



Judgment

410 revn128. 24

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

CRIMINAL REVISION APPLICATION NO.128 OF 2024

Sandesh s/o Nandkishor Sharma,
age: 38 years, occupation: service,
r/o 214, Housing Board Colony,
Nandanvan, district Nagpur. **Applicant.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer,
Police Station: Railway P.S.
District Nagpur. **Non-applicant.**

Shri Aniruddha Jaltare, Counsel for the Applicant.
Shri A.J.Gohokar, Additional Public Prosecutor for the
Non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 12/06/2025

PRONOUNCED ON : 17/06/2025

JUDGMENT

1. Heard finally by consent of learned counsel Shri
Aniruddha Jaltare for the applicant and learned

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Additional Public Prosecutor Shri A.J.Gohokar for the State.

2. The present revision is filed by the applicant in connection with Crime No.69/2009 registered with the non-applicant/police station for offences under Sections 186, 332, and 353 of the IPC. The applicant preferred an application below Exh.4 under Section 227 of the CrPC for discharge which came to be rejected by learned Additional Sessions Judge, Nagpur by order dated 8.7.2014.

Hence, this revision.

3. Brief facts necessary for disposal of the revision are as follows:

The applicant is arraigned as an accused in the crime in question on the basis of report lodged by

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Rajendra Hemant Kujur serving as Police Officer in CBI on an allegation that he received a complaint that the applicant has demanded the gratification amount and accepted the same. On the day of the incident, i.e. 22.4.2009, the applicant was proceeding by train to Tirupati along with his family members and, therefore, he along with other raiding party members and pancha intercepted the applicant at the platform. At the relevant time, the applicant has manhandled him and caused him injury. Thus, the applicant has used criminal force to restrain him from discharging official duty. On the basis of the said report, the police registered the crime against the applicant.

4. After registration of the crime, the investigating officer has investigated the crime and after completion of investigation, submitted chargesheet against the

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applicant. The applicant filed an application for discharge under Section 227 of the CrPC on the ground that there is no sufficient and cogent evidence against him to frame the charge. The prosecution concocted the story to substantiate their case against the applicant. In fact, no proper procedure is followed by the CBI Officer to conduct the raid on an allegation that the applicant has demanded and accepted the gratification amount. The entire chargesheet nowhere discloses that the applicant deterred them from discharging their duties and thereby committed the offence. The ingredients of the offence are not made out and no purpose would be served by forcing the applicant to face the charge and, therefore, the applicant has filed discharge application and the same was rejected as the aforesaid.

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5. Being aggrieved and dissatisfied with the same, the present revision is preferred on the ground that learned Judge below failed to appreciate the fact that the ingredients of the offences, that the applicant has deterred the “public servant” from discharging official duty, itself are not made out and, therefore, the order impugned in the revision deserves to be quashed and set aside.

6. Learned counsel for the applicant reiterated the contention that for framing of charge also there is no *prima facie* material against the applicant. These allegations are made only to substantiate the case of the CBI alleging that the applicant has demanded and accepted the bribe amount. In fact, no trap was laid to ascertain facts that the applicant has demanded gratification amount and accepted the same. As far as

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offence under sec 353 of the IPC is concerned, nothing is on record to show that the applicant has deterred the “public servant” from discharging official duty by using criminal force and, therefore, the applicant has made out a case for discharge.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and supported the order impugned in the revision and submitted that at the stage of framing of charge, evaluation of the evidence is not required. What is to be seen is, whether *prima facie* case is made out to frame the charge. The statements of the witnesses and injury certificate sufficiently show involvement of the applicant. Hence, the revision being devoid of merits is liable to be dismissed.

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

9. 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.

10. 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**

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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 commend us. True

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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

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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."

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

12. 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.

13. The materials placed before the court if disclose grave suspicion, framing of charge is justified.

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14. Thus, what the court has to do is to sift the evidence and to ascertain whether material is sufficient to frame the charge. It is not necessary to see whether the evidence on record would be sufficient to warrant conviction.

