



Judgment

364 revn67.24

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

CRIMINAL REVISION APPLICATION NO.67 OF 2024

Vishal s/o Marotrao Shende,
aged about: 40 years, occupation: agriculturist,
r/o Shinde Nagar, Yavatmal, tahsil and district
Yavatmal. **Applicant.**

:: VERSUS ::

State of Maharashtra,
through PSO Police Station
Awadhootwadi, Yavatmal,
district Yavatmal. **Non-applicant.**

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Shri S.A.Chaudhari, Counsel for the Applicant.
Mrs.S.S.Dhote, Additional Public Prosecutor for the Non-applicant/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 03/02/2025

PRONOUNCED ON : 25/02/2025

JUDGMENT

1. Heard finally by consent of learned counsel Shri S.A.Chaudhari for the applicant and learned Additional Public Prosecutor Mrs.S.S.Dhote for the State.

2. The present revision is filed by the applicant (accused) in connection with Crime No.976/2021

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registered with the non-applicant/police station under Section 376(2)(n) of the Indian Penal Code against rejection of discharge application vide Exh.10 (in Sessions Trial No.82/2022) filed under Section 227 of the Code of Criminal Procedure.

3. The accused is prosecuted for the offence punishable under Section 376(2)(n) of the Indian Penal Code on an allegation that the victim who is married lady got acquaintance with the accused. In the year 2011, her husband purchased a house at Shinde Nagar, Yavatmal and the accused was her neighbour. Being his neighbour, she was on visiting terms to his house to meet his mother. In the month of April 2013, the accused, on the pretext that she is called by his mother, called her to his home. When she went to his home, he disclosed that his mother went to nearby house and asked her to sit and, thereafter, he gave her a cup of tea. After drinking tea, she felt

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drowsy and went to her house. After one month, the accused informed her that she has to come to his house, otherwise he will show her nude photographs to her husband and, therefore, she went to his house. The accused threatened her that she has to give him sexual favour, otherwise he would show photographs to her husband. Due to the threatening, she consented. The accused has also shown her the said photographs. It revealed to her that he has administered her stupefying substance by mixing it into the tea and, thereafter, obtained her obscene photographs and by showing the said photographs subjected her for forceful sexual assault. On the basis of the said report, the police registered the crime. After completion of investigation, chargesheet was filed. The application below Exh.10 was filed for discharge on the ground that due to the previous enmity, he is implicated in the alleged offence. In fact, on

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21.8.2021, there was a quarrel between him and the husband of the victim and since then, the husband of the victim was threatening him that he has to face dire consequences and, therefore, this report is lodged.

4. Learned counsel for the accused submitted that from the entire investigation papers, it reveals that the story narrated by the victim does not inspire confidence and it is a false and concocted story. The accused is implicated merely because there was previous enmity between them. In fact, allegations are not substantiated by any material. The statements of the witnesses are also insufficient to show the *prima facie* case against the accused. For all above these grounds, the accused be discharged.

5. Learned Additional Public Prosecutor for the State, strongly opposed the application and submitted that not

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only the statement of the victim but also the statements of the various witnesses disclose that the accused has obtained nude photographs of the victim. The said photographs are seen by these witnesses in the mobile phone of the accused. At this stage, nothing is on record to show that there is any reason for the victim to implicate the accused falsely. The statement of the victim is substantiated by the statements of the other witnesses. The medical evidence sufficiently shows involvement of the accused. By considering the same, the application is rightly rejected by learned Judge below.

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

7. It is a settled principle of law that at the stage of considering an application for discharge, the court must

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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 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

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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:

"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

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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."

9. 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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10. With the above principles, if the material in the present case collected during the investigation is considered, there is no dispute as to the fact that the victim and the accused are neighbours. They were on visiting terms to the house of each other. The statement of the victim discloses that she was called by the accused on a pretext that his mother has called her and stupefying substance was administered to her. After one month of the incident, her nude photographs were shown to her and sexual favours are demanded from her by threatening her that he would show the photographs to her husband. As the victim was under apprehension of breaking of her marriage, she consented and the accused subjected her for forceful sexual assault. The allegation is further substantiated by the statements of various witnesses including the statements of her brothers and the statements of the independent witnesses.

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11. Thus, material collected during the investigation shows involvement of the accused in the alleged offence.

12. It is well settled that, at this stage, the defence of the accused is not to be seen. What is to be seen is, whether there is a sufficient material to frame the charge.

13. 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 under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

14. After having sifted weigh through the evidence on record and gone through the investigation papers and

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considering the materials on record, the same appears to be sufficient for subjecting the accused to trial and to attract the offence against him.

15. In this view of the matter, the order dated 30.10.2023 passed below Exh.10 in Sessions Trial No.82/2022 by learned Sessions Judge, Yavatmal rejecting the application for discharge filed under Section 227 of the Code of Criminal Procedure is legal and proper one. As such, the revision being devoid of merits is liable to be dismissed and the same is **dismissed**.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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