



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 47 OF 2024

Fulchand S/o. Nana Lad,
Age : 68 years, Occu. : Labour,
R/o. Pategaon, Tq. Karjat,
Dist. Ahmednagar.

... Applicant
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through Police Inspector,
Ashti Police Station,
Tq. Ashti, Dist. Beed.
2. Mohamad Mahamud Qureshi,
Age : 25 years, Occu. : Labour,
R/o. Khadkat, Tq. Ashti,
Dist. Beed.

... Respondents.

.....
Mr. Kishor G. Gaikwad, Advocate for Applicant.
Mrs. Vaishali S. Chaudhari, APP for Respondent No.1 – State.
Mr. Kartik Katariya h/f. Mr. N. B. Narwade, Advocate for Respondent No.2
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 26th FEBRUARY 2025
PRONOUNCED ON : 11th MARCH 2025

ORDER :

1. In instant revision, exception has been taken to the order dated 03.01.2024 passed by learned Additional Sessions Judge, Beed on application below Exhibit 35 in Sessions Case No. 68/2021, thereby rejecting said application for discharge.

2. Learned counsel for applicant pointed out that, crime was

registered against applicant bearing no. 174 of 2020 for offence punishable under sections 286, 336, 427 read with section 34 of Indian Penal Code and section 3 of the Explosive Substances Act, 1908. That, there was false implication. That, applicant had no nexus with the explosive substance. That, necessary ingredients for attracting section 3 of Explosive Substance Act were patently missing in the entire investigation. That, even section 7 of the Explosive Substance Act was misapplied. That, there was nothing to connect applicant with alleged crime and therefore he had preferred Application Exh.35 by invoking section 227 of Cr.P.C. seeking discharge. However, according to learned counsel, learned trial court failed to consider and appreciate the case set up by revisionist and also failed to consider and appreciate the purport of section 227 of Cr.P.C. and erred in rejecting the application and hence he seeks indulgence by allowing the revision.

3. Learned APP as well as learned counsel for respondent n.2, both opposed the revision on the ground that respondent no.2 lodged report, resulting into crime bearing no.174 of 2020. On thorough investigation, only when involvement of applicant was revealed, he was implicated as accused. That, there was sufficient material emerging upon complete investigation and therefore applicant was charge-sheeted and made to face trial. Therefore,

finding sufficient material, learned trial court committed no error in rejecting the application Exh.35. Hence, she prays to dismiss the revision.

4. Here, report lodged by Mohammad Qureshi with Ashti Police is that, on 29.05.2021, on account of blasting undertaken by detonators for digging pond in the field, there was damage to the structures and houses adjoining to the said field i.e. impact of blast, thereby causing loss. On above report, crime has been registered bearing no.174 of 2020 for offence under sections 286, 336, 427 r/w section 34 of IPC and under section 3 of Explosive Substance Act.

5. Investigating machinery seems to have recorded statements of witnesses. Spot panchanama is drawn. The tractor used for above blasting and air compressor machine used for the above activity are also shown to be seized on 21.10.2020. Detonator, yellow wire, guillotine and soil sample of the site are also seized by Investigating Officer and papers show that the same are dispatched to the scientific analyzer.

6. It would be fruitful to give a brief account of the settled legal position regarding objects and scope of Section 227 of Cr.P.C.

In the case of *Sajjan Kumar v. CBI* MANU/SC/0741/2010 :

(2010) 9 SCC 368, on the scope of Section 227 of Cr.P.C., the Hon'ble Apex Court observed in para 21 as under :

"21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The Court cannot act merely as a Post Office or a mouthpiece 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find

out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

The Hon'ble Apex Court, on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** MANU/SC/0595/2019 : (2019) 16 SCC 547, observed as under :

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial..."

In ***Asim Shariff v. National Investigation Agency*** MANU/SC/0863/2019 : (2019) 7 SCC 148 the Hon'ble Apex Court has observed that at the stage of framing of charge, the trial court is not expected

or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

Some other rulings on this aspect can be named as ***State of Maharashtra and others v. Som Nath Thapa and others*** (1996) 4 SCC 659; ***State of M.P. v. Mohanlal Soni*** (2000) 6 SCC 338; ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460; ***Asim Shariff v. National Investigation Agency*** (2019) 7 SCC 148.

7. Keeping above legal precedents and on studying the material placed before this court as well as learned trial court, *prima*

facie, it is emerging that investigating machinery, on receipt of complaint undertook investigation and has gathered above discussed material for trial. Resultantly, it cannot be said that there is no material or there to be absence of necessary ingredients to attract the provisions or to further make revisionist face trial. It is too early to seek discharge, rather there is no case made out for discharge. Hence, there being no merits and no infirmity in the impugned order, I proceed to pass the following order :-

ORDER

The revision application stands rejected.

(ABHAY S. WAGHWASE, J.)