

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.317 OF 2022

Atul Dauji Bhadke,
Age 39 years, Occu Service,
R/o. Ambika Niwas, Khandobanagar,
Shevgaon, District Ahmednagar .. Applicant
(Original Accused)

Versus

1. The State of Maharashtra
Through Police Station, Pathardi,
District Ahmednagar
2. Malhari Mhatardey Shirsath,
Age 41 years, Occu. Business,
R/o. Shirsathmala, Pathardi,
Taluka Pathardi, District Ahmednagar .. Respondents
(Respondent No.1
original informant)

...
Mr. N. S. Jaju, Advocate for Applicant;
Mr. S. P. Deshmukh, A.P.P. for Respondent No.1;
Mr. R. R. Bangar, Advocate for Respondent No.2
...

CORAM : S. G. MEHARE, J.

DATE : 07-06-2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for respondent No.2.

2. This is an example of wining over the material witness to get discharged. An unusual practice to add the complainant/witness in

a state case has been followed. The no objection of the complainant to discharge the accused/petitioner speaks volumes. The case is another example of a courage of a public servant to manage the witness for his benefit. The conduct of the applicant reflects his mindset. The applicant has played a novel attempt to secure the order from the Court. The facts also reflect the level of legal advice. Let us now turn towards the case of the applicant.

3. The learned counsel for the applicant has vehemently argued that the applicant was not present on the spot of the incident when the incident happened. He has also referred to the certain statements of the witnesses and claimed that their statements are not sufficient to proceed with the trial. He also added that the persons/customers who have allegedly beaten by the applicant did not state in the statements that the applicant/accused beat them. He has conveniently read the second part of the incident and vehemently argued that the applicant was not present at the time of the incident. When the Court raised a question to him, whether leaving the hotel without paying the bill is an offence. He has smartly argued that it is a civil liability. He also argued that there is no evidence or material with the prosecution as to who has placed the food orders. He has also referred to the bill which is standing in the name of accused No.1 and again argued that it is not a case of the prosecution that the applicant was liable to pay the bill. There is no material to

frame the charges against the applicant.

4. To bolster his arguments, he relied in the case of **P. Vijayan Vs. State of Kerala and Another, 2010 AIR SCW 886**. In this case, the Hon'ble Supreme Court laid down the law that Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the fact of case in order to determine whether a case for trial has been made out by the prosecution. The sentence "not sufficient ground for proceeding against the accused" in Section 227 of the Code of Criminal Procedure, has been considered and the above ratio has been laid down.

5. Further, he relied on the case of **Dr. Dashrath Bhande Vs. State of Maharashtra, 2016(12) LJ Soft 49 : 2016 All MR (Cri) 4394**. In this case also, it has been observed by this Court (Nagpur Bench) that sufficiency of the material for proceeding further against the accused would depend upon what is disclosed by the witnesses, when their statements are accepted as they are. If it is found that if the statements of the witnesses taken at their face value, do not disclose any material sufficient to fulfill the necessary ingredients of the offence of abetment to commit suicide, it would have to be held that there is no sufficient ground for proceeding further against the accused.

6. Further, he relied on the case of **Manohar s/o. Narayanrao**

Pranjale Vs. State of Maharashtra, 2002 (5) All MR (Cri) 2097. He pressed into service its paragraph No.23. In this case, the Bombay High Court considering the case of ***P. Vijayan*** (*supra*), held that while considering the question of framing of charges, the Judge is required to apply his mind to the evidence produced by the prosecution in support of its case and find out whether a *prima facie* case against the accused has been made out. It has also been observed that the test to determine *prima facie* case would always depend upon facts of each case and there cannot be a general rule of universal application in all cases. The observations recorded by the Court in paragraph No.34 as read by the learned counsel for the applicant appears relevant. In the middle of the said paragraph, it has been observed that the Judge has to look into all the material on record before coming to the conclusion that the accused is in any manner connected with the incident leading to his prosecution.

7. The learned A.P.P. has strongly opposed the application. He would argue that there is sufficient material to proceed with the trial. He read the statements of the witnesses and pointed out that the applicant along with other persons came in the hotel and they abused and beat the customers. He would also argue that none of the case laws are applicable to the case in hand. He has referred to the impugned order and pointed out that it is legal and correct order and specific observations are recorded by the

learned Additional Sessions Judge, Ahmednagar that the applicant was present and he has connection with the incident. When the learned counsel for the applicant referred to the statement of the first informant recorded in the departmental inquiry, he would argue that the statement of witnesses in departmental inquiry has no concern or cannot be received in evidence in the criminal trial. Supporting the impugned order, he would submit that the applicant has no ground to interfere with the same order.

8. The learned counsel for the applicant states that he did not deny the presence of the accused/applicant on the spot of the incident, but at the time of the alleged incident he was not present there.

9. Perused the charge sheet.

10. The first information report reveals that the incident happened in two parts. In the first part, the applicant along with co-accused, who was a police inspector, went to the hotel of the respondent no.2. They ordered food and liquor. After the dinner the complainant asked for bill. Thereafter, instead of paying bill, they started to proceed and one of them said that he is a policeman. Then they started to abuse and created mess. The statements of the witnesses are there who are consistent on the fact that the applicant along with other co-accused started beating and abusing other customers. One of the witnesses Ramesh Bohara @ Thapa,

who was a waiter has specifically stated that as per the order of four customers including the applicant, he served them food. They ordered snacks and liquor. Therefore, merely having bill in the name of co-accused, would not support the contention of the applicant that the applicant was not responsible to pay the bill. The applicant was in a public service. A strange argument has been advanced by the learned counsel for the applicant that it is contract and civil liability. Such an argument has no force.

11. The ratio laid down in the case cited supra by the Hon'ble Supreme Court and this Court is that the Judge has to exercise his judicial mind to the fact of the case in order to determine whether a case has been made out for the prosecution. However, the same principles and the law laid down by the legislature is applicable to every case. The Court has to examine the case and the documents on record as a whole.

12. The learned counsel for the applicant conveniently ignored the first part of the incident and barely read the second part of the incident when the applicant allegedly fled away as the police came there. The incident cannot be separated. The incident started when the applicant and other co-accused denied to pay the bill and they started beating and abusing the other customers and created mess.

13. Ratio laid down by the Hon'ble Supreme Court in the case of **State of Tamilnadu Vs. N. Suresh Rajan and others**, in Criminal Appeal No.22-23 of 2014, dated 06.01.2014, is squarely applicable to the case in hand. It has been laid down in the said case at paragraph No.12 that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge though for conviction, the Court has to come to the conclusion that accused has committed the offence.

14. Considering the ratio laid down by the Bombay High Court in the case of **Manohar** (*supra*), along with material available on record against the accused, the Court is of the view that the applicant was connected with the incident and that is sufficient to frame the charges. The prosecution cannot be thrown at this juncture. The Court, after having gone to the entire record and the documents filed by the investigating Officer, is satisfied that there is sufficient material against the applicant for framing the charges. The complainant/ respondent no.2 has no voice to state before the Court that the accused be discharged. Hence, his affidavit is not a legal document that bind the Court. He also appears in collision with the applicant.

15. In view of the above, the Court is of the view that, the learned Additional Sessions Judge, Ahmednagar correctly arrived at the conclusion that there is sufficient material to frame the charge against the accused. The order impugned is free from infirmity and error. The petition is devoid of merit and accordingly, stands dismissed.

16. Rule stands discharged.

17. Considering the conduct of the complainant, liberty is granted to the prosecution to take an appropriate step against complainant/respondent no.2, if the prosecution so desires.

(S. G. MEHARE)
JUDGE

rrd