



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

**CRIMINAL REVISION APPLICATION NO.36 OF 2025**

**Sunil s/o Kushalchand Vairagade,**  
Aged About years,  
Occupation- Currently Nil,  
R/o Clo Tahsil Office,  
Arjuni Morgaon, Dist.Gondia.

**.... APPLICANT**

**// V E R S U S //**

**State of Maharashtra,**  
Through Police Station Officer,  
Police Station Deori,  
District Gondia.

**.. RESPONDENT**

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Mr C.B. Dharmadhikari, Advocate for the applicant.  
Mrs. Swati Kolhe, APP for the State.

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**CORAM : URMILA PHALKE JOSHI, J.**  
**DATE : 12.03.2025**

**ORAL JUDGMENT**

1. Heard.
2. **ADMIT.** Taken up for final disposal forthwith by the consent of learned counsel for the parties.
3. By preferring this revision, the applicant has challenged the order passed by District Judge-1 and

Additional Sessions Judge, Gondia below Exh.17 which is the application for discharge under Section 227 of the Code of Criminal Procedure (for short, 'Cr.P.C.').

4. The application filed by the present applicant accused No.2 under Section 227 of the Cr.P.C. for discharge him from the offences punishable under Sections 406, 408, 409, 465, 466, 467, 468, 471, 477-A, 420 read 34 of the Indian Penal Code (for short, 'I.P.C.').

5. As per the contention of the applicant that he is not at all involved and no role is attributed to him. He is not named in the FIR which is lodged on 08.06.2024. His name firstly came during the investigation. In the statement of informant dated 10.06.2014 without any specific role attributed to him no ingredients of the offence is made out against the accused. He was merely acting his official capacity and obeying the orders of his senior. He has not executed

any false instrument with an intention to commit fraud or to deceive anybody. Thus there is no sufficient material against him to frame charge and therefore, he be discharged.

6. The said application is strongly opposed by the State on the ground that there is *prima-facie* material against the present applicant and therefore, the application deserves to be rejected. The Sessions Court has rejected the application as charge is already framed.

7. The contention is raised by the learned counsel for the applicant that the charge is framed without hearing him in view of the provision of Section 227 of the Cr.P.C. the applicant/accused is to be heard, which is obligatory on the part of the Court and therefore, the opportunity was not granted to the present applicant to put his submission before the Court and therefore, the framing of charge itself is illegal without hearing the present applicant and on that count, the matter be remanded back to the trial Court and trial Court

be directed to hear the present application before framing of the charge and thereafter considering his submission the charge can be framed or the applicant can be discharged.

8. Learned APP for the State strongly opposed the said revision application on the ground that now charge is already framed. Therefore, the revision itself devoid of merits and liable to be dismissed.

9. After hearing both the sides and on perusal of the record as well as impugned order from which it reveals that trial Court has mentioned that the present application is filed subsequent framing of charge against accused No.1 and him as the charge is already framed. The application becomes infructuous and therefore, the application is rejected.

10. After hearing both the sides and on perusal of the record it reveals that charge is already framed. Chapter XVIII deals with trial before Court of Sessions. Section 225 deals with the circumstance that trial to be conducted by Public

Prosecutor and it states in every trial before a Court of Sessions, the prosecution shall be conducted by a Public Prosecutor. Section 226 deals with opening case for prosecution which states when 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 deals with the discharge which states that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Section 228 deals with framing of charge which deals with (1) if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the

accused has committed an offence (a) is not exclusively triable by the Court of Sessions, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate Or (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

11. Thus, Section 227 as well as Section 228 of the Cr.P.C. deals with the circumstance that before framing of the charge or before passing any order as to be discharged there should be considerations to the record of the case and documents submitted and after hearing the submission of the case and prosecution in that behalf the Court either decides to frame a charge or discharge the accused. Thus, it is mandatory or obligatory on the part of the Court to hear the accused before framing of the charge. It seems that the trial Court has not followed this procedure and framed the charge. Therefore, opportunity is to be granted to the present applicant.

12. In view of that, revision deserves to be allowed to the extent that opportunity is to be granted to the present applicant in view of Sections 227 and 228 of the Cr.P.C.

13. In view of that I proceed to pass following order:-

(i) Criminal Revision is allowed.

(ii) The impugned order dated 11/07/2024 below Exh.17 in Special (ACB) Case No.12/2016 passed by District Judge-1 and Additional Sessions Judge, Gondia is quashed and set aside.

(iii) The matter is remanded back to the District Judge-1 and Additional Sessions Judge, Gondia.

(iv) The District Judge-1 and Additional Sessions Judge, Gondia shall give an opportunity to the present applicant of hearing to put his case before the Court and after considering his submission as well as the record the Sessions Court shall decide as to the framing of the charge.

(v) The applicant shall file appropriate application before the Trial Court for granting him opportunity of hearing and trial Court shall consider the same in view of the above provisions.

14. Criminal Revision stands disposed of. The pending application, if any stands disposed of.

**(URMILA PHALKE JOSHI, J.)**

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