

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1298 OF 2018**

Ajay Arun Kumar Chougule,
Age: 29 years, Occu: Service,
R/o. Gaonbhag Ichalkaranji,
Tq. Hatkanangle, Dist. Kolhapur

...Applicant
(Ori. Accused No.2)

Versus
The State of Maharashtra

...Respondent

Mr. Tejas Hilage for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 4th DECEMBER 2019

ORAL JUDGMENT :

1 Heard learned counsel for the applicant and the learned A.P.P
for the State.

2 Rule. Rule is made returnable forthwith, with the consent of
the parties and is taken up for final disposal. Learned A.P.P waives service
on behalf of the respondent-State.

3 By this application, the applicant has impugned the order dated
14th August 2018 passed by the learned Judicial Magistrate First Class, Peth
Vadgaon, Kolhapur below Exhibit 12/C and Exhibit 14/C, by which the

learned Magistrate was pleased to frame charge as against the applicant and record his statement.

4 Learned counsel for the applicant submits that the learned Magistrate has proceeded to frame charge as against the applicant and another co-accused, without complying with the provisions of Section 239 of the Criminal Procedure Code (`Cr.P.C'). He submits that on the very first date i.e. on 14th August 2018, the learned Magistrate framed charge as against the applicant and another co-accused for the alleged offences punishable under Sections 354 and 506 r/w 34 of the Indian Penal Code.

5 Learned A.P.P does not dispute the fact that on the very first date i.e. on 14th August 2018, when the applicant and co-accused appeared before the Magistrate, the learned Magistrate framed charge as against the accused.

6 Perused the papers, in particular, the Roznama annexed to the application. The applicant is the original accused No. 2 who was arrested in connection with C.R. No. 127/2018 registered with the Ichalkaranji Police Station, Kolhapur for the alleged offences punishable under Sections 354 and 506 r/w 34 of the Indian Penal Code. After investigation, charge-

sheet was filed as against the applicant and co-accused, on 14th June 2018 and summons were issued on the same day i.e. 14th June 2018.

7 Admittedly, the next date before the learned Judge was 14th August 2018, on which date, the learned Magistrate proceeded to frame charge as against the applicant and co-accused under Sections 354 and 506 r/w 34 of the Indian Penal Code.

8 The relevant provision with which this Court is concerned is Section 239 Cr.P.C, which reads as under :

“239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

9 The Roznama does not reflect whether the Magistrate had examined the report or heard the applicant/prosecution in compliance with Section 239 Cr.P.C. A perusal of the Roznama clearly shows that on the very first date, when the applicant appeared along with the other co-accused, the learned Magistrate proceeded to frame charge.

10 Considering the fact that the learned Magistrate has proceeded to frame charge as against the applicant and two other accused, without complying with the provisions of Sections 239 Cr.P.C, the order dated 14th August 2018 framing charge against the applicant and co-accused is quashed and set-aside. The accused ought to be given an opportunity of being heard.

11 Accordingly, the application is allowed. The learned Magistrate to comply with the provisions of Section 239 before proceeding with Section 240 Cr.P.C.

12 Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

13 Application is disposed of on the aforesaid terms.

14 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.