



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

CRIMINAL APPLICATION (APL) NO.72 OF 2022

APPLICANT : Tryambak Sitaram Dipake,
Aged about 57 years, Occ. Service,
R/o. Taj Nagar, Digras,
Tq. Digras, District : Yavatmal.

..VERSUS..

NON- : The State of Maharashtra,
APPLICANT Through P.S.O. Digras,
District Yavatmal.

Mr. R.J. Mirza, Advocate for applicant
Ms S.N. Thakur, APP for the non-applicant/State

CORAM : ANIL S. KILOR, J.

DATE : 11th FEBRUARY, 2025

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith. Heard finally by the consent of both the parties.
3. The applicant, who is the accused No.2 in Regular Criminal Case No.71 of 2010 (State Vs. Rajabhau and another), moved an application under Section 239 of the Code

of Criminal Procedure (CrPC) for discharge, which came to be rejected by the trial Court and it has been confirmed by the Revisional Court. Hence, this application.

4. It is the case of the applicant that the accused No.1 was working as 'Chief Manager' and the accused No.2 was working as 'Manager' in the Digras Block Shetkari Sahakari Ginning and Pressing Society Limited, Digras. The accused No.1 was in charge and responsible for maintaining the record of the society, as full charge of Manager was with him.

5. An audit for the year, commencing from 01.04.2005 to 31.03.2006 was done by one Manohar Bhendarkar, Auditor against whom the accused No.2/applicant had made a complainant to District Sub Registrar Co-operative Society, Yavatmal. It is therefore, submitted that as a counter blast, the said Auditor made false allegations against the applicant about misappropriation of Rs.20,000/- in the Audit Report, which was the basis for registering crime against the applicant.

6. On perusal of the FIR, it is evident that mainly the allegations are against the accused No.1 and as far as the present

applicant/accused No.2 is concerned, the FIR speaks about one entry dated 18.10.2007 showing recovery of Rs.20,000/- from the Administrator.

7. However, during audit of the account, no amount was found to be recoverable from the Administrator or Manager. Thus, on the basis of the said finding, the Auditor, who is the informant, alleged that the applicant misappropriated Rs.20,000/-.

8. It is important to note that while rejecting the application for discharge and while holding that there is *prima facie* material against the applicant, the learned trial Court recorded the reasons in paragraph 6 and 7.

9. On perusal of the paragraph 6 and 7, it is evident that the learned trial Court categorically observed that, the applicant had taken charge as Manager on 25.12.2007 and before that the accused No.1 was holding the charge as Manager and he was maintaining the record.

10. As it is evident from the FIR that an entry allegedly recorded by the applicant and made basis to allege that the

applicant misappropriated Rs.20,000/- is of dated 18.10.2007 i.e. admittedly before the applicant took charge on 25.12.2007.

11. Thus, it is evident that the learned trial Court misdirected himself in holding that *prima facie* there is material against the applicant.

12. Further, it is evident that on the date of entry dated 18.10.2007, the accused No.1 was the Manager and not the applicant. He accepted the charge of Manager on 25.12.2007.

13. There is no other allegation against the applicant, except the aforesaid. Thus, it can safely be said that there is no *prima facie* evidence available on record to show the involvement of the applicant in the alleged offence. Hence, I am of the opinion that the applicant is entitled for discharge. Hence, I pass the following order:

(i) The application is **allowed**.

(ii) The order dated 31.08.2015 passed by the learned Judicial Magistrate First Class, Court No.2, Digra in RCC No.71 of 2010 and the judgment dated 23.08.2021 passed by the Additional Sessions Judge, Darwha in

Criminal Revision Application No.27 of 2015, are hereby quashed and set aside and thereby, the application for discharge is allowed.

Rule is made absolute in the above terms.

(ANIL S. KILOR, J.)