



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

CRIMINAL REVISION APPLICATION NO.63 OF 2024

Payoj s/o Jagdish Pande,
Aged 57 years, Occupation – Service,
R/o Plot No.218, Nirmal Ganga
Building, Nandanvan main road,
Nagpur, District Nagpur

...APPLICANT

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Mukutban,
District Yavatmal

...NON-APPLICANT

Mr. R.R. Vyas, Advocate for the applicant.
Ms R.V. Sharma, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : JANUARY 21, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. By this application, the applicant is seeking quashing and
setting aside of the order passed by the Additional Sessions Judge-2,

Kelapur in Sessions trial No.32/2017 dated 09/01/2024 below Exhibit-12 which was filed for discharge under Section 227 of the Cr.PC.

3. As per the contention of the applicant, on the basis of the information supplied by one Shobha Mashakhatri with non-applicant-police station, the FIR vide Crime No.170/2016 dated 04/12/2016 was registered for the offence punishable under Section 304 read with Section 34 of IPC against five persons.

4. The applicant is shown as an accused No.1 in the said FIR. After completion of the investigation, the charge-sheet was submitted. As per the allegations in the FIR that the son of the applicant Rahul @ Golu Mashakhatri was installing the double pole structure which is commonly called as DP in the house of one Pachbhai at Adegaon Shivar on 30/11/2016. The accused persons did not disconnect the electricity supply and due to the electric current said Rahul died on the spot due to the electrocution. At the relevant time, the present applicant was working as an Assistant Engineer with the Maharashtra State Electricity Distribution Company Limited at distribution centre, Mukutban. The said distribution centre comes under sub division, Zari Jamani, District Yavatmal which was headed by Deputy Executive Engineer by name Mr. Pawde. The said area was under the Pandharkawda division and the Executive Engineer was Mr Kondawar, which was headed by him. The

complainant who is the mother of the deceased Rahul has alleged that the applicant being the Assistant Engineer was not present at the spot where her son was installing the DP and he has engaged himself with the contractor though he was not having knowledge of the electrical works, and therefore, due to the negligence on the part of the present applicant and other co-accused the death of her son was caused.

5. After completion of the investigation the charge-sheet was filed and present applicant has filed an application for discharge which came to be rejected by the Additional Sessions Judge on the ground that Section 228 requires to Judge to frame charge if he consider that there is ground for presuming that the accused has committed the offence. He further observed that considering the ratio laid down by the Hon'ble Apex Court as cited above and considering the allegation despite the knowledge, the present applicant remained absent and the death of the deceased is caused due to the negligence of the co-accused. It was the duty of the present applicant to remain present at the spot while installing the said transformer. Without intimating the superior officer, he remained absent and thus, due to his negligence, the death of the deceased is caused.

6. Learned Counsel for the applicant submitted that except the allegations made that it was the duty of the present applicant to remain

present at the time of at the time of installing the transformer, no other documents are collected by the investigating agency to show that it was the present applicant under whose supervision that transformer is to be installed. He submitted that as far as the documents are concerned which shows that on the day of the incident, the applicant remained absent as he was on a leave, therefore, no vicarious liability can be attributed against him. As far as the statements of the witnesses are concerned which are not sufficient to show the involvement of the present applicant in the alleged offence as far as the negligence is concerned. He has invited my attention toward the various statements of the witnesses as well as the communication and submitted that none of the communication shows that the presence of the present applicant was required at the time of installing the transformer. He stated that even the statements of the witnesses shows that it was the co-accused – Umesh Khobre who has not disconnected the electrical line and asked the deceased to step on the pole and due to his negligence the alleged incident has taken place. A general statement is made by the witnesses against the present applicant that it was his duty to remain present at the relevant time; however, the official communication nowhere states that it was the duty of the present applicant to remain present. He submitted that overall supervision was to be done by the present applicant but it was not intimated to him that on the day of incident i.e.

on 30/11/2016 that transformer is to be installed. Thus, considering that even no *prima facie* case is made out to frame the charge against the present applicant, he be discharged. He submitted that learned Sessions Court has not considered the same and rejected the application erroneously and wrongly.

