

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.41 OF 2021

Bhagatsing Pratap Singh Pawar (Patil),
Age 52 years, Occu. Talathi, Sajja -
Amsari & Ajintha, Tq. Sillod,
District Aurangabad.

R/o. Plot No. 1, Jai Kisan Housing Society,
Bhadgaon Road, Pachora,
District Jalgaon.

.. Applicant

Versus

The State of Maharashtra
Through The Investigation Officer,
Police Inspector, Anti corruption Bureau,
Aurangabad.

.. Respondent

Mr. M. M. Patil, Advocate for Applicant;
Ms. V. S. Choudhari, APP for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 09-12-2022

PER COURT:-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State at length.
2. The present revision is against framing of the charges on 16.08.2019 by the learned Special Judge, Aurangabad, in Spl. A.C.B. Case No. 42 of 2016.
3. Before dealing with issue raised in this petition, it would be appropriate to make it clear that the applicant did not apply for discharge before framing the charges.

4. The learned counsel for the applicant would state that on the last date, an incorrect statement was made before the Court that the trial had opened and part evidence was recorded. On 10.11.2022, nobody was present for the applicant. Hence the order was passed against the applicant. However, while passing the said order, the Court has also considered the grounds for revision. The order dated 10.11.2022 by separate order has been called back, and in the interest of justice, an opportunity has been granted to the petitioner to argue the petition on merit.

5. The learned counsel for the applicant has argued that the applicant had filed an application on 02.12.2022, requesting the Court to direct the learned A.P.P. to provide the copy of C.D. He tried to argue that on the day of the framing of the charge, the C.D. was not supplied to him. Therefore, the framing of the charges was illegal and improper.

6. He relied on the case of **Sajjan Kumar Versus Central Bureau of Investigation, 2010 (9) SCC 368**. In this case, the extract from the case of **Union of India v Prafulla Kumar Samal, (1979) 3 SCC 4**, in which in paragraph No.10(4) it has been observed that *"That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece 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.”.

7. He has referred to paragraph No.18 of the above judgment in which the principles enunciated in the case of ***Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135***, in paragraph 12 has been extracted thus:

*“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see *Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.*)”*

8. The above observations were about the scope of Sections 227 and 228 of the Criminal Procedure Code.

9. Further, he would rely on the case of - ***Dipakbhai Jagdishchandra Patel Versus State of Gujrat and another, 2019 DGLS (SC) 633***. In the said case, the same principles, as observed in the above case, were reiterated regarding framing the charges.

10. He also relied on the case of ***State through Central Bureau of Investigation Versus Anup Kumar Srivastava (Dr.) 2017 DGLS (SC) 761***. It has been observed in paragraph 18 of the said case that “Framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court, but the framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial....”

11. He also relied upon the judgment of this Court in the case of ***Ajay Arunkumar Chougule Versus State of Maharashtra, 2019 DGLS (Bom.) 1379***. In the said case, this Court in paragraph no.9 has observed that “the Roznama does not reflect whether the Magistrate had examined the report or heard the

applicant/prosecution in compliance with Section 239 of the Code of Criminal Procedure. 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 the charge.”

12. The purpose of Section 239 of the Cr.P.C. was the issue before the Court in the said case. Section 239 of the Cr.P.C., provides an opportunity for a hearing for the prosecution and the accused before framing the charges.

13. The Special A.C.B. Case against the applicant was submitted to the Special Judge in 2016 for an incident dated 07.08.2014. The learned Special Judge framed the charges against the accused on 16.08.2019.

14. Before framing the charge, the Special Judge passed specific order that the learned A.P.P. and the learned Advocate for the accused were heard. It has also been observed in the said order that on perusal of the charge sheet and the police papers, it reveals that there is a positive case for framing the charge against the accused for commission of punishable under Section of the Prevention of the Corruption Act and Sections 466, 468, 471, 474 and Section 201 of the Indian Penal Code. After recording these observations, the charges were framed.

15. Reading the order passed before framing the charge, it can not be said that the learned Judge did not hear before framing the charges as required under Section 239 of the Cr.P.C. Therefore, the arguments advanced by the learned counsel for the applicant that the learned Special Judge did not apply mind and considered the ratio laid down by the Hon'ble Supreme Court and this Court in the cases cited supra cannot be upheld. This is also not a case where the Court has hastily framed charges on the first date of the accused's appearance.

16. It was the indirect argument of the learned counsel for the applicant that there was material in favour of the applicant that was not sufficient to frame the charges.

17. He has tried to convince the Court that a copy of C.D. was not supplied to the applicant, and hence, the framing of the charge was incorrect. After the charge sheet, for the first time, he complained that a copy of the C.D. was not supplied to him. Since 2016, for about six years, the applicant has been silent. The contents of the application, which is taken on record and marked as Annexure 'A' show that the applicant made an incorrect statement before the Special Judge that he has filed an application No. 3930 of 2022 before the High Court for discharge. In fact, this Application No. 3930 of 2022 was filed barely to call back an order dated 10.11.2022. Such is the conduct of the applicant.

18. The next limb of the argument of the learned counsel for the applicant was that considering the material on record, the applicant has a genuine chance of discharge.

19. The applicant never applied for discharge before the Special Judge. If the accused consider that he has a case for discharge, he may apply under section 227 of Cr.P.C., before framing the charge. As stated above, the applicant did not apply for discharge before framing the charge. However, under the guise of not supplying the C.D., the applicant is trying to challenge the order of framing the charges. Had the applicant applied for discharge, the case would have been different. In the absence of any material as such before the Court, it would be difficult to agree with the learned counsel for the applicant that no opportunity was granted to him before framing the charges.

20. In view of the above observations, the Court is of the view that the learned Special Judge did not commit any error in framing the charge. He has complied with Section 239 of the Cr.P.C. The revision application appears misconceived and groundless. Hence, dismissed.

**(S. G. MEHARE)
JUDGE**

rrd