

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 92 OF 2022

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| 1. Rushikant s/o. Arjun Dombale
Age.23 years, Occ. Agri.,
R/o. Wanjarwadi, Tq. Bhoom,
Dist. Osmanabad. | .. | Applicants
[accused Nos.
3 & 4] |
| | | |
| 2. Datta @ Dattatraya Baba Chormale
Age.34 years, Occ. Agri.,
R/o. Korgaon, Tq. Barshi,
Dist. Solapur. | .. | |

Versus

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| 1. The State of Maharashtra
Through Police Station,
Bhoom, Dist. Osmanabad. | .. | Respondents |
| | | |
| 2. Lahu Ashok Dombale,
Age. 22 years, Occ.Service,
R/o. Vanjarwadi, Tq. Bhoom,
Dist. Osmanabad,
At present – Shingoli,
Tal. & Dist. Osmanabad. | .. | |

Mr.S.J. Salunke, Advocate for the applicants.
Mrs.G.L. Deshpande, APP for respondent No.1/State.
Mr.G.J. Kore, Advocate for respondent No.2.

CORAM	:	KISHORE C. SANT, J.
DATED	:	07.10.2022

ORAL JUDGMENT :-

01. Heard learned Counsel for the parties.

02. The applicants, by way of present revision application, have challenged an order passed by the learned Sessions Judge dated 20.10.2021 on application seeking discharge in Sessions Case No. 17 of 2020. Present applicants are accused Nos.3 and 4 respectively in the said sessions case. The prosecution is launched for the offences punishable under section 302, 201 read with section 34 of the Indian Penal Code. The applicants have also prayed for quashing and setting aside order of issuance of process against them dated 28.02.2020. It is further prayer of the applicants to quash and set aside order dated 02.03.2020 passed by the learned JMFC, thereby refusing to accept report under section 169 of the Criminal Procedure Code [for short "Cr.P.C."].

03. Initially the entire thrust of the argument of the applicants was that while rejecting report under section 169 of the Cr.P.C., learned JMFC has not applied his mind, in view of the order dated 26.02.2020, though notice

was issued to the informant. Without hearing him, order is passed. It was submission that in such case, it was necessary for the JMFC to pass reasoned order. This Court initially expressed that now in view of the fact that case is committed to the Sessions Court, the order of issuance of process cannot be considered at this stage.

04. Thereafter, the learned Advocate made submissions that so far as order passed on discharge application is concerned, the learned Sessions Judge by the impugned order has noted that there is some material on record to proceed with a trial. It is observed that this case is of circumstantial evidence and there is no direct evidence available and therefore at this stage the accused cannot be discharged.

05. In support of the case, the applicant relies upon judgment passed by this Court in **Criminal Writ Petition No.1022 of 2015** in the case of **Vishal s/o. Bhausahab Tanpure & Ors. Vs. State of Maharashtra & Anr..** It was a case wherein this Court has found that while rejecting report under section 169 of the Cr.PC., the Court did not record any reasons and on that ground the order of rejection of report under section 169 of the Cr.PC. was set aside and the

matter was remanded with direction to decide the matter afresh by reasoned order.

06. Next judgment he relied is a judgment reported in 2020 ALL MR (Cri.) 2084 in the case of M/s. Magic Gold Vs. Anita Anil Chavan and Anr. This case is again on the point of issuance of process. As already recorded that stage of issuance of process has gone back. The case is now committed to the Sessions Court and discharge application is also filed and now same is rejected.

07. In support of the contention, order passed on discharge application is concerned, the learned Advocate for the applicant relies on the case reported in (2000) 6 SCC 195 in the case of K.K. Patel & Anr. Vs. State of Gujarat and Anr. On the strength of this judgment, it is submitted that even the grounds which are not taken before the Trial Court can be agitated before the Revisional Court.

08. There is no doubt about the proposition. From the discharge application, it is seen that the ground in respect of non-application of mind

while issuing process is not agitated. It is submission that therefore that ground can be agitated in this revision application. It needs to be noted here that it is not only a ground, but it is an order passed which was not challenged at the appropriate time. Once the matter has moved to next stage, this Court need not go back to the earlier stage and to decide whether process was rightly issued or not. Once discharge application is filed, the Court is expected only to look into the material, which is on record and that is rightly done by the learned Sessions Judge. As stated, it is a case of circumstantial evidence and therefore the statement will have to be read as it is. In the averments in the application for discharge, it is seen that the applicants were very much aware and have in-fact made reference to report under section 169 of Cr.P.C. in the application. Further, he sought to rely on the statements of some of the persons recorded by the Investigating Officer to canvass that if those statements are accepted, the applicants can be discharged. However, that is of no use as the same would be a part of the defence to be adopted by the applicant. It is further considered that the offence is not only under section 302 of the IPC, but it is also under section 201 of the IPC. It specifically needs to be considered because the main thrust of argument by the applicant is that in report under section 169 of the C.P.C. police have

submitted that when the incident has taken place, these two applicants were not present and there is no statement showing that they were present at the spot. However, that cannot be considered at this stage. Learned APP, so also, Advocate for respondent No.2 have relied upon judgment reported in 2022 SCC Online SC 913 in the case of Ghulam Hassan Beigh Vs. Md. Maqbool Magrey and Ors and submits that the learned Sessions Court has rightly passed order rejecting the discharge application.

09. On going through the impugned order, this Court does not find any reason to interfere with the order, as no illegalities or perversity is found in the order. So far as prayer clauses (D) and (E) are concerned, those are in respect of order passed by the learned JMFC, issuing process and rejecting report under section 169 of the Cr.PC. For the reasons already stated, these prayers cannot be considered.

10. The next point that was canvassed that the learned JMFC be directed to reconsider report under section 169 of the Cr.PC. Since the stage has already passed, now directing the JMFC to reconsider report under section 169 of the Cr.PC. will be setting the clock back, which cannot be done within

the limited jurisdiction available with this Court, while deciding Criminal Revision Application. Hence, following order is passed :-

ORDER

The Criminal Revision Application is dismissed.

[KISHORE C. SANT, J.]