

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

CRIMINAL APPLICATION (APL) NO. 758 OF 2017

Meghraj s/o Vishwanath Tarde,
Aged about 37 years,
Occupation – Service-Police Constable,
R/o Qtr. No. 06, Police Line Takli, Nagpur. **APPLICANT**

VERSUS

- 1) Nagorao s/o Tulsiram Ingle,
Aged about 51 years,
Occupation – Police Constable,
- 2) Smt. Jyoti w/o Nagorao Ingle,
Aged about 45 years,
Occupation – Household,
- 3) Ashish s/o Nagorao Ingle,
Aged about 22 years,
Occupation – Education,

All R/o Rai Gulmohar, Wing No.III,
Flat No. 603, “A” Block, Teka Naka,
Kamptee Road, Nagpur.

- 4) State of Maharashtra,
(through P.S. Kalamana, Nagpur) **NON-APPLICANTS**

Mr. R.B. Gaikwad, Counsel for the applicant,
Mr. A.K. Waghmare, Counsel for non-applicants 1 to 3,
Mr. N.R. Rode, Addl.PP for non-applicant 4/State.

CORAM : ROHIT B. DEO, J.
DATED : 5th FEBRUARY, 2021

ORAL JUDGMENT :

Applicant-Meghraj Tarde lodged report dated 18-5-2014 with Kalamana Police Station, Nagpur, on the basis of which Crime 155/2014 for offences punishable under Sections 294, 394 and 506 read with Section 34 of the Indian Penal Code, was registered against non-applicants 1 to 3.

2. The culmination of investigation led to submission of the final report under Section 173 of the Criminal Procedure Code, 1973 (Code). Non-applicants 1 to 3, who shall be hereinafter referred to as the accused, preferred application Exhibit 17 under Section 239 of the Code seeking discharge.

3. The learned Magistrate rejected the application under Section 239 of the Code vide order dated 19-8-2016.

4. The accused preferred Criminal Revision 207/2016 challenging the order of the learned Magistrate. The learned Additional Sessions Judge, Nagpur allowed the revision vide judgment dated 07-7-2017 and discharged the accused from offences punishable under Sections 294, 394 and 506-II of the Indian Penal Code.

5. It may be noted, that while the operative part of the judgment declares that the criminal revision is partly allowed and that the order of the learned Magistrate refusing to discharge the accused is partly set aside, the factual assumption of the learned Additional Sessions Judge for not allowing the revision in its entirety, is flawed. The learned Additional Sessions Judge observes that at the most, it can be said that there is enough material against the accused in respect of offence punishable under Section 323 of the Indian Penal Code. The learned Additional Sessions Judge failed to notice, that the accused were not charged under Section 323 of the Indian Penal Code nor was any application seeking alteration or addition of charge moved. In this view of the matter, the learned Additional Sessions Judge was not right in observing that the order of the learned Magistrate is partly set aside.

6. The applicant, who shall be hereinafter referred to as the complainant, is aggrieved by the judgment of the learned Additional Sessions Judge and is invoking inherent powers of this Court under Section 482 of the Code in assailing the said judgment.

7. I have heard Mr. R.B. Gaikwad, learned Counsel for the complainant, Mr. A.K. Waghmare, learned Counsel for the accused and Mr. N.R. Rode, learned Additional Public Prosecutor for the State and

with their assistance, the material in the charge-sheet is scrutinized minutely. Having done so, I am of the considered view, that no case is made out for proceeding against the accused and, therefore, the judgment impugned needs no interference.

8. The contention of the accused is that on 18-5-2014 they were abused and assaulted by the complainant who was under the influence of alcohol. Accused Jyoti lodged complaint at 6-00 p.m., on the basis of which Crime 154/2014 is registered against the complainant for offences punishable under Sections 294, 323 and 354 of the Indian Penal Code and Section 85 of the Maharashtra Prohibition Act.

9. The accused contend that as a counterblast, at 9-30 a.m. the complainant lodged a false report alleging assault, abuses, threats to life and extortion. On the basis of the report, Crime 155/2014 is registered against the accused under Sections 294, 394 and 506 read with Section 34 of the Indian Penal Code.

10. Notably, the alleged incident occurred at the police station in presence of many police personnel. Statements of Arun Malik, Ratnakar Walke, Mohd. Sajid, Balaji Vaidya, Surbhan Thakur, Nilesh Gawande, Chandrashekhar Radke, Pankaj Ragatsinge and Shubhangi

Wakode, who are police personnel, were recorded. None of the witnesses supported the allegations in the report touching commission of offences punishable under Sections 294, 394 and 506 read with Section 34 of the Indian Penal Code. The supplementary statements of the aforesaid witnesses except Mohd. Sajid were recorded by the Investigating Officer. The consistent version is that no incident of removing gold chain or cash or wrist watch by the accused occurred in their presence.

11. Nothing is recovered from the accused in the personal search.

12. The learned Additional Sessions Judge minutely scrutinized the material in the charge-sheet and concluded that except the report, there is no material whatsoever as would attract the provisions of Sections 294, 394 and 506-II of the Indian Penal Code. I entirely agree with the said conclusion.

13. It is well settled that even at the stage of deciding an application seeking discharge, the Court is not expected to act as post office. The version of the informant cannot be treated as gospel truth. While a mini trial must be shunned, the Court is expected to sift the evidence for the limited purpose of assessing whether a case is made out to

proceed against the accused. The accused must not be made to face trial as an empty or ritualistic formality if the material on record, does not warrant a trial.

14. As noted supra, other than the allegations in the report, there is no material whatsoever to frame charge. I do not see any error in the judgment impugned save and except that the learned Additional Sessions Judge has incorrectly observed that the revision is partly allowed and that the order of the learned Magistrate of refusing to discharge the accused is partly set aside. It is reiterated that the accused are not charge-sheeted under Section 323 of the Indian Penal Code.

15. The application is dismissed.

JUDGE

adgokar