

SA Pathan

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

CRIMINAL REVISION APPLICATION NO. 2 OF 2023

Azar Nijamuddin Dhanse	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Rajesh L. Dharap, for the Applicant.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 14, 2023

PC.:

1. The Petitioner is challenging the order dated 19 September 2022 rejecting the discharge Application of the Petitioner. The Petitioner is facing trial for offences punishable under Sections 353, 332, 186, 504 and 506 of the Indian Penal Code (for short “IPC”). During pendency of the said trial the Petitioner filed an Application for discharge. The said Application has been rejected by learned Sessions Judge.

2. The learned Advocate for the Applicant submitted that best evidence in the form of CCTV footage has been tampered with; he has been falsely implicated; the complainant himself attacked the Applicant.

3. Learned Sessions Judge, considering the material on record recorded a finding that sufficient ground to proceed against the Applicant has been made out. The Sessions Judge rejected the

Application on following grounds:

- i. statement of eye witnesses corroborating the version of complainant,
- ii. seizure of cloths to show scuffle,
- iii. the injury certificate indicating simple abrasion of 4 c.m. X 1 ½ c.m. on chest below neck right side which was fresh injury,

4. The effect of alleged tampering of CCTV footage and all other contentions raised by the Petitioner needs to be scrutinized at the time of trial by learned Sessions Judge. At the stage of considering the Application for discharge probative value of evidence on record need not be considered. The parameters for scrutinizing the Application of discharge have been laid down by the Apex Court in the case **Union of India vs Prafulla Kumar Samal & Anr**¹ which are as under:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

¹ 1979 SCC (3) 4

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

5. Considering reasons assigned for rejecting discharge Application, there is no infirmity in the order passed by the learned Sessions Judge.

6. All contentions of the Petitioner are kept open to be adjudicated at the time of trial.

(AMIT BORKAR, J.)