



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

**CRIMINAL APPLICATION NO. 2364 OF 2023
IN
CRIMINAL APPLICATION NO. 415 OF 2021**

1. Mr. Jamilkhan Abdulkhan Pathan,
Age : 30 Years, Occ. Advocate
2. Mr. Abdullakhan Bismillakhan Pathan,
Age : 65 Years, Occ. Busines,
Both R/o. Bismillah Chowk, Nandurbar,
..APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Nandurbar City Police Station,
Taluka Nandurbar, District Nandurbar.
2. Mrs. Hameedabi Moinoddin Shaikh,
Age : 55 Years, Occ. Housewife,
R/o. Bismilah Chowk, Nandurbar
Dist. Nandurbar ..RESPONDENTS

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Advocate for the Applicants : Mr.V. D. Khivesara,
A.P.P for Respondent No.1 : Mr. A.M. Phule

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**CORAM : SMT. VIBHA KANKANWADI AND
R. W. JOSHI, JJ**

DATED : NOVEMBER 22, 2024

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

1. Present application has been filed for restoration of Criminal Application No. 415 of 2021 which came to be disposed of in view of order dated 27.06.2023 by this Court.
2. Before we proceed, the background is required to be considered. The present applicants had filed said Criminal Application No. 415 of 2021 for quashing the FIR vide C.R. No. 20 of 2021 dated 09.01.2021 registered with Nandurbar City Police Station, Taluka Nandurbar, District Nandurbar for the offence punishable under Sections 354, 323, 324, 109, 504 read with Section 34 of the Indian Penal Code.
3. This Court, by order dated 9th April 2021 taking note of the fact that arguable case has been made out, observed that in the event, Investigating Officer files a charge sheet before the Trial Court against these two applicants as well, the said charge sheet to the extent of these applicants, would be subject to result of this application. Thereafter, the matter proceeded and it appears that on 27th June 2023, when the learned Advocate for the applicants was absent, the learned A.P.P. pointed out that the charge sheet has been filed indicating that the applicants to have not been proposed to be prosecuted, interpreted that, no charge sheet has been filed

against these applicants. It was then observed that nothing survives in the application and therefore, it was disposed of. It is stated in the charge sheet by the Investigating Officer, as to why he was not forwarding the accused No.3 and 4 i.e. present applicants before the Magistrate.

4. Learned A.P.P now submits that it appears that the said action on the part of Investigating Officer is under Section 169 of the Code of Criminal Procedure. We would like to consider the terminology that has been used by the Investigating Officer

“ म्हणून आरोपी क्रमांक ३ आणि ४ यांचे विरुद्ध काही एक पुरावा मिळून न आल्याने आरोपी क्रमांक ३ व ४ यांना दोषारोपातून मुक्त करण्यात आले आहे.”

5. We are of the opinion that the Investigating Officer has no jurisdiction to discharge any accused, but certainly Section 169 of Code of Criminal Procedure says that If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient, evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate

empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial. At the most, the Investigating Officer is supposed to give simple report that upon his investigation there is no sufficient evidence transpiring against a particular accused or accused persons to submit to the jurisdiction of the Magistrate. Use of the wrong wording by the Investigating Officer in the present case is not prejudicial to present applicants. The fact remains that there was no evidence against them collected by the investigating officer or transpired to him and therefore he had not made the present applicants as accused in the charge sheet column No.10 which is for list of accused charge sheeted in Court.

6. The learned Advocate appearing for the applicants is producing copy of the judgment against the other accused persons against whom charge sheet was forwarded and it appears that by the judgment and order dated 22.11.2023 they have been acquitted of all the offenses.

7. We are of the opinion that there is no necessity to restore the Criminal Application No. 415 of 2021. Only the clarification of the order would suffice taking into consideration the fact that as the applicants have been released by the Investigating Officer by taking recourse to

Section 169 of the Code of Criminal Procedure, the FIR also may not affect against them and will not survive. With these observations, the application stands disposed of.

(R.W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni