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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.154 OF 2024

Satish Purushottam Girhe,
Aged about 33 Years,
Occupation : Medical Practitioner,
R/o. Dhruv square,
Shukravar peth, Washim.

..... APPLICANT

// VERSUS //

1. State of Maharashtra
Through Police Station Officer
Asegaon, Washim.
2. Mahadev Suryabhan Ghorpade,
Aged about 48 years,
Occupation : Agriculture,
Bodegaon, Darwha, Washim.

.... NON-APPLICANTS

Mr. Harshwardhan Chawhan, Counsel for the applicant.
Ms. Swati Kolhe, APP for the non-applicant No.1 /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05.03.2025

ORAL JUDGMENT :

1. **Admit.**
2. Heard finally by consent of the learned Counsel for the applicant and learned APP for the State.
3. The present application is filed by the applicant/accused in connection with Crime No.48/2017 registered at Police Station Asegaon, District Washim for the offence punishable under Sections 498-A, 306 and 201 read with Section 34 of the Indian Penal Code

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(for short 'the IPC') against the rejection of the discharge application vide Exh. 24 under Section 227 of the Code of Criminal Procedure (for short 'the Cr.P.C.').

4. The applicant is the original accused No.6 and doctor by profession. The niece of the informant namely, Sushma was married with accused No.1 Sandip Zalke and their marriage was solemnized on 15.05.2011 at village Dhamangaon, District Yavatmal. After marriage, it was alleged that the other co-accused ill-treated her and harassed her as she gave birth to the female child on both occasions. As far as the present applicant is concerned, he is not the relative of the deceased or the other co-accused. On 04.03.2017 as there was a fair festival at village Dhamangaon, the informant made a phone call to Sushma at about 10.30 a.m., but the said phone call was attended by her mother-in-law, who informed her that the deceased is admitted in Rural Hospital at Manora, and thereafter, the informant called the accused No.1 Sandip, who has also informed the informant that the deceased is admitted in the hospital that as she consumed the tablets. Thereafter, the informant along with his nephew immediately came in the hospital and observed that the deceased has consumed poison and her mouth was emitting smell of poison, and thereafter, the informant made inquiry with the doctor about the health of Sushma i.e. deceased. It was informed him that her

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health is fine and asked her to take her to the house. Thereafter, the victim was admitted in a Medicare Hospital at Pusad and thereafter, on 06.03.2017 she was shifted from Pusad to Bombay by Ambulance. On the way, victim Susham has narrated to the informant about the ill-treatment and harassment, due to the ill-treatment. The Investigating Officer during the investigation arrested the present applicant as it was transpired to him that the health of the Sushma is good and advised to take her home as the ill advice given by the present applicant only to screen the other co-accused from the punishment. It is alleged that the present applicant has neither informed to the police nor given information to the informant and other relatives. Thus, the material on record as per the prosecution shows that to screen the other co-accused from the punishment and to cause the evidence to disappear, he has concealed the true information and thereby committed an offence punishable under Section 201 of IPC.

5. After completion of the investigation, the charge-sheet was submitted against the present applicant as well as the other co-accused. Therefore, the present applicant preferred an application under Section 227 Cr.P.C. for discharge on the ground that considering the investigation papers and the allegation against him, the offence under Section 201 of IPC is not made out. It is the contention that mere non-giving the information is not sufficient to

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attract the offence under Section 201 of IPC. On the basis of the medical papers, it is tried to emphasize that the applicant has time to time informed about the health of the deceased to the relatives and their endorsement is also taken on the medical papers, therefore, no offence is made out against the present applicant.

6. Heard learned Counsel for the applicant who reiterated the contentions and invited my attention towards the medical papers which shows that on the date of admission itself, there is an endorsement on the medical treatment papers that 'inform the police referred to higher centre'. He submitted that initially investigation of the deceased which was carried out in Medicare Hospital shows that her matters were normal, even the recitals of the FIR shows that she was communicating, and therefore, she was informed about the ill-treatment to her parents. He submitted that to attract the offence punishable under Section 201 of IPC, the applicant should have knowledge about the committal of the offence. He should have knowledge or result to believe that the main offence has been committed, and thereafter, he should have caused the disappearance of evidence or should have given a false information regarding the main offence. He submitted that the entire investigation papers nowhere shows either he was aware about the committal of the offence of the abetment to the deceased by the other co-accused. There is no evidence on record to show

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that he has given a false information regarding the main offence or he has done any act to screen the other accused from the punishment and therefore, no offence is made out against the present applicant and hence he be discharged.

7. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of **V. L. Tresa Vs. State of Kerala** reported in **(2001) 3 SCC 549** and **Dr.(Smt) K. K. Patnayak and others Vs. State of Madhya Pradesh** reported in **1998 SCC Online MP 342**. On the basis of the said submission, he submitted that as no *prima facie* material is against the present applicant to frame the charge, and therefore, he be discharged.

