

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

CRIMINAL WRIT PETITION NO. 823 OF 2022

PETITIONER : Anil Pundlikrao Khadse, Aged: 45 yrs,
Occ: Business, R/o. Plot No.531/1,
Congress Nagar, Panchsheel Housing
Society, Amravati, Dist. Amravati.

//VERSUS//

RESPONDENT : State of Maharashtra, Through P.S.O.,
P. S. City Kotwali, Tq. & Dist.
Amravati.

Mr. S.B. Gandhe, Advocate for the Petitioner.
Mr. A.R. Chutke, APP for the Respondent/State.

CORAM : G. A. SANAP, J.
DATED : 1st FEBRUARY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this criminal writ petition, filed under Article 227 of the Constitution of India, challenge is to the order dated 3rd August, 2022 passed by the learned Chief Judicial Magistrate, Amravati, whereby the learned Chief Judicial Magistrate has framed the charge against the petitioner-accused No.1.

03] The charge-sheet against the accused No.1 was filed on 3rd August, 2022. The accused No.2 was absconding. The learned Chief Judicial Magistrate was pleased to issue standing arrest warrant against the accused No.2. The learned Chief Judicial Magistrate, without waiting for execution of the standing arrest warrant against the accused No.2, was pleased to frame the charge against the accused No.1. The accused No.1 was produced via video conferencing.

04] The main grievance of the petitioner is that the learned Chief Judicial Magistrate neither heard the learned APP in-charge of the case nor the accused before framing the charge. It is stated that the order of framing of charge is contrary and in gross violation of the mandate of Section 239 of the Code of Criminal Procedure, 1973 (for short "Cr.PC"). It is the grievance of the accused that the learned Chief Judicial Magistrate, without giving an opportunity to the accused and to his advocate, to make a submission before framing the charge, framed the charge in hurry.

05] I have heard Mr. S.B. Gandhe, learned advocate for the petitioner and Mr. A.R. Chutke, learned APP for the respondent.

06] The learned APP argued the matter without filing the reply. The question of applicability of Section 239 of the Cr.PC is

involved in this case. It would, therefore, be appropriate to reproduce Section 239 of the Cr.PC, which reads as follows:

“239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

07] The roznama dated 3rd August, 2022 has been placed on record. The roznama does not reflect that the learned Chief Judicial Magistrate had examined the report or heard the petitioner-accused No.1, the advocate for the petitioner and the prosecution, as required to be done in terms of Section 239 of the Cr.PC. The roznama indicates that on the date of taking cognizance itself, the learned Chief Judicial Magistrate framed the charge. The accused No.1 was produced via video conferencing. It is not reflected in the roznama that the advocate representing the accused No.1 was either present or absent in the Court. The learned Chief Judicial Magistrate was required to ensure the compliance of Section 239 of the Cr.PC. It needs to be stated that the compliance of Section 239 of the Cr.PC must be reflected in the record. In this case, leave

aside the record, it has not been reflected in the roznama. The roznama dated 3rd August, 2022 would show that no hearing for examination of the record, as contemplated under Section 239 of the Cr.PC was made by the learned Chief Judicial Magistrate. The charge, framed against the petitioner-accused No.1 without complying the provisions of Section 239 of the Cr.PC, is, therefore, not in accordance with law. The charge is, therefore, required to be quashed and set aside. The petitioner-accused No.1 is required to be given an opportunity of hearing before framing the charge.

08] Accordingly, the writ petition is **allowed**. The order dated 3rd August, 2022 passed by the learned Chief Judicial Magistrate, Amravati framing the charge against the petitioner-accused No.1 and the order dated 15th October, 2022 passed by the learned Additional Sessions Judge, Amravati confirming the order passed by the learned Chief Judicial Magistrate are quashed and set aside. The learned Chief Judicial Magistrate shall comply with the provisions of Section 239 of the Cr.PC before proceeding to frame the charge.

09] The learned advocate for the petitioner, at this stage, submits that the absconding accused has now been arrested. The learned Chief Judicial Magistrate, therefore, shall ensure that the

charge is framed against accused Nos.1 and 2 after granting them an opportunity of hearing and after conducting hearing, as provided under Sections 239 and 240 of the Cr.PC.

10] The Registry to communicate this order to the learned Trial Court.

11] Rule is made absolute in the aforesaid terms. The writ petition stands disposed of.

(G. A. SANAP, J.)

Vijay