



Judgment

394 revn150.24

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

CRIMINAL REVISION APPLICATION NO.150 OF 2024

Satish s/o Satendrakumar
Rokade, aged about 64 years,
occupation business,
r/o Ansing, taluka and district Washim. **Applicant.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer
Police Station Ansing,
taluka and district Washim. **Non-applicant.**

Shri Ram Karode, Counsel for the Applicant.
Mrs.Ritu Sharma, Additional Public Prosecutor for the
State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 27/03/2025

PRONOUNCED ON : 22/04/2025

JUDGMENT

1. The present revision is filed challenging order dated
15.6.2024 passed below Exh.16 by learned Sessions

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Judge, Washim in Sessions Trial No.5/2018 whereby the application for discharge is rejected.

2. Heard learned counsel Shri Ram Karode for the applicant and learned Additional Public Prosecutor Mrs.Ritu Sharma for the State.

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

One Dhondba Malharji Gadekar (the deceased) died on 23.2.2012 due to the burn injuries sustained by him in fatal electrical accident. The Electric Inspector at Washim made enquiry about the said accident and submitted report that it is occurred due to the negligence of Executive and Junior Engineers of MSEDCL and after submission of the enquiry report, directed to pay the compensation to the legal heirs of the deceased. In the meantime, informant Ashok Hurkat filed an application

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under Section 156(3) of the CrPC alleging that the applicant was owner of gat No.451 admeasuring 8.90 HR situated at Ansing, taluka and district Washim. He got converted his land into non-agricultural. Permission was granted by the SDO at Washim on 11.6.1996 in Revenue Case No.NAP-34/Ansing/6/1995-96. The said land was divided into plots. The said plot No.102 was sold by the present applicant to Dharamchandra Walali. On 23.2.2012, the deceased died due to electric shock due to fall of Electric Wire of High Tension. It is alleged that it was specifically informed while granting the non-agricultural permission that construction is to be done by leaving the distance approximately 15 feet from the pole from which the high tension connection is attached. While selling the said plot, this fact was not informed to the subsequent purchaser. It was further informed that owner has to get removed the said pole from the MSEDCL and,

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thereafter, construct the house. However, the applicant, who was original owner, neither furnished the said information while obtaining the Non-agricultural Permission nor he communicated the said directions to the subsequent purchaser and, therefore, due to his negligence, the alleged incident has occurred and death of the deceased is caused.

4. After completion of the investigation, chargesheet was submitted against the applicant. The applicant filed an application for discharge contending that he has filed an application for grant of conversion of the land for residential purpose and the said permission was granted by the SDO at Washim. After the death of the deceased, a regular civil suit was filed. The internal committee of the MSEDCL also conducted enquiry and held Executive and Junior Engineers of MSEDCL to pay the compensation. The applicant has already filed an application with the

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MSEDCL for removal of the said pole, but the MSEDCL has not removed the said pole. After applying for the permission and on verifying the documents, the permission was granted to the applicant for converting the land into non-agricultural. Thus, as far as the involvement of the applicant in causing the death of the deceased is concerned, no *prima facie* material is collected during the investigation and, therefore, he filed the application for discharge.

5. Learned Judge below, after considering the entire record and investigation papers, held that the statements of the witnesses and the documents on record show that the applicant has furnished false information while applied for Non-agricultural Permission. In the application form, specific query was made whether Electricity High Tension Line passes over the land or so what the distance thereof from the proposed building or other works. The

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application mentioned that no such High Tension Wire is passing and, therefore, the permission was granted. It is further observed that the officers of MSEDCL are held liable, but at the same time, there is negligence on the part of the applicant also who sold the said plot to the subsequent purchaser and not informed him about the guidelines or directions. Thus, there is a negligence on his part and, therefore, he is responsible for the death of the deceased.

6. Learned counsel for the applicant reiterated the contentions and invited my attention towards the application filed by the applicant for converting the land into non-agricultural purpose. He also submitted that in view of the order passed by the SDO at Washim, the permission was granted after going through the entire documents. The Gram Panchayat and the Deputy Executive Engineer also issued no objection to convert the

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land into non-agricultural purpose. Thus, after converting the land into non-agricultural purpose, the applicant has sold out the plot. It was negligence of the officers of the MSEDCL who have not removed the said pole from the said agricultural land and, therefore, the alleged incident has taken place. In view of the same, the applicant is not at all responsible for the death of the deceased and, therefore, no *prima facie* case is made out against the applicant to frame the charge.

7. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that intention of the applicant can be gathered from the fact that while applying, the applicant has not given true information as to the query whether Electricity High Tension Line passes over the land, as he mentioned in the negative. The order passed by the SDO at Washim specifically shows that unless the electric connection or

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telephonic cord is removed, no permission is to be granted for construction. The letter issued by the Deputy Executive Engineer, MSEDCL at Washim shows that High Tension Wire is passing from the said agricultural land. The spot panchanama also shows that at a distance of 3-4 feet from the said pole, the house is constructed which is contrary to the Indian Electricity Rules. The order passed by the Town Planning Authority also shows that the owner of the house has to leave the space from the said pole while constructing. The letter of Electricity Inspector shows that the officers of the MSEDCL are held liable for the negligent act. It is submitted by learned APP that by giving false information, the permission was obtained. The house was constructed by the subsequent purchaser without following rules. The applicant has not communicated to the subsequent purchaser about the directions. The SDO at Washim also nowhere mentions

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about the said High Tension Wire Pole at the plot which was sold out. Thus, negligence is attributable to the applicant.

8. Before entering into the merits of the case, it is necessary to see the law on 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 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**, advertng to the earlier propositions of law in its earlier decisions in the cases of

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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 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 been committed and not whether a ground for

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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. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be

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confined to the material produced by the investigating agency. 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.

12. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

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“(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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.

(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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the

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evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge 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. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

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13. With the above principles, if the material in the present case collected during the investigation is discussed, there is no dispute as to the facts that the applicant was original owner of gat No.451 admeasuring 8.90 HR situated at Ansing, taluka and district Washim. He has filed an application for converting his land into non-agricultural to the extent of 4H 35R. The application addressed to the SDO by the applicant shows that he has not given information while filing the application as to the query whether Electricity High Tension Line passes over his land and if so what is the distance therefrom the proposed building or other works, which he answered in the negative. The SDO in his order dated 11.6.1996 directed that without removing the electric wires or telephonic wire, no construction can be done. It is specifically mentioned that proposed construction should be by leaving the distance as per the Indian Electricity

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Rules. The certificate issued by the Deputy Executive Engineer dated 30.3.1996 shows that High Tension Wire of 11KV is passing from the said agricultural land. Even, the order of the Town Planning Authority also shows that no construction can be done without removing High Tension Wire or the Electrical Wires. Though the applicant has informed the officers of the MSEDCL for removing the High Tension Wire, admittedly, he was directed to deposit some amount which he has not deposited and, therefore, the said pole was not removed. The internal committee was conducted by the officers of the MSEDCL wherein Executive and Junior Engineers were held responsible for the said incident. At the same time, the investigation papers show that the applicant has not given correct information while applying for converting the land into non-agricultural. While executing the sale deed, he has not mentioned as to the availability of the

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said high tension pole in the agricultural land and conditions imposed while converting the land into non-agricultural. The statements of the subsequent purchasers also show that they were not informed as to the condition of construction imposed while granting permission. Thus, the applicant while selling the plots has not followed the terms and conditions on which the non-agricultural permission was granted to him. Rule 80 of the Indian Electricity Rules, states about Clearances from buildings of high and extra-high voltage lines, which is reproduced as under:

“Rule 80. (1) Where a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than-

(a) for high voltage lines upto and including 33,000 volts – 337 metres.

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(b) for extra-high voltage lines - 3.7 metres plus 0.30 metres for every metres for every additional 33,000 volts or part thereof.

(2) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than-

(a) for high voltage lines upto and including 11,000 volts – 1.2 metres.

(b) for high voltage lines above 11,000 volts upto and including 33,000 volts – 2.0 metres.

(c) for extra-high voltage lines - 2.0 metres plus 0.3 metres plus 0.3 metre for every additional 33,000 volts for part thereof.

[Explanation .-For the purpose of this rule expression "building" shall be deemed to include any structure, whether permanent or temporary.] [Various clearances such as vertical, horizontal and ground clearance shall be considered as per the sketch in Annexure XVI.].

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14. Thus, in view of the above said Rule, it is obligatory on the part of the applicant to mention as to the existence of high tension wire pole in the agricultural field which he suppressed while applying for non agricultural purpose. While converting the land and while selling plots, he has not followed the Rules of Indian Electricity Rules.

15. Whether the above said act would attract the negligence on the part of the applicant.

16. The expression “negligence” has not been defined in the IPC. The Black's Law Dictionary describes 'negligence' as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is

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intentionally, wantonly, or willfully disregardful of others rights. The negligence is breach of a duty caused by the omission to do something to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property?. The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said; (3) consequential damage.

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17. In the light of the above settled principles, “negligence” signifies that it is breach of a duty caused by the omission to do something to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Thus, essence of negligence whether arising from an act of commission or omission lies in neglect of care towards a person to whom the defendant or the accused as the case may be owes a duty of care to prevent damage or injury to the property or the person of the victim.

18. In the present case, the investigation papers show that the applicant has not taken care which a prudent man would have taken under these circumstances. Thus, the sufficient material is on record to show his involvement in the alleged offence. Admittedly, at the stage of framing of

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charge, only the aspect is to be seen whether the investigation material is sufficient to frame the charge.

19. As already observed, the investigation papers *prima facie* show the involvement of the applicant and, therefore, the order impugned calls for no interference. 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 !!