is framed, there is no question of considering the application under Section 239 of the Cr.P.C. for discharge, as is rightly observed by the learned Special Judge.

6. In the wake of above observations, I hardly see any scope for interference in the order impugned. Thus, the Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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