



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 58 OF 2025

PETITIONER

Manoj s/o Doliram Kuthe,
Aged about 40 years, Occupation: Private,
R/o c/o Sandhya Bagmare, Plot No. 31,
Railway Station Road, Bhandewadi,
Nagpur, Maharashtra.

VERSUS

RESPONDENT

State of Maharashtra,
through its Police Station Officer,
Police Station Sakkardara, Nagpur.

Mr. S.R. Kadam, counsel for petitioner.
Mrs. Sneha S.Dhote, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 19/06/2025

JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith with consent of

learned counsels appearing for the parties.

3. By this writ petition, the petitioner has challenged the order passed by the Judicial Magistrate First Class, Nagpur, rejecting the application for discharge, which is confirmed by the Sessions Court in Criminal Revision No. 112/2024 by order dated 18/12/2024.

4. Brief facts which are necessary for the disposal of the present petition are as under;

Sushant Kumar Meshram has lodged the report, alleging that the applicant, who was working in his office as an admission officer, has committed theft of One Laptop, Two hard disks, and Two pendrives. The informant is running a Training Center by name Academy of Fire and Safety. Thus, as per the allegation, the present petitioner has committed a theft of Rs. 42,000/-. On the basis of the said report, police have registered the crime against the present applicant. During the investigation, the investigating officer visited the house of the present applicant and drawn the spot panchanama. The statements were also recorded. The seizure panchanama was also drawn. After completion of the investigation, the charge-sheet is filed.

5. After filing of the charge-sheet, the applicant filed an application for discharge on the contention that, during the house search panchanama, nothing is recovered from his house, neither the incriminating articles nor any other documents. Thus, except the statement of the informant, there is no other material to connect the present applicant with the alleged offence. Thus, as there is no prima-facie material to connect the present applicant with the alleged offence, no purpose would be served by insisting him to face the trial, and therefore, he be discharged from the charges.

6. The said application is strongly opposed by the State on the ground that, at the stage of framing of the charge, what is to be looked into is the material, which is collected during the investigation, and the defence of the applicant is not to be taken into consideration. Prima-facie material points out the involvement of the present applicant, as the said laptop is recovered at the instance of the present applicant from the office, and therefore, prima-facie material is there to connect the present applicant with the alleged offence. The learned magistrate has considered all these aspects and rejected the application.

7. Being aggrieved and dissatisfied with the same, the applicant preferred the criminal revision before the Additional Sessions Judge-12, Nagpur. The learned Judge observed that upon perusal of the charge-sheet, a Sony company laptop bag and a pen drive were seized from the office where the applicant works, at his instance. Therefore, sufficient material exists to connect the applicant with the alleged offence, and the revision was dismissed.

8. Being aggrieved and dissatisfied with the same, the present writ petition is filed by the petitioner on the ground that both the courts below had not considered that no prima-facie material was collected during the investigation, which would be sufficient to frame the charge, and therefore the order passed by the learned Magistrate as well as the Additional Sessions Judge, Nagpur, deserves to be quashed and set aside and the petitioner to be discharged from the charges.

9. Before entering into the merits of the case, it is necessary to see what are the considerations for considering the application for discharge.

10. It is a settled principle of law that, at the stage of considering an application for discharge, the Court must proceed

on the assumption that the material, which has been brought on record by the prosecution, is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. The Hon'ble Apex Court in the case of *State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU / SC / 1113/2023*, adverting to the earlier propositions of law. In its earlier decisions in the cases of (1) *State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709* and (2) *the State of Maharashtra vs. Som Nath Thapa, reported in (1996) 4 SCC 659* and (3) *The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC 338*, has held thus:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. This Court in ***State of Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709*** adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks

that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

13. Thus, the defence of the accused is not to be looked into, at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 or 239 of the Code of Criminal Procedure is to be understood, as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge, the court cannot analyze or direct the evidence of the prosecution and defence on the points or possible cross examination of the defence.

14. In the light of above said proposition of law, if the facts of the present case are taken into consideration, at this stage, there is sufficient material to frame the charge as incriminating material is recovered at the instance of the present applicant. Thus, there is no merit of in the writ petition, and no interference is called for.

The writ petition being devoid of merits and liable to be dismissed. Accordingly, I proceed to pass the following order.

- a] The writ petition is **dismissed**.
- b] Rule stands discharged with no order as to costs.

[URMILA JOSHI-PHALKE, J.]