



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

CRIMINAL REVISION APPLICATION NO. 275 OF 2024

Gopalkrushna S/o. Govindrao More
Age: 59 years, Occu.: Pensioner,
R/o. Telki, Tq.Loha, Dist.Nanded.
At present R/o. : Maganpura, Nanded
Tq. & Dist.Nanded.

....Applicant
(Orig. Accused)

Versus

The State of Maharashtra
Through Police Station, Sonkhed.

....Respondent

.....
Advocate for Applicant : Mr. Vaibhav Balajirao Dhage
APP for Respondent : Ms.Vaishali S.Chaudhari

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 MARCH, 2025

PRONOUNCED ON : 17 MARCH, 2025

ORDER :

1. Present revision application is at the instance of original accused, whose application for discharge filed below Exh.6 came to be rejected by order dated 25-07-2024 by learned Additional Sessions Judge, Kandhar in Sessions Case No.28 of 2020.

2. Substance of arguments while challenging the impugned order is that applicant was arrayed as accused in crime. He was chargesheeted before the learned trial Court in Sessions Case No.28 of 2020. Case of applicant is that, he was a Government employee

holding Additional Charge of the Secretary of Anusaya Sevabhavi Sanstha, Kandhar. That, said Sanstha runs Matoshri Anusaya Secondary School at Sonkhed. That, complainant, who set law into motion, was also working as Assistant Teacher and was holding post of Incharge Head Master in the said School. It is pointed out that, complainant indulged in irregularities and therefore, Management suspended him and further decided to terminate his services. That, aggrieved by the same, complainant approached School Tribunal and also lodged report against present revisionist levelling false allegations resulting into registration of crime no.179 of 2018 under Sections 353, 332 and 506 of the IPC alleging obstructions in commission of official duties. That, on the basis of said report, investigation was carried out and applicant came to be chargesheeted. That, infact there was no material for trial, therefore, application exh.6 was pressed into service seeking discharge of applicant from offence under Sections 353, 332 and 506 of the Indian Penal Code (IPC). That, moreover, further by order dated m 25-07-2024, application seeking discharge came to be rejected.

3. It is further submitted that FIR against applicant was with ulterior motive. That, there was false implication. That, inspite of

entire investigation, no material to attract offence under Sections 353, 332 and 506 of the IPC was found by the investigating machinery so as to make him face charge. Therefore, in the interest of justice, learned counsel questions impugned order.

In support of submissions, learned counsel placed reliance on the decision of this Court passed in the case of *Amer Khan v. State of Maharashtra and Others*, 2023 SCC Online Bom.818.

4. Learned APP opposed application on the ground that as there was sufficient material and on thorough investigation, applicant was duly chargesheeted. Learned APP submitted that all required ingredients for attracting charges were available in the very FIR and statements of witnesses. Therefore, application for discharge was misplaced and mis-directed and hence, it was rightly rejected by the learned trial Court.

In support of submissions, learned APP placed reliance on the decision of the Hon'ble Supreme Court in the case of *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 68.

5. Present application is apparently preferred invoking provisions under Section 227 of the Cr.P.C. Before analyzing above material, it

would be fruitful to give a brief account of the settled legal position and land mark judgments in which guidelines and principles are enunciated regarding objects and scope of Section 227 of the 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.

6. Perused the papers. It appears that, a report was lodged at Police Station, Sonkhed, Tq.Loha, Dist.Nanded, by Kalidas Patil in the capacity of Head Master of Matoshri Anusaya Secondary and Higher Secondary School, Sonkhed, stating that on 26-11-2018, when "Constitution Day" was celebrated, which was attended by all teachers and students, at around 09.45 a.m. Gopalkrushna Govindrao More i.e. present revisionist caught-hold of collar of Patil, scuffled with him. That time, revisionist also issued threats to kill. That, teachers and staff witnessed the occurrence. Hence, Patil sought

legal action resulting into registration of crime bearing no.179 of 2018 for offence u/s 353, 332, 506 of the IPC and after investigation, revisionist was chargesheeted and tried vide Sessions Case no.28 of 2020.

In above Session Case, revisionist preferred exh.6 seeking discharge under 227 of the Cr.P.C. and fundamental ground amongst other grounds was that, complainant Patil was Head Master of Private School and was not thus a public servant so as to attract above provisions, more particularly 353 and 332 of the IPC.

7. The impugned order, which is now questioned, is of 25-07-2024. Learned Additional Sessions Judge, Kandhar, appreciated the above contentions amongst other contentions and by relying on judgment of this Court in *Ayyub Younus Bagmaru v. State of Maharashtra*, 2022 ALL MR (Cri) 2958, observed that even a Teacher working in Government aided school *prima facie* comes in the purview of “public servant” and further held that Kalidas Patil being Head Master of Matoshri Anusaya Secondary and Higher Secondary School, Sonkhed, which is also stated to be Government aided school, was indeed a “public servant” and therefore, there was no substance in the ground of the discharge.

8. Issue as to whether aforesaid School was Government aided or private and whether Teachers and staff of said Institution would be termed as “public servants” or not, would depend on documentary evidence, which could be assessed at full-fledge trial. There are not only allegation of obstructions in official duty, but also allegation of threat to kill resulting into crime being registered also for offence under Section 506 of the IPC. Hence, for said reason also, it cannot be said to be a case to invoke provisions under Section 227 of the Cr.P.C. and to discharge the applicant.

9. The facts of the case relied by the applicant and the case in hand are quite distinguishable and therefore, cannot be made applicable to the case in hand.

10. In view of the aforesaid discussions, following order is passed :

ORDER

Criminal Revision Application No.275 of 2024 is rejected.

(ABHAY S. WAGHWASE)
JUDGE