

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 672 OF 2018

Chandrakant S/o Venkatrao Patil
 Age : 50 years, Occ: Nil,
 R/o :Sadashiv Nagar, Khadgaon Road,
 Latur, Taluka and District- Latur. ... **Petitioner**

Vs.

1. The State of Maharashtra,
 Through Police Station Gandhi Chowk,
 Latur, Taluka and District- Latur.
2. Laxmi W/o Shivaji Batanpurkar,
 Age: 60 years, Occ: House Wife,
 R/o Near Blind School, Labour Colony,
 Latur, Taluka and District- Latur. ... **Respondents**

Mr. C.V. Patil, Party-in-person present.
 Mr. S.P. Sonpawale, Advocate for Respondent/State.
 Mr. S.G. Rudrawar, Advocate for Respondent no.2.

CORAM : MANGESH S. PATIL, J.
DATE : 15.01.2019

JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent no.1. Learned advocate Mr. Rudrawar waives service for the respondent no.2. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner who is appearing in person is impugning the order dated 04.10.2017 passed by the learned Magistrate refusing to

discharge him under Section 239 of the Cr.P.C. in R.C.C. No.179/2015 pending on the file of learned Chief Judicial Magistrate, Latur and the dismissal of his revision, impugning that order, by the learned Additional Sessions Judge, Latur in Criminal Revision No. 68 of 2017 by the order dated 13.04.2018.

3. Crime No.42 of 2015 was registered in Gandhi Chowk Police Station on a complaint lodged by the prosecutrix alleging that on 21.02.2015 at 9.20 a.m. the present petitioner and the other accused Bhaskar had caught hold of her hand in the office of the Headmaster of the school and thereby they had outraged her modesty. She also alleged about they having uttered abuses on caste lines. The offence was registered. Investigation was completed and in due course of time, the charge-sheet was filed. The petitioner submitted the application (Exhibit-26) under Section 239 of the Cr.P.C. and sought discharge. The learned Magistrate by the impugned order rejected his application and even the revision was dismissed. Hence this writ petition.

4. The petitioner who appears in person meticulously took me through the record and strenuously argued that he is being falsely implicated. There has been a dispute in the Management. The informant-prosecutrix has been acting at the behest of one of the groups and has filed a false complaint. He was never the Headmaster of the school at the relevant time which manifestly falsifies the allegations of

the prosecutrix. The charge is groundless and he cannot be made to face the trial and may be discharged.

5. The learned A.P.P. as well as the learned advocate for the respondent no.2 pointed out that as far as merits are concerned, at this juncture there is not enough material to discredit the prosecutrix who has specifically alleged about she having been molested by the petitioner. Her allegations have been substantiated by couple of witnesses and by no stretch of imagination the charge can be said to be groundless.

6. In addition they would submit that in fact it was a successive application by the petitioner seeking discharge. Already he had moved an application (Exhibit-17) seeking discharge under Section 239 of the Cr.P.C. It was heard and rejected by the order dated 15.04.2017. Therefore, once the Magistrate had rejected his application for discharge, no fault can be found in the impugned order passed by the Magistrate on the successive application (Exhibit-26) rejecting it. For that matter even the learned Additional Sessions Judge has carefully considered this aspect of the matter and has rightly dismissed the revision. Therefore, the writ petition may be dismissed.

7. It is a matter of record that admittedly the petitioner had filed application (Exhibit-17) seeking discharge. The say of the prosecution was obtained and after hearing both the sides, by the order

dated 15.04.2017 the application was rejected. There is also no dispute about the fact that this order passed by the Magistrate had reached finality and the petitioner has failed to demonstrate that he had challenged it before the appellate Court.

8. If such was the state of affairs, when the learned Magistrate had once rejected the application (Exhibit-17) moved by the petitioner seeking discharge, there could not have been another request seeking discharge and none could have been considered on merits. It would be a sheer misuse of the process of the Court if an accused is allowed to file successive application for discharge much less when there is no material change in the circumstances.

9. It is pertinent to note that while moving the second application for discharge (Exhibit-26), no attempt was made by the petitioner to explain as to why and how he was filing the successive application for discharge. In view of such state of affairs, in my considered view, the petitioner could not have filed a successive application for discharge and there is no error or illegality committed by the learned Magistrate in rejecting the application (Exhibit-26). There was no apparent perversity, arbitrariness or illegality which could have enabled the Court of revision to intervene under Section 397 of the Cr.P.C. Therefore, even there is no apparent illegality committed by the learned Additional Sessions Judge in dismissing the revision preferred

by the petitioner.

10. Apart from the above state of affairs, even if one decides to consider the merits, by no stretch of imagination, the charge can be said to be groundless. The prosecutrix has specifically alleged as to how the petitioner had molested her and her version has been substantiated by couple of witnesses. How far her version and that of the witnesses is believable and reliable is a matter which can only be tested during the trial. At this juncture, there is absolutely nothing to discredit them. Discharging the petitioner would certainly cause a serious prejudice to her and she would be deprived of an opportunity to substantiate the charge. The charge not being groundless, even on merits the petitioner is not entitled to claim any benefit.

11. The Writ Petition is dismissed. The Rule is made discharged.

(MANGESH S. PATIL, J.)