



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO.273 OF 2024

JANARDHAN AKULA CHANDRAPPA

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Nitin Bhavar Patil LLP Advocate and Legal Consultancy for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 27th SEPTEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings bearing Sessions Case No.156/2023 (Regular Criminal Case No.148/2021) pending before learned Additional Sessions Judge, Ahmednagar arising out of Crime No.478/2020 registered with Supa Police Station, Dist. Ahmednagar, for the offence punishable under Section 302, 120-B, 212 read with Section 34 of the Indian Penal Code, 1860.

2 Present applicant is original accused No.7. The said First

Information Report came to be lodged by respondent No.2 with Supa Police Station.

3 Learned Advocate for applicant submits that perusal of the First Information Report and the entire charge sheet would show that offence is not made out against the applicant. As per the prosecution story, the present applicant had harboured accused No.6 in spite of having knowledge that he has absconded after the commission of crime. In fact, in First Information Report there is absolutely no disclosure in respect of present applicant. Present applicant is a practicing lawyer before High Court for the State of Telangana and resides at Hyderabad. Accused No.6 Bal @ Balasaheb Jagannath Bothe is said to be the accused, who had given contract to kill deceased Rekha Jare. The entire charge sheet does not give the specific event as to how the present applicant was knowing that original accused No.6 had committed the offence was within the knowledge of the applicant. The prosecution is solely relying upon the statement of one witness by name P. Satishkumar. Reading the statement of said P. Satishkumar would show that the present applicant had introduced the accused as an Advocate to accused Bothe and introduced that he has come for taking training. From the statement of said P. Satishkumar it cannot be said that present applicant had the knowledge that he was knowing that accused No.6 had committed the

offence of murder. Under such circumstance, it would be an abuse of process of law to ask the applicant to face the trial.

4 Learned Advocate for applicant has further submitted that applicant had filed an application for discharge under Section 227 of the Code of Criminal Procedure, which was rejected by the Trial Court and then he had filed Criminal Revision Application No.109 of 2023 before this Court, which was decided by learned Single Judge on 28.06.2023. The said revision application was dismissed. Yet, there is no bar for the consideration of application under Section 482 of the Code of Criminal Procedure. He relies on the decisions in **Vishnu Kumar Shukla and others vs. State of Uttar Pradesh and others** [2023 SCC OnLine SC 1582], **Ram Prakash Chadha vs. The State of Uttar Pradesh** in Criminal Appeal No.2395 of 2023 decided by Hon'ble Apex Court on 15.07.2024, **Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another** [(2019) 11 SCC 706] and **Rishi Nakatu Pustode and others vs. State of Maharashtra and another** in Criminal Application (APL) No.1091 of 2021 decided on 18.01.2023 by this Court, Bench at Nagpur. In all these cases it has been held that an application under Section 482 of the Code of Criminal Procedure is maintainable even after the rejection of the application under Section 227 of the Code of Criminal Procedure. Inherent powers of the High Court can be

exercised even after charge sheet is filed.

5 Learned APP submits that when this Court has come to a conclusion that there was no illegality or error by the Trial Court in rejecting application under Section 227 of the Code of Criminal Procedure and it was observed that there is prima face evidence against the present applicant, then there is no scope for inherent powers to be exercised by this Court.

6 At the outset, we would like to consider the maintainability of the application. In other words, whether case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure after the revision application under Section 397 and/or 401 of the Code of Criminal Procedure has been decided by this Court. We may not, therefore, consider the merits or what is the evidence against the applicant as those factors have already been considered by this Court in the said revision application. Section 397 of the Code of Criminal Procedure empowers this Court as well Sessions Court to consider legality and propriety of an order. Section 401 of the Code of Criminal Procedure is on the same line which can be exercised only by this Court. The present applicant by filing the revision application had challenged order below Exh.1 passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.156/2021 dated 17.01.2023,

thereby rejecting the application for discharge. The basis on which the discharge application was that the sole statement of witness P. Satishkumar, which showed introduction of accused No.6 Bal @ Balasaheb Jagannath Bothe. The statement of that witness under Section 164 of the Code of Criminal Procedure also was taken as involvement of the applicant in the crime and, therefore, the applicant contended that the said evidence is not sufficient to frame charge against him. Copy of the order passed by the Hon'ble Single Bench in the Criminal Revision Application No.109 of 2023 dated 28.06.2023 has been produced. It has been observed that the statement of the witness is under Section 161 as well as under Section 164 of the Code of Criminal Procedure. It was tried to be interpreted by the applicant that he had no knowledge when he introduced Bal @ Balasaheb Bothe to P. Satishkumar as an Advocate and he himself had no knowledge about the crime that was committed. Now, the charge mainly against the applicant is regarding harbouring said accused No.6. The Hon'ble Single Judge has dismissed the said revision application by holding that there is prima facie material available against the applicant. The present applicant has not challenged the said order before Hon'ble Apex Court. Under the said circumstance, we are of the opinion that this Court once again under different provisions cannot come to the conclusion that there is no evidence or it would be unjust to ask the applicant to face the trial. In other words,

when this Court (though through Hon'ble Single Bench) had come to the conclusion that there is a prima facie evidence to frame charge against the applicant, then by way of an application under Section 482 of the Code of Criminal Procedure a different view that there is no evidence collected against the applicant or whatever evidence that has been collected is not sufficient for even to frame charge cannot be taken. The law in the cases relied upon by the applicant is well settled. However, all of them were dealing with rejection or dismissal of the application for discharge which was preferred under Section 227 of the Code of Criminal Procedure in the proceedings under Section 482 of the Code of Criminal Procedure before the High Court. In other words, in these cases there was no fact involving non exercise of power under Section 397/401 of the Code of Criminal Procedure in favour of the applicant.

7 Thus, when this Court had already taken a view in the revision that there is evidence against the applicant, we do not find this to be a fit case where we can exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Application stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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