15. With the above principle, if the material collected during investigation is perused, it would show that as per the allegations, the complainant who is the police officer received information that the applicant has demanded and accepted the bribe and, therefore, to conduct a raid, he along with the other raiding party members had been to Railway Station and shown him identity. At the relevant time, the applicant manhandled him and caused him injury and deterred him from discharging the official duty. After registration of the crime, the complainant was referred for medical examination. The injury certificate is

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also collected. The history narrated before the Medical Officer shows assault by somebody and the complainant has received CLW 1/4 cm skin deep. The statements of the witnesses are to the extent of manhandling the complainant. Admittedly, the alleged incident occurred at the railway platform, however the statements of independent witnesses are not recorded.

16. The applicant is facing charge with an allegation that by using criminal force, he deterred the public servant and thereby committed the offence under Sections 186 and 353 of the Indian Penal Code. Since the applicant has been charged for committing offences under Sections 186 and 353 of the IPC, the same Sections are reproduced for reference:

“Section 186. Obstructing public servant in discharge of public functions. - Whoever

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voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 353. Assault or criminal force to deter public servant from discharge of his duty. -

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”.

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17. For a prohibited act to come within the scope of the offence under section 353 of the IPC, such an act must show that assault of criminal force was used to deter public servant from discharging of his official duty. Such an act cannot be a mere act of obstruction which is an offence under Section 186 of the IPC. Something more is required involving criminal force, or assault to attract the offence punishable under Section 353 of the IPC.

18. The Hon'ble Apex Court, in the case of **B.N.John vs. State of U.P and anr, reported in MANU/SC0020/2025 (SC)** has dealt with this issue and it is observed that for a prohibited act to come within the scope of the offence under Section 353 of the IPC, such an act must qualify either as an assault or criminal force meant to deter public servant from discharge of his duty.

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Obviously, such an act cannot be a mere act of obstruction which is an offence under Section 186 of the IPC. The offence contemplated under Section 353 of the IPC is of a more serious nature involving criminal force, or assault which attracts more stringent punishment that may extend to two years. On the other hand, the offence of obstruction covered under Section 186 of the IPC is punishable by imprisonment, which may extend to three months at the maximum.

A close examination of Section 353 of the IPC would indicate that to invoke the aforesaid offence, there must be use of criminal force or assault on any public servant in the execution of his official duty or with the intent to prevent or deter such public servant from discharging his duty. It would be clear from a reading of the provisions of Section 186 as well as Section 353 of

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the IPC that Section 353 of the IPC is the aggravated form of offence where criminal force or assault is involved. Unlike in the case of Section 186 of the IPC where voluntarily obstructing any public servant in discharge of his official function is sufficient to invoke the said section.

19. In the present case, what can be seen from a perusal of the contents of the FIR, is that no such allegation of assault or use of criminal force has been made. The FIR is based on complaint of the Police Inspector serving in CBI at Nagpur

20. Thus, considering the allegations, the offence under section 353 of the IPC, on bare perusal of the FIR and the statements of various witnesses, is not made out. Under these circumstances, the applicant has made out a case to discharge him from the said offence.

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21. As far as the offence under section 186 of the IPC is concerned, there is an allegation that the applicant obstructed the public servant in discharging the public functions. The definition given under Section 186 of the IPC shows that whoever voluntarily obstructs any public servant while discharging public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which extend to five hundred rupees, or with both.

22. What is to be noted in the present case is that if the applicant had actually used criminal force or assaulted public servant, which would bring the said act within the scope of Section 353 of the IPC, nothing prevented the complainant from mentioning the same before the Medical Officer during his medical examination. The recital of the FIR nowhere shows that

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he has either used any criminal force or deter the public servant from discharging the official duty.

23. Thus, in absence of the ingredients, which would constitute the offence, the contentions of learned counsel for the applicant that there is no material to frame the charge against him, in view of Sections 186 and 353 of the IPC, require to be taken into consideration.

24. After having sifted and weighed the evidence on record, it is clear that, *prima facie*, offence is not made out against the applicant and, therefore, material collected by the prosecution, even if accepted, it would not be sufficient to establish the case of the prosecution and, therefore, the conducting of the trial against the applicant would be an empty formality. I am, therefore, of the view that the order impugned is liable to be set aside.

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25. In this view of the matter, I proceed to pass following order:

ORDER

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

(2) The order dated 8.7.2024 passed below Exh.4 passed by learned Additional Sessions Judge-15, Nagpur in Sessions Trial Case No.70/2023 is hereby quashed and set aside.

(3) The applicant is hereby discharged of offences Sections 186, 332, and 353 of the IPC.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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