

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

CRIMINAL APPLICATION (APL) NO. 363 OF 2021

Yogesh Subhashrao Langade
Aged about 35 yrs, Occ : Labourer
R/o Prashant Nagar, Amravati,
Tq. and Dist Amravati.

.... **Applicant**

- Versus -

(1) The State of Maharashtra,
through Police Station Officer,
Police Station Kurha,
Tq. Tiwasa, District : Amravati.

(2) Atul Arun Kale,
Age : 36 yrs, Occu : Service,
R/o Morshi Post Office,
Morshi, Tq. Morshi,
Dist : Amravati.

.... **Non-applicants/
Respondents**

Mr. S. B. Gandhe, Advocate for the applicant
Mr. M. K. Pathan, A.P.P for the State
None for non-applicant 2

**CORAM : ROHIT B. DEO, J.
DATED : 10th March, 2021.**

ORAL JUDGMENT

Heard.

2. Admit.

3. With consent, the application is finally heard.

4. The applicant is facing trial for offences punishable under Sections 409 and 201 of the Indian Penal Code on the allegation that while working as a Postmaster, he received an amount of Rs. 24,870/- from the account holders and instead of depositing the amount in their accounts in the post office, he converted/misappropriated the same.

5. The applicant preferred an application purportedly under Section 239 of the Criminal Procedure Code, 1973 (Code) seeking discharge on the solitary ground that the applicant had returned the amount to the account holders before the registration of the offence.

6. In the passing, the applicant also contended that in the absence of sanction under Section 197 of the Code, the learned Magistrate was precluded from taking cognizance of the alleged offence.

7. In all fairness, the submission on the touchstone of Section 197 of the Code is not pressed, and rightly so. The protective

umbrella of Section 197 is not available if the allegation is of misappropriation. Such act/omission is not connected with the discharge of official functions or duties.

8. Adverting to the first submission which is pressed, the submission deserves rejection in view of the settled legal position that return of the amount misappropriated does not wipe out the offence. The accused can still be prosecuted. If reference to any authority is needed, suffice it to refer to the decision of the Apex Court in the case of **Vishwa Nath Vs. State of J. & K. [AIR 1983 SC 174]**.

9. The learned Magistrate who rejected the application for discharge and the learned revisional Court which confirmed the rejection order committed no error, much less, an error impelling this Court to exercise inherent power under Section 482 of the Code.

10. The application is dismissed.

JUDGE