

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

CRIMINAL APPLICATION (APL) NO. 1525 OF 2022

Sarang S/o Shreedhar Lambe and another

Vs.

State of Maharashtra, through its PSO, PS Bajaj Nagar, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.C. Khare, Advocate for applicants.

Shri S.A. Ashirgade, APP for non-applicant/State.

CORAM : G.A. SANAP, J.

DATE : DECEMBER 13, 2022.

Challenge in this application is to the order dated 05.11.2022 passed by the learned Additional Sessions Judge, Nagpur, whereby the learned Judge rejected the revision application filed by the applicants against the order of the learned Judicial Magistrate First Class, Nagpur dated 23.03.2022. The learned Judicial Magistrate First Class, Nagpur vide order dated 23.03.2022 was pleased to reject the application made by these applicants, who are arrayed as accused Nos.3 and 5, for their discharge in Summary Criminal Case No.20895 of 2019 for the offences punishable under Sections 68 and 84 of the Maharashtra Prohibition Act, 1949. In Summary Criminal Case No.20895 of 2019 in all there are 11 accused. As per the case of the prosecution, they were apprehended on the spot. After investigation, the charge-sheet came to be filed for the above offences in the Court of Judicial Magistrate First Class. The applicants/accused nos.3 and 5 applied for discharge from the

criminal case on the ground that no offence has been made out against them. The application made by the accused was under Section 227 of the Code of Criminal Procedure (Cr.P.C.).

2. The learned Magistrate rejected the application mainly on the ground of maintainability. According to the learned Magistrate, the application for discharge was not maintainable in the summary trial provided under Chapter XXI of the Cr.P.C. The applicants carried this order in the revision before the learned Sessions Court, Nagpur. The learned Additional Sessions Judge endorsed the view taken by the learned Magistrate and rejected the application. The applicants are therefore before this Court.

3. I have heard the learned advocate for the applicants and learned Additional Public Prosecutor for the non-applicant/State. Perused the record and proceedings.

4. The copy of the discharge application made before the learned Additional Sessions Judge is annexed to this application. Perusal of the same would show that discharge application was made by invoking the jurisdiction under Section 227 of the Cr.P.C.

5. The learned advocate for the applicants submitted that under Section 482 of the Cr.P.C. this Court has inherent jurisdiction to go through the record while examining the legality and correctness of the impugned order and grant the application made by the applicants for their discharge. In this

application, mainly legality and correctness of the orders passed by the Courts below has been challenged. The case instituted on the police report for the above offences is tried as summary trial. The procedure is prescribed in Chapter XI. Section 226 to Sections 265 provides procedure for the summary trial. The plain reading of Chapter XXI leaves no manner of doubt that in a summary trial there is no provision for discharge. The application was made for seeking discharge under XVIII Section 227 of the Cr.P.C. Section 227 is part of a chapter of the Cr.P.C. prescribing the procedure for sessions trial. It is to be noted that in the case of the applicants Sections 227, 239 and 245 of the Cr.P.C. cannot be made applicable.

6. In the facts and circumstances, I am of the view that no illegality has been committed by the Courts below while rejecting the application.

7. It is to be noted that after rejection of the revision application, the applicants could have taken recourse to the legal remedy available under the law. In my view law, while examining the legality and correctness of two orders, one passed by the learned Magistrate and one passed by learned Additional Sessions Judge in revision, the recourse to the provisions of Section 482 cannot be taken. Therefore, I conclude there is no substance in the application. Accordingly, the application stands rejected.

JUDGE

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