
(2019) 12 BOM CK 0007

In the Bombay High Court

Case No : Criminal Application No. 1298 Of 2018

Ajay Arun Kumar Chougule

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 239, 240
Indian Penal Code, 1860 — Section 34, 354, 506

Citation : (2019) 12 BOM CK 0007

Hon'ble Judges : Revati Mohite Dere, J

Bench : Single Bench

Advocate : Tejas Hilage, P.P. Shinde

Final Decision : Allowed

Judgement

1. Heard learned counsel for the applicant and the learned A.P.P for the State.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives service on behalf of the respondent-State.
3. By this application, the applicant has impugned the order dated 14th August 2018 passed by the learned Judicial Magistrate First Class, Peth Vadgaon, Kolhapur below Exhibit 12/C and Exhibit 14/C, by which the learned Magistrate was pleased to frame charge as against the applicant and record his statement.
4. Learned counsel for the applicant submits that the learned Magistrate has proceeded to frame charge as against the applicant and another co-accused, without complying with the provisions of Section 239 of the Criminal Procedure Code (`Cr.P.C'). He submits that on the very first date i.e. on 14th August 2018, the learned Magistrate framed charge as against the applicant and another co-accused for the alleged offences punishable under Sections 354 and 506 r/w 34 of the Indian Penal Code.

5. Learned A.P.P does not dispute the fact that on the very first date i.e. on 14th August 2018, when the applicant and co-accused appeared before the Magistrate, the learned Magistrate framed charge as against the accused.

6. Perused the papers, in particular, the Roznama annexed to the application. The applicant is the original accused No. 2 who was arrested in connection with C.R. No. 127/2018 registered with the Ichalkaranji Police Station, Kolhapur for the alleged offences punishable under Sections 354 and 506 r/w 34 of the Indian Penal Code. After investigation, charge-sheet was filed as against the applicant and co-accused, on 14th June 2018 and summons were issued on the same day i.e. 14th June 2018.

7. Admittedly, the next date before the learned Judge was 14th August 2018, on which date, the learned Magistrate proceeded to frame charge as against the applicant and co-accused under Sections 354 and 506 r/w 34 of the Indian Penal Code.

8. The relevant provision with which this Court is concerned is Section 239 Cr.P.C, which reads as under:

"239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

9. The Roznama does not reflect whether the Magistrate had examined the report or heard the applicant/prosecution in compliance with Section 239 Cr.P.C. A perusal of the Roznama clearly shows that on the very first date, when the applicant appeared along with the other co-accused, the learned Magistrate proceeded to frame charge.

10. Considering the fact that the learned Magistrate has proceeded to frame charge as against the applicant and two other accused, without complying with the provisions of Sections 239 Cr.P.C, the order dated 14th August 2018 framing charge against the applicant and co-accused is quashed and set-aside. The accused ought to be given an opportunity of being heard.

11. Accordingly, the application is allowed. The learned Magistrate to comply with the provisions of Section 239 before proceeding with Section 240 Cr.P.C.

12. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

13. Application is disposed of on the aforesaid terms.

14. All concerned to act on the authenticated copy of this order.