

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

CRIMINAL REVISION APPLICATION NO.186 OF 2021

1. Nihalsing Chandrasingh Rathod,
Age : 39 years, Occ. Labour,
R/o : Holnanthe, Taluka : Shirpur,
District : Dhule.
2. Manishabai Nihalsing Rathod,
Age : 30 years, Occ. Housewife,
R/o : Holnanthe, Taluka : Shirpur,
District : Dhule.

...Applicants

Versus

1. The State of Maharashtra,
Through Thalner Police Station
(Copy to be served through the office of
Public Prosecutor, Bombay High Court, Bench at
Aurangabad)

2. XYZ
- ...Respondents

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Mr. Joslyn A. Menezes h/f Mr. Prakash S. Paranjape, Advocate for Applicants.

Mr. V.P. Raje, Advocate for Respondent No.2.

Mr. K.S. Patil, APP for the Respondent/State.

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CORAM : S.G. MEHARE, J.

**RESERVED ON : 12th DECEMBER, 2022
PRONOUNCED ON : 13th JANUARY, 2023**

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The applicants/accused have impugned the order rejecting the prayer for discharge dated 09.11.2021 passed by the learned Additional Sessions Judge, Dhule in Sessions Case No.45 of 2018.

3. The complainant is the maternal sister of accused no.2/ Manisha and accused no.1 is her husband. The first incident of rape allegedly happened on 17.07.2017. It has been alleged that the stupefying substance was administered to the victim through food, then applicant no.1 did forceful sex with her. When she gain her sense, she was naked. She enquired with accused no.2 about the forceful sex, but she did not pay heed. The second incident happened on 11.10.2017 in bathroom. There also the accused no.1 did forceful sex with her. After the first incident, she was blackmailed and threatened to make the video of her forceful sex viral. The victim is a widow. She filed an application under Section 156(3) of the Criminal Procedure Code. On the order of learned Magistrate, the crime was registered. The evidence was collected and the charge sheet has been filed.

4. The present applicants/accused claimed that the allegations levelled against them are false and concocted. No incidents as such happened. There is inordinate delay in lodging the report. There is absolutely no evidence to corroborate the wild allegations. Medical evidence as regards the forceful sex and administering the stupefying substance is not available. There was no video or sound recording. The victim resides adjacent to the house of the present applicants. The statement of her brother is recorded belatedly. The witnesses are hearsay.

5. Learned counsel for the applicants Mr. Menezes has referred to the evidence collected by the investigation officer and vehemently argued that there is absolutely no material to frame the charge. Hence, they are liable to be discharged. However, the learned Additional Sessions Judge did not consider the law in proper perspective and mechanically dismissed the petition.

6. Per contra, learned counsel Mr. Raje for the complainant/respondent has vehemently opposed the application. He would point out that no lady would take such a drastic step unless there is some substance. The applicants did not point out the patent illegalities committed by the learned Additional Sessions Judge. He relied upon the case of Sanjay Sravan Bhojne Vs. State of Maharashtra and another in Criminal Writ Petition No.823 of 2018 of Bombay High Court, Nagpur Bench decided on 10.01.2022. Relying on this case, he would argue that considering the law on framing of charge, the parameters to frame the charge are well settled. The High Court has very little power to interfere in the revisional jurisdiction against the order denying discharge. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

7. He would further argue that relying on the case of Amit Kapur Vs. Ramesh Chander and Another, 2012 (9) SCC 460, the

Hon'ble Bombay High Court in the case of Sanjay Sravan Bhojne (cited supra) has laid down the law that "while considering the application for discharge, the test to be applied is as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not and it is only in case the allegations made are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere, which would indicate the limited scope of interference by the Court at the stage of framing of a charge under Section 227 of the Cr.P.C." He added that there was sufficient material, statement of child and brother to believe the *prima facie* case against the applicants. He prayed to dismiss the petition.

8. In reply, learned counsel Mr. Menezes for the applicants would submit that the facts of the case of Sanjay Sravan Bhojne (cited supra) were that it was a consensual relationship; hence, the ratio laid down in that case would not apply. The complainants case is highly improbable.

9. The law is well settled that the revisional Court has limited power to interfere with the order framing the charge or denying discharge to the accused.

10. While framing the charge, the Court has to consider the material on record and the points raised by the respective parties. If the Court is satisfied from the material and documents on record, there are grounds for presuming that the accused has committed the offence, the charges may be framed. As against this, if upon considering the record of the case and documents submitted therewith, the Court considers that there is no sufficient ground for proceeding against the accused, then Court shall discharge the accused and record his reasons for so doing. The legal proposition is clear that the accused must satisfy the Court that there were no sufficient grounds for proceeding against him. While framing the charge, no meticulous examination of the evidence is needed. The Court is also not required to consider whether the case would end in conviction or not at the stage of framing of the charge. The Court has to examine the *prima facie* material available on record constituting an offence based upon the allegations. No doubt, the delay in registering the FIR and recording the statement may raise suspicion, but it is always subject to explanation. The accused has right to rebut the reasons for delay in lodging the report.

11. The arguments of the accused/applicants are that even if the allegations have been accepted as it is, the alleged incidents are highly improbable. Their arguments were that there must be a corroborative evidence to support such serious allegations. However,

the statement of the prosecutrix making such serious allegations cannot be ignored for the reason of delay in lodging the complaint. The prosecutrix has a specific case that after the first incident, she was blackmailed under the pretext of making her video of sex with accused no.1 viral. She being a widow, was afraid and she did not take immediate action. However, again the same thing was repeated with her. Not only this, the applicants have extracted money and gold from her under the threats to make the video of her sex viral. Her child and brother gave the supporting statements to her allegations.

12. Bearing in mind the legal preposition for discharge, the Court is of the view that the allegations made against the applicants and the material produced cannot be thrown at threshold, only on the grounds raised by the applicants. Apparently, the allegations are serious against the applicants. There is sufficient material on record to frame the charge. The Court did not find any substantial reason to discharge the applicants and interfere with the impugned order.

13. For the reasons stated above, the revision application stands dismissed.

14. Rule stands discharge.

(S.G. MEHARE, J.)