



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

CRIMINAL REVISION APPLICATION NO.19 OF 2024

Sachin Dhyaneshwar Dahake

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Beltarodi, District Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. N. Singh, Counsel for the applicant.

Mr. V. A. Thakare, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 09/01/2025

1. Heard learned Counsel for the applicant and learned APP for the respondent/State.

2. The present revision application is preferred against the framing of charge without complying Section 226 of the Code of Criminal Procedure (for short 'the Cr.P.C.') on 06.01.2024.

3. On 06.01.2024, the learned Special Judge framed the charge against the applicant under Sections 406, 420 of the Indian Penal Code and Section 3 of the MPID Act. The grievance of the applicant that while framing the charge in view of Section 239 of the Code of Criminal Procedure, the opportunity was not granted to the present applicant to place his case before the Court.

4. The learned Counsel for the applicant placed reliance on the decision of this Court in the case of **Ambadas Kashrao Kharad vs. State of Maharashtra** reported in **2007 ALL MR (Cri) 1916** and **Akshay Manoj Jaisinghani Vs. State of Maharashtra** reported in **2018 ALL MR (Cri) 1** and submitted that in view of both the decisions that compliance is not mere formality but the Sessions Judge has to comply under Section 239 and 240 of the Cr.P.C. before framing the charge.

5. Learned APP submitted that now charge is already framed and the charge was explained to the accused therefore, no prejudice is caused to the present applicant, in view of that, the application deserves to be rejected. He further submitted that at the time of framing of the charge, the learned Counsel for the applicant has not raised any objection.

6. Being it is a warrant case, Sections 238, 239 and 240 of Cr. P.C. will come into play.

"Section 238 – Compliance with section 207.— When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207."

7. Section 239 deals with when accused shall deals with the situation when accused shall be discharged. Section 239 Cr. P.C. is reproduced for the reference.

"Section 239 — If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

8. Section 240 deals with framing of charge which reads as under:

"Section 240 — (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

9. Thus, a bare perusal of the above Sections makes it clear that the case has to begin with opening of the case by the prosecution followed by arguments on behalf of the prosecution

and the accused culminating in passing of an order provided in Section 240 of the Code of Criminal Procedure. The compliance of Sections 239 and 240 is not an empty formality and the Magistrate dealing with the criminal cases are bound to comply with the sections 239 and 240 of the Code of Criminal Procedure in letter and spirit.

10. This aspect is also dealt by the Hon'ble Apex Court in the case of **Anokhil Vs. State of Madhaya Pradesh** reported in **(2019) 20 SCC 196** wherein in para No.22 it is held that the provisions concerned Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after 'hearing the submissions of the accused and the prosecution in that behalf'. If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.

11. Similarly Section 240 (1) of the Code denotes after such consideration and hearing, the Magistrate is of the opinion. Thus, hearing for the purposes of this provision is to be meaningful and not just formalities.

12. Thus, it is apparent that the learned Additional Sessions Judge (Special Judge) has directly

proceeded to frame charge against the applicant without complying with the relevant provisions. This practice *ex facie* is contrary to the provision and in view of that the charge dated 06.01.2024 framed against the applicant in Sessions Case No.122/2023 deserves to be quashed and set aside and the matter is remanded to the Special Judge, Nagpur to pass the appropriate orders after complying with the Sections 239 and 240 being it is warrant trial.

13. The revision application is disposed of with the above directions.

(URMILA JOSHI-PHALKE, J.)