



(1)

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

CRIMINAL REVISION APPLICATION NO.208 OF 2024

Parshuram s/o Trayambak Jaybhaye,
Aged about 40 Years, Occupation : Service,
R/o Palaskhed, Post – Hirdav,
Taluka Lonar, Rahatni, Hirdav,
District Buldhana.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Washim City,
District Washim.
2. Khushal s/o Ramchandra Jadhav,
Aged about 53 Years,
Occupation : Agriculture,
R/o Saikheda,
Taluka Mangrulpir, District Washim. **RESPONDENTS**

Mr. V. S. Sambre, Counsel for the applicant.

Mr. C. A. Lokhande, APP for the non-applicant No.1 /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.06.2025

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Taken up for final disposal with the consent of the learned Counsel for the applicant and learned APP for the State.
3. By this revision application, the applicant has challenged the order of framing of charge without hearing him and without

(2)

compliance of Section 226 and 228 of the Code of Criminal Procedure.

4. Heard learned Counsel for the applicant who submitted that the applicant challenges the order of framing of charge dated 23.07.2024 in Special ACB No. 3/2017 pending before the learned Additional Sessions Judge, Mangrulpir, Washim for commission of the offences under Sections 7 and 15 of the Prevention of Corruption Act, 1988 in Crime No.386/2016 lodged on 03.12.2016, registered with the non-applicant No.1 by the complainant.

5. The brief facts which are necessary for the disposal of the application are as under:

The informant Khushal Ramchandra Jadhav, who is doing the agriculture work and owns a farm measuring 15 acres at Saikheda, Washim at Gat No.108. Due to scarcity of water, the said well in his field came to be acquired by the government, for which the complainant has been awarded a compensation of Rs.22,000/-. Therefore, the complainant approached to the accused who is serving as clerk in Panchayat Samiti and demanded about his compensation amount, at that time the present applicant alleged to have demanded the bribe amount of Rs.1500/- to hand over the cheque of Rs.22,000/- therefore, the complainant approached to the ACB Office Washim and lodged the report. The ACB official verified about demand and the applicant was arrested and thereafter after

(3)

completion of investigation submitted a charge-sheet against the present applicant. The Special Court has framed the charge on 23.07.2024. The only grievance of the present applicant is that without hearing him, which is the requirement under Sections 226 and 227 of the Code of Criminal Procedure, the learned trial Court has framed the charge and therefore, the framing of charge without hearing the present applicant. In view of that the opportunity is to be granted to the applicant to be heard on the point of the charge.

6. Learned APP strongly opposed the said contentions on the ground that though applicant was present he has not made any submission as to the hearing before framing of charge and therefore, the revision being devoid of merit and liable to be dismissed.

7. Heard learned Counsel for the applicant who placed reliance on the decision of the Hon'ble Apex Court in the case of ***Ram Prakash Chadha vs State of Uttar Pradesh*** reported in **(2024) 10 SCC 651**.

8. Section 226 of the Code of Criminal Procedure provides that after the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. Section 227 contemplates

(4)

consideration of the record of the case by the Judge and hearing of the submissions on behalf of the accused and the prosecution and passing of the order either framing charge or discharging the accused. Thus, it is settled by catena of decisions of the Apex Court that if the Judge wants to frame a charge he may not pass a detailed order giving reasons but he wants to discharge the accused he has to give detailed reasons for discharging the accused. Section 227 mandates consideration of record and hearing of the prosecution as well as the accused before passing an order framing of charge or discharging the accused. Section 228 of the Code of Criminal Procedure contemplates consideration of record and hearing of accused for the purpose of finding out there is a ground for presuming that the accused has committed any offence. Thus the opportunity of the hearing is to be granted to the accused before framing of the charge.

9. I have gone through the roznama as well as the charge framed by the learned Judge. Roznama as well as the charge framed nowhere discloses that opportunity of hearing is granted to the present applicant/accused.

10. In my view, on account of this, a fundamental defect has been crept in, the accused has come forward to remove the defect in the charge and therefore, the revision application deserves to be allowed. Hence I pass the following order:-

(5)

ORDER

(i) The charge framed against the accused/applicant in Special ACB Case No.3/2017 at Exh.12 by the learned Special Judge and Ad-hoc District Judge-1 and Additional Sessions Judge, Mangrulpur dated 23.07.2024 is hereby quashed and set aside.

(ii) Learned Judge is directed to frame a charge against the accused/applicant by complying the provisions of Section 227 of Cr.P.C.

11. With this, the revision is disposed of.

12. Rule made absolute in the above terms

(URMILA JOSHI-PHALKE, J.)

Sarkate.