8. Learned APP strongly opposed the said application on the ground that the medical papers and the statement itself shows that though the condition of the deceased was worsened, but the parents or the relatives were not informed. The present applicant has also not informed to the police about the said incident and thus, he has assisted the other co-accused to screen themselves from the punishment, and therefore, the application deserves to be rejected.

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

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10. 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.

11. 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** advertent 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

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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 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."

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

13. By applying these principles, if the facts of the present case are taken into consideration the only allegation against the present applicant is that he has given the false information to the relatives of the deceased and he has not informed the police and

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therefore, the charge for the offence punishable under Section 201 of IPC. Thus, the issue pertains to the maintainability of the application of Section 201 of IPC.

14. Learned Counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in the case of **V. L. Tresa Vs. State of Kerala** (supra) wherein the Hon'ble Apex Court has considered the ingredients of Section 201.

15. Section 201 I.P.C reads as below:

"201. Causing disappearance of evidence of offence, or giving false information to screen offender.- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, [if a capital offence] shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

[if punishable with imprisonment for life] and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

[if punishable with less than ten years imprisonment] and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

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16. Having regard to the language used, the following ingredients are as under:

(I) Committal of an offence;

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(III) person charged with the offence under Section 201 IPC should have caused disappearance of evidence or should have given false information regarding the main offence; and

(IV) the act should have been done with the intention of screening the offender from legal punishment.

17. The Hon'ble Apex Court in the above said judgment has considered the interpretation of Section 201 and held as under:

"The impact of Section 201 thus is the intent to screen the offender from legal punishment. It is on this score "Such intention exists or presumed to exist in the mind of the accused when he has some interest in the person who committed the main offence. Though the identity of the person who committed the main offence is not established in evidence, there must be material to indicate that the accused know who the main offender was, when the accused did the act of causing disappearance of evidence or giving false information regarding the offence. The intention to screen the offender must be the primary and sole object of the accused. The mere fact that the concealment was likely to have that effect is not sufficient."

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18. The Hon'ble Apex Court further observes that having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The fore-most necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the earlier decision **Palvinder Kaur Vs. State of Punjab (AIR 1952 SC 354)**. and in **Roshan Lal Vs. State Punjab (AIR 1965 SC 1413)** wherein the observation are as follows:

"(12) Section 201 is somewhat clumsily drafted, but we think that the expression knowing or having reason to believe in the first paragraph and the expression 'knows or believes' in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe than an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under S.201. If it be supposed that the word 'believes' was used in a sense different from the expression 'having reason to believe', it would be necessary for the purpose of inflicting punishment upon the accused to prove that he 'believes' in addition to 'having reason to believe'. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved."

19. In the matter in hand, the allegation as observed earlier that only to the extent that he has given false information as to the

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health condition of the deceased. In fact, all the communication made from the hospital to the relatives of the deceased shows that they were made aware about the physical condition of the deceased. The second allegation is that he has not given the information to the police about the admission of the deceased and the reason for her admission. After hearing both the sides on this aspect, it is alleged that the applicant is that who have committed an offence under Section 201 of IPC allegedly because he has screened the offender by not given the information in time. On perusal of the admission papers, it reveals and it becomes clear that he has already made endorsement to inform the police. Thus, it was the staff of the hospital, who has to inform the said police. Nothing is on record to show that the applicant was aware about the offence committed by the other accused. There is no evidence that if any of the doctors of the said hospital or the present applicant was having any information as to the commission of the offence by the other accused. Mere failure on the part of the hospital of not giving the information is not sufficient to attract the offence punishable under Section 201 of IPC. Non giving the information by itself is not an offence. As observed by the Hon'ble Apex Court that the person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed. The said aspect itself is absent in the present case. Mere suspicion would not be sufficient to apply the Section

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201 in the present case. The medical certificate and the medical treatment papers sufficiently shows that the health condition was time to time informed to the relatives of the deceased. The effort was taken by the present applicant to inform the police by making an endorsement.

20. Thus, applying the principle laid down by the Hon'ble Apex Court and after sifting the evidence on record, there is no sufficient material against the present applicant to attract the offence against him. In view of this, the order passed by the learned Additional Sessions Judge, Mangrulpir dated 29.08.2024 rejecting the application for discharge is liable to be quashed and set aside. In view of that, the criminal revision application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The order passed by the learned Additional Sessions Judge, Mangrulpir dated 29.08.2024 below Exh.24 is hereby quashed and set aside.
- (iii) The applicant **Satish Purushottam Girhe** is hereby discharged from the offence punishable under Section 201 of the Indian Penal Code, in connection with Crime No.48/2017 in Sessions Trial No.12/2018.

The revision application is disposed of.

(URMILA JOSHI-PHALKE, J.)