7. Learned APP strongly opposed the application on the ground that the complainant namely Shobha who is the mother of the deceased lodged report stating therein that her son deceased Rahul Mashakhatri used to attend the work along with accused No.3 and was doing the labour work. On 30/11/2016 he went to the field of accused No.5 where the work of accused No.3 and 4 of installation of electric DP was going on. On the same day the deceased came to house and after having lunch again went to the spot where electric DP was being installed. In the evening when deceased did not return home, she and other members of the family started enquiring and in the evening they came to know that the deceased died in a hospital due to electric shock. It is further alleged that initially merg was registered. During investigation, it revealed that the co-accused Khobre has not disconnected the line and due to his negligence, the death of the deceased was caused. She submitted that the statement of all the witnesses as well as the statement of the officials of MSEDCL also shows that overall supervision was of the present applicant and without

intimating anybody he remained absent and went on leave. Thus, the applicant has not performed his duty with utmost care and death of the deceased is caused in the said incident.

8. I have heard learned Counsel for both the sides. Perused the investigation papers from which it reveals that the crime is registered on the basis of the report lodged by the mother of the deceased. There is no dispute as to the fact that when the deceased stepped on the pole for the installation of DP he got electric current and his death was caused due to the electrocution. It is also not a disputed fact that at the relevant time the another co-accused Umesh Khobre was along with the deceased. It further reveals from the investigation papers that it was the Executive Engineer had given the contract of installing the transformer to the Shivkrupa electricals owned by contractor Shri Shrikant Thakare. The statements of the witnesses further shows that said contractor has sent the deceased and one more labour Dattatraya Pal for installing the said transformer. The statement of one Sainath Kisan Matte shows that he has enquired with said Dattatraya Pal whether he has disconnected the line while installing the transformer, at the relevant time, said Dattatraya Pal replied that he has disconnected the same. Subsequently, the deceased who was on the pole has got the electric shock and his death was caused due to the electrocution. It further reveals from the investigation papers that it was the Executive Engineer who has extended the contract of that

Shivkrupa Electricals, Wani orally though his written agreement period was over. It is submitted by the learned Counsel that said Executive Engineer was not made an accused in the present prosecution.

9. Learned Counsel also invited my attention towards various statements of the witnesses as well as the communications and submitted that none of the communication shows that while installing the transformer the presence of the present applicant was required or he was informed either by the co-accused or any other person that he shall remain present at the time of installation of the said transformer as his presence was required. It is a matter of the document that on the relevant day the applicant was on leave. He is punished for going on leave without intimating to the office. Thus, it is crystal clear from the investigation papers that on the day of the incident the applicant was not present at the spot of incident. It is settled position of law that at the stage of considering an application for discharge, the court must proceed on an assumption that that the material which has been brought on the 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. It is further settled principle of law 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 in order to determine whether the facts emerging from the material taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Hon'ble Apex Court in the case of ***State of Tamil Nadu Tr. Insp. of Police Vs. N. Suresh Rajan & ors. [2014 (11) SCC 709]*** adverting to the earlier prepositions of law laid down on this subject as under:

“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.”

10. It is also settled law that the defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.PC. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. 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. This Court by referring to its earlier decisions in the ***State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659*** and ***the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338*** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of *prima-facie* case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

11. After having weighted the evidence on record which is produced in the nature of the charge-sheet and the various charges communication, it is seen that the charges levelled against the present applicant that he was negligent and was having knowledge, then also he remained absent and caused the death of the deceased. As far as the investigation material is concerned which shows that the presence of the applicant was not stated any of the witnesses. The communication on record also nowhere shows that the present applicant at any point of time was informed that the said installation of the DP work is to be carried out on the day of incident i.e. on 30/11/2016. The record shows that on the day of the incident, he was on leave. Only allegation against him is that he proceeded on leave without intimating the superior officer and for that purpose he is already punished. As far as the negligence regarding the continuing the electric supply when the work of installation of transformer was in progress, admittedly the present applicant was not present. The communication on record also nowhere shows that his presence was required at the time of installing the said transformer. Thus, at this stage, there is nothing on record to show that his presence was required for the purpose of installation of the transformer and at the relevant time intentionally he remained absent, and therefore, the alleged incident has taken place. Thus, considering the material which is brought on record by the prosecution to frame the

charge is not sufficient even for the framing of the charge, and therefore, the order passed by the Additional Sessions Judge, Kelapur is liable to be quashed and set aside. In view of that, I proceed to pass the following order :

- (i) The revision application is allowed.
- (ii) The order passed by the Additional Sessions Judge-2, Kelapur in Sessions trial No.32/2017 dated 09/01/2024 is hereby quashed and set aside.
- (iii) The applicant - Payoj s/o Jagdish Pande is hereby discharged from the offence punishable under Section 304 read with Section 34 of the Indian Penal Code registered at police station Mukutban, District Yavatmal vide Crime No.170/2016.

12. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*