



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

**CRIMINAL APPLICATION (APL) NO. 2022 OF 2025**

**Shankar s/o Rajeram Dadmal**

Aged about 50 years,  
Occupation – Private,  
Resident of C/o Mohanji Giri,  
Azad Chowk, Bhiwapur

**APPLICANT**

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

**The State of Maharashtra,**

Through its Range Forest Officer,  
Butibori Range Forest, Butibori,  
Nagpur

**NON-APPLICANT**

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Mr. R.S. Akbani Advocate for the applicant.  
Mrs. Ritu Sharma, APP for non-applicant/State.  
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**CORAM : URMILA JOSHI PHALKE, J.**

**DATED : 01.04.2026**

**ORAL JUDGMENT :**

1. Heard.
2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.
3. By this application the applicant is challenging the order of framing of charge dated 16.12.2022 by the Judicial

Magistrate First Class, Court No.10, Nagpur in RCC No.2106/2022.

4. Heard learned counsel for the applicant who submitted that criminal complaint under Section 55-B of Animal Protection Act, 1972 read with Sections 190 and 200 of the Code of Criminal Procedure (for short, 'the Code') was filed against present applicant along with others on 06.03.2022. After receipt of the complaint the learned Magistrate has taken cognizance of the said complaint, by registering complaint as RCC No.2106/2022. Thereafter the Magistrate has framed the charge without following the procedure under Sections 242 and 247 of the Code which is applicable in trial of warrant cases. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of *Sunil Mehta and another vs. State of Gujarat and another* reported in *(2013) 9 SCC 209*.

5. Per contra, learned APP for the State strongly opposed for the same and submitted that now charge is already framed and no prejudice would be caused to the present applicant.

6. On hearing both the sides and on perusal of entire record, admittedly, Chapter XIX of the Code regulates the trial of warrant cases by Magistrate. Part A of the Chapter XIX deals with cases instituted on a police report. Part B deals with cases instituted otherwise than on police report. Section 244 that appears in part B of Chapter XIX requires the Magistrate to hear the prosecution and take all such evidences as may be produced in Court in support of the prosecution. Section 245 involves the Magistrate to discharge the accused upon taking all the evidence referred to in Section 244, if he considers that no case against the accused has been made out which, if unrebutted, would warrant his conviction. Sub-section (2) of Section 245 involves the Magistrate to discharge the accused even “at any previous stage of the case” if for reasons to be recorded by such Magistrate, the charges are considered to be groundless. In cases where the accused is not discharged the Magistrate is required to follow the procedure under Section 246 of the Code.

7. The Hon’ble Apex Court in the decision of ***Sunil Mehta and another vs. State of Gujarat and another*** considered the entire procedure in detail and observed that in the light of

above said procedure the High Court felt in palpable error in interfering with the order passed by the Revisional Court of Sessions Judge. The High Court was particularly in error in holding that the appellant had an opportunity to cross-examine the witnesses or that he had not availed of the said opportunity when the witnesses were examined at the stage of proceedings under Chapter XV of the Code. The High Court, it is obvious, has failed to approach the issue from the correct perspective while passing the impugned order.

8. In view of the above observations of the Hon'ble Apex Court it would be appropriate and in the interests of justice to direct the learned Judicial Magistrate First Class Court No.10, Nagpur to reconsider these facts and record the evidence before charge and then proceed in view of Sections 244 and 247 of the Code.

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

#### **ORDER**

(i) The order of framing of charge dated 16/12/2022 in Regular Criminal Case No. 2106/2022 without recording evidence is hereby quashed and set aside.

(ii) The matter is remanded back to the trial Court for recording the evidence before charge and after following the due procedure the trial Court can frame the charge against the present applicant if the case is made out.

10. The criminal application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

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

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