

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

CRIMINAL APPLICATION (APL) NO.175 OF 2021

Devarao s/o Bhagwan Urade,
Aged 42 years, Occ: Teacher,
R/o Sirsi Chak, Post Lodholi,
Tah. Saoli, Dist. Chandrapur. **APPLICANT**

...V E R S U S...

1. State of Maharashtra through
Police Station Ramnagar, Chandrapur.
2. Kavita d/o Sakharam Gedam (Madavi),
Aged 50 years, Occ: Teacher,
R/o Zilla Parishad Primary School,
Daheli, Ballarpur,
Dist. Chandrapur. **NON-APPLICANTS**

Mr. S.M. Bahirwar, Advocate for Applicant.
Mr. N.S. Rao, APP for Non-Applicant 1/State.
Mr. V.S. Lokhande, Advocate for Non-Applicant 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **23rd JULY, 2021.**

ORAL JUDGMENT:

Heard Mr. S.M. Bahirwar, the learned Counsel for the
applicant, Mr. N.S. Rao, the learned Additional Public Prosecutor

for non-applicant 1/State and Mr. V.S. Lokhande, the learned Counsel for non-applicant 2.

2. The challenge is to the order dated 17.08.2019 rendered by the Judicial Magistrate First Class, Chandrapur in Regular Criminal Case 267/2017 whereby the application preferred by the applicant – accused under Section 239 of the Criminal Procedure Code, 1973 (Code) is rejected with a cryptic order.

3. The applicant is serving as an Assistant Teacher with Zilla Parishad Primary School at Brahmapuri.

4. The applicant is arraigned as accused 3 in Crime 744/2017 registered with the Police Station Ramnagar, Chandrapur and, upon culmination of investigation, is charge-sheeted under Sections 354 (A)(4)(5), 509 read with Section 34 of the Indian Penal Code.

5. The complainant is Mrs. 'K' who alleged, in her complaint addressed to the Chief Executive Officer, Zilla Parishad, Chandrapur that on 05.04.2016 when she visited the office of Zilla

Parishad, Chandrapur, the three accused were engaged in conversation and accused Jaiprakash Kamble passed certain comments and made gestures which embarrassed Mrs. 'K' and outraged her modesty. Notably, no role is attributed to the applicant Mr. Devarao Urade in the complaint, apparently lodged on 14.06.2016 concerning the alleged incident of 05.04.2016. Indeed, Mrs. 'K' sought action only against Mr. Jaiprakash Kamble.

6. However, in the subsequent statement presumably recorded by the District Women Complaints Redressal Committee, Zilla Parishad, Chandrapur she implicated the applicant and attributed to him a certain response to the alleged utterances and gestures of accused Jaiprakash Kamble. The committee found *prima facie* credence in the complaint and recommended that action be initiated against Jaiprakash Kamble, Jaidas Sangode.

7. The police recorded the statement of Mrs. 'K' on 03.05.2017 and registered Crime 744/2017, as noted *supra*.

8. The applicant preferred an application under Section 239 of the Code, seeking discharge. He submitted that the complaint was inquired into by the Block Education Officer who

submitted report on 23.03.2016 to the Education Officer who in turn submitted the final report to the Chief Executive Officer of the Zilla Parishad. The applicant submitted that accepting the report, the Chief Executive Officer opined that the complaint lodged by Mrs. 'K' was false.

9. The applicant further questioned the initiation of prosecution *inter alia* on the ground that there is no material on record to presume that an offence is committed and that the charge is groundless and the trial would be a futile exercise.

10. The learned Magistrate laboured under the impression that the sole ground on which discharge is sought is the departmental report exonerating the applicant.

11. The learned Magistrate then observed that while deciding the application for discharge, the Court is not expected to conduct a mini trial and that the applicant will get a fair opportunity of cross-examination.

12. In my considered view, the learned Magistrate clearly erred in not sifting the material on record, albeit for a limited

purpose, to ascertain whether a presumption can be drawn of commission of offence. The right to apply for discharge is a valuable right. If the charge is groundless, it would be a travesty of justice to force the accused to face a trial as an empty and ritualistic formality.

13. While the learned Magistrate is right in observing that he was not expected to conduct a mini trial, he clearly failed to appreciate, that while deciding the application he was expected to sift the material on record and then to record a finding, on broad probabilities, whether the presumption of commission of offence can be drawn. In the present case, all that is said by the learned Magistrate is that the finding that the complaint is false, which is recorded in the departmental inquiry cannot be a ground of discharge. The learned Magistrate has not applied mind to the material on record in entirety, which he was duty bound to do, albeit for the limited purpose of ascertaining whether the accused is liable to face the trial.

14. In this view of the matter, the order impugned is quashed. The matter is remitted to the learned Magistrate for deciding the discharge application afresh, after giving the accused

and the prosecution effective opportunity of addressing the court.

15. The application is partly allowed in the aforestated terms.

JUDGE

NSN