



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

CRIMINAL WRIT PETITION NO. 356/2025

Dinkar S/o Chandrabhan Sawarkar,
aged 65 yrs., Occ. Retired Dy. S.P. (A.C.B.),
R/o. Jay Somnath Palace, 3, Flat No.201,
Second Floor, Dornacharya Nagar, Plot No.89/91,
Trimurti Nagar, Nagpur.

...PETITIONER

VERSUS

State of Maharashtra,
through its Police Station Officer,
Police station Rana Pratap Nagar,
Nagpur.

RESPONDENT

Mr. A.C. Jaltare, Advocate with S.D. Umredkar, Advocate for
petitioner.
Mr. A. Ghogare, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/06/2025.

JUDGMENT (ORAL)

Heard finally with the consent of learned counsel for the
petitioner and learned APP for the State. The present writ petition is
filed challenging the order passed by learned Additional Sessions

Judge, Nagpur below Exh.8 in Criminal Revision Application No.53/2024 rejecting the application of the present petitioner for discharge.

2. The Crime No. 75/2022 was registered against the present petitioner under Section 354-A, 354-D, 504 and 506 of the Indian Penal Code on the basis of the report lodged by the victim on an allegation that present petitioner who is retired Police Officer residing in the same building, wherein she is residing. Her husband is serving in Army and therefore, she is alone along with her son is residing in the said building. The present petitioner is residing on the second floor and other residents of the said building are residing on the third and fourth floor. It is alleged that with the ill intention, the present petitioner used to come at ground floor, unnecessary used to attempt to contact with her and abusing in the filthy language in her present. On 25.01.2022 in front of the apartment, he was abusing and was asking the laboures to close the work. The laboures were working at her house and also abused her in a filthy language due to which she felt ashamed and therefore, she approached to the Police Station and lodged report. On the basis of said report, the Police have registered

the crime against the present petitioner. During investigation, the Investigating Officer has recorded statement of the informant as well as the other residents of the said building, drawn the spot panchanama and filed charge-sheet. The petitioner has filed an application for discharge before the Judicial Magistrate First Class which was partly allowed and the petitioner is discharged of the offence punishable under Section 354-A of the Indian Penal Code (“IPC”), whereas the cognizance has taken for the offence punishable under Sections 354-D, 504 and 506 of the IPC. Being aggrieved with the judgment and order passed by learned Judicial Magistrate First, present petitioner has filed a criminal revision application before learned Additional Sessions Judge, Nagpur. The Additional Sessions Judge dismissed the said revision and hence this writ petition.

3. Heard learned counsel for the petitioner who submitted that the entire investigation paper nowhere reveals that the present petitioner has used any criminal force to outrage the modesty, even the offence of stalking is not made out from the entire investigation paper for framing of the charge. There should be some material, in absence of any material against the present petitioner, charge cannot be framed

and unnecessarily the petitioner cannot be compelled to face the trial. The statement of the witnesses nowhere reveals the ingredients of the offence punishable under Sections 354-C of the IPC. Thus, considering all these aspects order passed by learned Additional Sessions Judge, Nagpur deserves to be quashed and set aside and the application for discharge deserves to be allowed.

4. Learned APP strongly opposed said petition on the ground that not only the statement of the victim, but the statement of the other witnesses discloses the involvement of the present petitioner in the alleged incident. The ingredients of offence of Section 354-D of the IPC are attracted as there is a specific allegation that the present petitioner had contacted and attempted to contact with the victim to foster personal interaction repeatedly, despite a clear indication of disinterest, therefore, the offence under Section 354-D of the IPC is made out, even strong suspicious is sufficient to frame the charge against the present petitioner and therefore, the contention of the petitioner for discharging him from the offence punishable under Sections 354-D, 504 and 506 of the IPC deserve to be rejected. He submitted that the Revisional Court as well as the Trial Court has

rightly considered these aspects and rightly rejected the application, therefore, no interference is called for.

5. On hearing both sides and on perusal of investigation papers, it reveals that the allegation against the present petitioner is that he is residing in the same building, wherein the victim is residing along with his son and at the relevant time, some renovation work was going on in her house which was disturbed by the present petitioner. She further alleged that the present petitioner used to contact her and with an ill-intention used to give some indication for attracting her personal interaction, though she has shown the disinterest. The Investigating Officer has also recorded statements of other residents of the said building. As far as the behaviour and conduct of the present petitioner is concerned, the other residents also supported the contentions of the informant. The allegation that the present petitioner used to stare at women who are residing in the said building and the female members of the said building feel insecure in his presence. The same is also narrated by the other witnesses. It is also supported that he used to hurl the filthy abuses to the other residents in the said building.

6. In the light of above statement of the witnesses which are recorded during the investigation, it is necessary to see what are the consideration for considering the application for discharge. 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.

7. The Hon'ble Apex Court in the case of *State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023*, advertent 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:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar. 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."

8. In view of the above observations, 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.

9. In the light of the above observation, the material placed before the Court in the present case disclose the prima facie material against the present petitioner which is sufficient to frame the charge, therefore, no interference is called for in the order passed by learned Additional Sessions Judge, Nagpur. The petition being devoid of merits, is liable to be dismissed and accordingly, is dismissed.

(URMILA JOSHI-PHALKE, J)