

Ghugre

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3812 OF 2022

Pramod Manikchand Dube ... Petitioner
V/s.
The State of Maharashtra ... Respondent

Mr. Maitreya Shukla i/b Mr. Kripashankar Pandey for
the petitioner.

Mr. R.M. Pethe, APP for the State.

API Ramkrishna Bodke, Mira Road Police Station.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 12, 2022

P.C.:

1. The petitioner is challenging order dated 23rd May, 2022 on Exhibit-11 in Regular Criminal Case No.1738 of 2022 framing charge under Section 420 of Indian Penal Code, 1860. First Information Report No.369 of 2021 was filed against the petitioner by one Ashok Banwarilal Gupta in alleged commission of offence under Section 420 of Indian Penal Code, 1860. In pursuance of the said First Information Report, a final report was filed with the Court of Chief Judicial Magistrate, Thane on 7th May, 2022 which was numbered as RCC No.1783 of 2022. The petitioner appeared before the learned Magistrate on 23rd May, 2022. On the same day he was handed over a copy of charge-sheet. As per the averments in para No.6 of the petition, petitioner made oral request to peruse the charge-sheet and make appropriate submissions on the point of discharge. Despite the said request, the learned Magistrate framed

charges on the same day. The said order of framing charge is the subject matter of the present petition.

2. Learned Advocate for the petitioner submitted that by framing charges on the same day of supplying charge-sheet, and in spite of making request for postponing framing of charge to enable the petitioner to consider whether to file application for discharge, the legal rights of the petitioners are affected. In support of his submissions he has relied on unreported judgment of this Court in Writ Petition No.434 of 2013 dated 25th March, 2013 **Mandar Mahesh Gosawami Vs. The Inspector of Police Anti Corruption Bureau, CBI, Mumbai and Anr.** He also relied on judgment of Apex Court in **Pritesh Vs. State of Maharashtra and Anr** (2002) 1 SCC 253.

3. *Per contra*, learned APP submitted that the averments made in paragraph No.6 are not sufficient to infer that the petitioner was not heard before framing charges. He relied on the judgment of **State of Orissa Vs. Debendra Nath Padhi** (2005) 1 SCC 586 which, according to him, lays down the scope of hearing to be granted while deciding the application for discharge. According to him, therefore, the approach of the learned Magistrate to frame charges on the same day was legal and proper.

4. Having heard learned Advocate for both the sides, in my opinion, in spite of request made to postpone the hearing framing of charges by the learned Magistrate on the same day of serving copy of charge-sheet on the accused, was not proper. In case of **Pritish Vs. State of Maharashtra and ors.** (2002) 1 SCC 253 the

Apex Court while considering Sections 238, 239 and 240 held that the accused has a legal right to be heard whether he should be tried for offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then right to participate in the pretrial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.

5. The Single Judge of this Court in **Mandar Goswami** (supra) was considering a case where the charges were framed on the same date when the accused appeared before the learned Magistrate. In the context of the said facts this Court observed in paragraph No.6 as under :

“6. To my mind, the learned Judge could not have refused even a oral request in these facts and circumstances and given some time to the petitioner to peruse the charge-sheet and if so advised to apply for discharge. There was no need to proceed and frame charges straight away when the petitioner was called upon to attend the court and the summons in that behalf was served on him.”

6. In the light of this position of law laid down by the Apex Court and in the facts of the case, in my opinion, the learned Magistrate was not justified in rejecting oral request of the petitioner to postpone the hearing to a future date.

7. For the reasons stated above, I am of the opinion that the charges framed against the petitioners deserves to be set aside, granting liberty to the petitioner to file appropriate application for discharge, if he so desires. If such application for discharge is filed

within two (2) weeks from today, the learned Magistrate shall decide the application for discharge within Four (4) weeks from the date of filing of such application after giving opportunity of hearing to both sides.

8. If application for discharge is rejected, the learned Magistrate thereafter shall frame appropriate charges against the petitioner.

9. The writ petition is disposed of in the above terms. No costs.

(AMIT BORKAR, J.)