

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

**CRIMINAL REVISION APPLICATION NO.43 OF 2023**

AABA @ MUKESH RAMESH BAVISKAR  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.R.  
Sapkal

APP for Respondent/State : Mr. K.S. Patil

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**CORAM : S.G. MEHARE, J.**

**DATED : JUNE 05, 2023**

**PER COURT:-**

1. Heard learned senior counsel Shri V.D. Sapkal for the applicant and learned APP for the State.

2. The learned Additional Sessions Judge, Jalgaon, had framed the charges against the accused for the offence punishable under Section 302, 452, 342, 506 r/w 34 of the Indian Penal Code. It is an admitted fact that the discharge application of the applicant was rejected. Against the said order, the Criminal Writ petition was filed. However, as per the statement of the learned senior counsel, it was withdrawn, and thereafter, the charges were framed on 15.12.2022. The incident happened the year 2014.

3. Perusal of the record referred to by the learned senior counsel appears that the deceased initially gave a statement that he met with a vehicular accident. He was admitted to the hospital by a

corporator. On his statement, the vehicular road accident case was registered. However, the police did not prepare the spot panchnama as per the statement of the deceased, which was given immediately after the alleged incident. Subsequently, the deceased succumbed to the injuries. The first informant/mother has specifically alleged that the deceased told her the incident as alleged on the basis of which the charges have been framed. It appears from the oral dying declaration of the deceased given to his mother that the accused had mercilessly assaulted him for Rs.50,000/- and he died of the said injuries.

4. The learned senior counsel submitted that the prosecution has two contradictory cases. One is of vehicular accident, and the other is of the intentional act of committing the murder. Therefore, two views are apparently possible, and the charges could not have been framed. To buttress his arguments, he relied on the case of Sajjan Kumar Vs. Central Bureau of Investigation, 2011 AIR SCW 3730. Particularly he referred to para 17 of the said judgment. He also relied upon the case of Ramkishore Sharma Vs. State of Madhya Pradesh, Criminal Revision No.506 of 2012, decided on 09.08.2012. In sum and substance, he has argued that in view of the two contradictory stands taken by the prosecution itself, two views are possible, and one of them gives rise to serious suspicion. He also argued that while exercising power under Section 227 of Cr.P.C., the

learned Sessions Judge did not consider the complete material. Hence, the charges have not been correctly framed.

5. Per contra, the learned APP would submit that the allegations levelled against the applicant are serious. Admittedly, the deceased was working with the applicant. The oral dying declaration of the deceased to the first informant is admissible evidence and that is the prima facie material available before the Court to frame the charges. Two contradictory cases, as alleged regarding the incident, may not form two views. The investigating officer did not prepare the spot panchnama of the alleged incident of a vehicular road accident. This is a serious infirmity on the part of the Investigating Officer. To support the statement of the deceased as regards the vehicular road accident the spot panchanama was essential. However, it was missing. The learned Additional Sessions Judge has correctly exercised the powers under Section 227 of the Cr.P.C. and framed the charges based upon the allegations sufficient to proceed with the case. The case laws relied upon by the learned senior counsel for the applicant would not apply in the peculiar facts and circumstances of the case. Hence, the application deserves to be dismissed.

6. It is not in dispute that initially, the deceased had given a statement as regards the vehicular road accident. It was the duty of the investigating officer to investigate the facts as regards the vehicular accident. But unfortunately, the material piece of evidence

i.e. the spot panchanama, to support the contention of the deceased that it was a vehicular road accident, was missing. It appears that the case of the deceased of a vehicular road accident was made part of the present investigation. The first informant/mother has given an explanation why the report was not immediately lodged. The reason was the apprehension of causing serious loss to the deceased or his family at the hands of the applicant. While framing the charge under Section 227 of Cr.P.C. the Court has to read the material and documents as a whole. In the judgment of the case of Sajjan Kumar (cited supra) in para 17 clause (iv), it has been observed thus :

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

7. The above observation indicates that if the material available on record is sufficient to form an opinion that the accused might have committed the offence, the Court can frame the charge. A perusal of the charge sheet and allegations levelled against the applicant, the Court is of the opinion that barely the prosecution has the case of a road accident, it cannot be said that the accused might not have committed the offence. Prima facie material is available against the applicant to exercise the power under Sections 227 and 228 of Cr.P.C. The contradictory case of a vehicular road accident may be a defence. However, considering the allegations and material

collected after the allegations of murder, the Court is of the opinion that that cannot be brushed aside or ignored as it was part of the record. The Court is of the opinion that two possible views and contradictory cases are different concepts. Considering the papers available with the charge sheet, it cannot be said that it gives rise to suspicion. The allegations levelled against the applicant, if prima facie sufficient to frame the charges, the Court should frame the charge. In view of the above, the Court is of the view that the learned Additional Sessions Judge has correctly considered the material available on record and framed the charges against the applicant. The charges framed are free from error. There are no sufficient grounds to warrant the interference in framing of the charges. Hence, the application stands dismissed.

**(S.G. MEHARE, J.)**