

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 254 OF 2018**

Basavraj Mallappa Handgi

...Applicant.

Vs.

The State of Maharashtra &amp; Anr.

....Respondents.

Mr. Satyavrat Joshi for the Applicant.

Mr. R.M. Pethe APP, for the Respondent-State.

Mr. Mohansinh U. Rajput for the Respondent No.2.

**CORAM : A. S. GADKARI, J.****DATE : 11<sup>th</sup> JULY, 2019.****P.C.:-**

By the present Revision under Section 397 of the Code of Criminal Procedure (for short, "*the Code*"), the Applicant has impugned Order dated 6<sup>th</sup> February, 2018 passed by the learned Sessions Judge, Sangli below Exhibit 5 in Sessions Case No. 32 of 2016 thereby rejecting his Application under Section 227 of the Code for discharge.

2           Heard Mr. Joshi, the learned counsel for the Applicant, Mr., Rajput the learned counsel for the Respondent No.2 and Mr. Pethe, the learned APP. Perused the charge-sheet annexed to the Application.

3           The prosecutrix has lodged a crime mainly against accused No.1 Rushikesh Kumbhar under Sections 376(2) (K)(L)(N), 420, 494, 506, 403, 406, 417 read with Section 201 of the Indian Penal Code with Jath Police Station, District Sangli.

          The prosecution case in nutshell is that, the prosecutrix and the accused No.1-Rushikesh Kumbhar were working in the same Government establishment and their acquaintance was blossomed in to a love affair. That, the accused No.1 by extending promise to marry with the prosecutrix, established physical relations with her and subsequently, resiled from his promise.

4           The allegation against the Applicant is that, he was working as a peon in the said Government establishment in the department of accused No.1 and under the directions and instructions of accused No.1, he on 19<sup>th</sup> December, 2014 took mobile phone of the prosecutrix having sim card No.9422408344 and did not return it to her.

          It is the specific case of the prosecution that, the Applicant in connivance with accused No.1-Rushikesh Kumbhar with a view to screen the evidence, took the said mobile phone from the prosecutrix, deleted the photographs of their marriage from it and subsequently,

did not return the said mobile phone to the prosecutrix.

5           The investigating agency has applied Section 201 of the I.P.C. *qua* the Applicant for surfacing evidence in connivance with accused No.1. A bare perusal of supplementary statement dated 19<sup>th</sup> September, 2015 of the prosecutrix would *prima facie* indicate that, the Applicant is equally liable to face a charge under Section 420 of the Indian Penal Code. The Sessions Court conducting trial of present case is hereby requested to take into consideration the supplementary statement of the prosecutrix dated 19<sup>th</sup> September, 2015, at the time of framing of charge. As noted earlier *prima facie* it appears that, the Applicant is also liable to face a charge under Section 420 along with Section 201 of the Indian Penal Code.

6           A useful reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Prafulla Kumar Samal, reported in AIR 1979 SC 366***. It is necessary and useful to refer to paragraph 10 of the said judgment which reads as under:-

*“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

*(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the*

*undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:*

*(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.*

*(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.*

7           The Supreme Court in the case of **R.S. Nayak vs. A.R. Antulay and Anr. Reported in AIR 1986 SC 2045**, while analysing provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms, in Para 44 has held as under:-

*“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it;*

*cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction". It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."*

8           A further reliance can also usefully be placed on the decision of the Supreme Court in the case of ***State of Maharashtra Vs. Soma Nath Thapa reported in (1996) 4 SCC 659*** wherein, the

Supreme Court has held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a *prima facie* case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

9           The Supreme Court in the case of ***Palvinder Singh Vs. Balwinder Singh and others reported in (2008) 14 SCC 504*** while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the *prima facie* case as made out by the Complainant/prosecution.

10           After perusing the charge-sheet, it clearly indicates that a strong *prima facie* case against the Applicant is made out by the prosecution and there is sufficient material available on record to

proceed further to frame charge under Section 228 of the Code of Criminal Procedure. In view thereof, the Applicant does not deserve to be discharged from the said offence.

11           After perusing the impugned Order dated 6<sup>th</sup> February, 2018, this Court is of the considered view that, the said Order does not suffer from any error, illegality or perversity. No interference is called for in the impugned Order.

Application being dehors of merits is accordingly rejected.

**(A.S. GADKARI, J.)**