



Judgment

363 revn69.24

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.
CRIMINAL REVISION APPLICATION NO.69 OF 2024

Anil s/o Gajanan Borkar,
aged about 54 years, occupation: doctor,
r/o Near State Bank of India, Ward
No.5, house No.1530, tahsil
Mouda, district :Nagpur. **Applicant.**

:: VERSUS ::

The State of Maharashtra,
through Police Station Officer,
Police Station Mouda,
Nagpur. **Non-applicant.**

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Shri A.S.Mardikar, Senior Counsel assisted by Shri VR.Deshpande,
Advocate for the Applicant.
Mrs.Ritu Sharma, Additional Public Prosecutor for the
Non-applicant/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 04/02/2025

PRONOUNCED ON : 25/02/2025

JUDGMENT

1. Heard learned Senior Counsel Shri A.S.Mardikar for
the applicant (accused) and learned Additional Public
Prosecutor Mrs.Ritu Sharma for the non-applicant/State.

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2. The present revision is filed by the accused in connection with Crime No.11/2016 registered under Sections 304 and 308 read with 34 of the Indian Penal Code with the Mauda Police Station, district Nagpur against rejection of discharge application vide Exh.3 in Sessions Case No.396/2016 dated 12.2.2024.

3. The accused is a doctor by profession. In the year 2015, he intended to construct a “Mangal Karyalaya” on his property beside ‘Galaxy Hotel’ at village Mauda. The accused being medical practitioner had no knowledge about technicalities of the procedure of construction of the same and, therefore, entrusted construction and other related work of the said project to one Dinkar Dorle, who was Civil Contractor. The accused also entered into an agreement dated 13.4.2015 with the said contractor wherein it was agreed that the entire construction shall be carried out and coordinated by said Dinkar Dorle. On

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15.1.2016, during the construction of the “Mangal Karyalaya” slab of the same collapsed due to which the Contractor along with 18 labours sustained injuries. During treatment, said Dinkar Dorle succumbed to the injuries in the unfortunate incident. The report of the said incident came to be lodged by Vasudeo Borde on behalf of the State. Being the accused is owner of the said property, he is made an accused in the said crime. After registration of the crime, the investigation was carried out and after completion of the investigation, the chargesheet was filed.

4. The accused has filed an application for discharge on the ground that as far as the quality of construction is concerned, he has nothing to do with it as he is not expert in the said field and, therefore, he entered into an agreement and the entire responsibility was of the Engineer and Contractor. As far as allegations in the FIR is concerned, he is made an accused only because he is the

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owner. In fact, he has engaged Engineer Amitosh Devikar and deceased Dinkar Borde to supervise and execute the work. As they have used alleged sub standard material, they are responsible for the said act. After hearing both the sides, learned Sessions Judge rejected the application for discharge.

Hence, this revision.

5. Learned Senior Counsel for the accused submitted that from the entire investigation papers, except the accused is owner, no other role reveals. The investigation papers show that the construction work is to be carried out by Engineer Amitosh Devikar and Contractor Dinkar Dorle who are experts in the said field. The accused has also entered into an agreement with them and they have agreed to execute the work and accepted the responsibility of execution of the work. They have also accepted the

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responsibility of any untoward incident. Thus, none of statements of the witnesses disclosed any role played by the accused. As he was a layman, as far as construction of the work is concerned, he engaged services of Engineer Amitosh Devikar and Contractor Dinkar Dorle. Thus, the accused has not committed any criminal offence. Even, if the charge is framed, as it is not alleged about the negligence or any act constituting the offence against the accused, there is remote possibility of conviction. For all above these grounds, the application deserves to be allowed.

6. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that investigation papers show that the accused was the owner of the property who has engaged Engineer Amitosh Devikar and Contractor Dinkar Dorle for construction of Mangal Karyalaya. Due to the use of sub standard

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material, slab collapsed and Contractor Dinkar Dorle sustained injuries and succumbed to the death. Other eighteen labours sustained injuries. Thus, there was negligence on the part of the accused. By considering the same, the application is rightly rejected by learned Sessions Judge.

7. 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.

8. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in

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MANU/SC/1113 2023, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in (2014) 11 SCC 709 and **The State of Maharashtra vs. Som Nath Thapa**, reported in (1996) 4 SCC 659 and **The State of MP Vs. Mohan Lal Soni**, reported in (2000) 6 SCC 338, has held as under:

“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. 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:

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"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

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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."

9. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge.

10. What is to be seen is that, whether there is a sufficient material to frame the charge. Even, strong suspicion is sufficient to frame the charge.

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11. The catena of decisions of the Hon'ble Apex Court explain scope of Sections 227 and 228 of the Code of Criminal Procedure from which following principles emerge:

1. While considering the question of framing the charges under section 227 of the Code, the court 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 prime facie case would depend upon the facts of each case.

2. 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.

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3. The court cannot act merely as a Post office or a mouth-piece 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 appearing in the case and so on. 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.

4. 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.

5. 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

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on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

6. 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 there from 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.

7. 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.

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12. With the above principles, if the material in the present case collected during the investigation is perused, it shows that the accused who is the owner of the property behind “Galaxy Hotel” was under construction. The accused has engaged Engineer Amitosh Devikar and Contractor Dinkar Dorle to execute the the work of construction. The said agree was executed on 13.4.2015. As per the said agreement, said Amitosh Devikar and Dinkar Dorle have accepted the entire responsibility of the construction. They further agreed that if any loss is caused, they are responsible for the same. It is specifically mentioned in the agreement that as the accused and his wife both are medical professions and they have no experience as to the construction of any building, they engaged the services of Amitosh and Dinkar. As per the allegations, Engineer Amitosh and Contractor Dinkar have used the sub standard material for the construction and,

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therefore, the slab collapsed and in the said incident eighteen labours including the Contractor sustained injuries. The said Contractor subsequently died in the said incident.

13. Thus, except the allegation that the accused is the owner of the said land, wherein the construction was carried out, nothing is alleged against him. The statements of various labourers recorded during the investigation also show that it was Contractor Dinkar Dorle and Engineer Amitosh Devikar who have used sub standard material and, therefore, the slab collapsed and Contractor Dinkar Dorle succumbed to injuries.

14. Thus, after having sifted weigh through the evidence on record and gone through the investigation papers and considering the materials on record, it is difficult to hold that inference of grave suspicion can be

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raised against the accused on the basis of the evidence on record. The material appears to be insufficient for subjecting the accused to trial. On the basis of the evidence on record, it cannot be stated that the material is sufficient for the prosecution to establish the charge against the accused. Subjecting the accused to trial on the basis of the above said evidence would not only be a mere formality but also abuse of process of law. Learned Sessions Judge ought to have appreciated that ingredients of the offence are absent. Even, if it is assumed that the material collected by the prosecution is true, it would not be sufficient to establish the case of the prosecution and, therefore, the conducting of the trial against the accused would be an empty formality. I am, therefore, of the view that the order impugned is liable to be set aside.

15. In this view of the matter, this Court passes following order:

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ORDER

(1) The Criminal Revision Application is **allowed**.

(2) The order dated 12.2.2024 passed below Exh.3 by learned Additional Sessions Judge, Nagpur in Sessions Trial No.396/2016 rejecting the application for discharge is quashed and set aside.

(3) The applicant is discharged in connection with Crime No.11/2016 registered under Sections 304 and 308 read with 34 of the Indian Penal Code with the Mauda Police Station, district Nagpur and chargesheet no.104/2016.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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