IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3146 OF 2017

1. Shri. Ashish Kamlakar Tungare,
Age :- 50 Years, Occ. :- Service
R/at :- 901, Vashnavi Tower,
Sector 44, Nerul, Navi Mumbai … Petitioner.

V/s.

1. State of Maharashtra.
(through Police Inspector
Pantnagar Police Station, Mumbai)

2. Shri Anil Prabhakar Sathe
Age :- 39 Years, Occ. :- Service,
R/at :- 103, Bluebel, Bratimand,
Phase No. 7, Godbundan Road,
Thane (W), Thane. … Respondents

Mr. Pritam P. Runwal a/w Mr. Anil Khopde for the Petitioner.
Mr. Prashant Jadhav, APP for the Respondent-State.
PSI. Santosh Jadhav, Pantnagar Police Station, Mumbai is present.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 15th JULY 2026.
PRONOUNCED ON : 22nd SEPTEMBER 2026.

JUDGMENT :-

1) The present petition is filed under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure (for short, "CrPC") and seeks to quash and set aside the Order dated 7th December 2016

passed by the Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai in C.C. No. 232/PW/2010 and Order dated 7th July 2012 passed by the Additional Sessions Judge, Greater Bombay in Criminal Revision Application No. 222 of 2017.

2) Heard Mr. Pritam Runwal, learned Advocate for the Petitioner, Mr. Prashant Jadhav, APP for the Respondent-State, and perused the entire record.

3) This Court by Order dated 26th February 2018 had granted liberty to add the Original Complainant as Respondent No. 2. Notice was to be issued to the Respondent No. 2 informing him that, the matter will be taken up for final hearing at the admission stage. The said Court notice remained to be served. The Petitioner served Respondent No. 2 by private notice and filed an affidavit of service. None appeared for the Respondent No. 2.

3.1) Considering the said facts, this Court by Order dated 8th August 2018 issued fresh notice to Respondent No. 2 and granted stay to the proceedings pending before the Trial Court. As none appeared for the Respondent No. 2, this Court by Order dated 26th February 2026 directed the Investigating Officer to inform the Respondent-company about the pendency of the present petition. The record indicates that, notice issued to Respondent No. 2 was duly served. The matter pertains to the year 2017. Record indicates that, the Respondent No. 2 has been served. Though served, as none appeared for Respondent No. 2, hearing in the matter was proceeded with.

4) The case as alleged in the FIR is as under:-

4.1) The FIR came to be lodged by Respondent No. 2, Regional Manager of a company by the name of Manmachine India Pvt. Ltd (said company). The Petitioner was working as the Corporate Manager in the said company at Ghatkopar Division and was entrusted with the work of recovering amounts due from the customers to whom the said company had supplied machines/goods.

4.2) A payment of Rs. 1,43,120/- was due and payable to the said company by one Mr. Yogesh M. Parmar, Director of Fermatech Conferate Solutions Company. That, it was the duty of the Petitioner to collect the said cheque of Rs. 1,43,120/- in the name of the said company. The Petitioner persuaded Mr. Yogesh M. Parmar to issue a cheque in the name of a company known as Arvind Clean Line. That, believing the said representation, Mr. Yogesh Parmar issued a cheque dated 13th August 2009 of Rs. 1,43,120/- in favour of Arvind Clean Line.

4.3) As Mr. Yogesh Parmar became suspicious, he called the office of the said company and inquired as to why the company had directed that the cheque be issued in the name of Arvind Clean Line. That, only due to the enquiries made, the said company came to know of the fact of the cheque being issued in the name of Arvind Clean Line.

4.4) It is alleged that, the Petitioner on 16th September 2009 confessed to the said wrongdoing and also admitted that he had given 4 more machines. Based on the above said facts, C.R. No. 210 of 2009 dated 18th September

2009 came to be registered with the Pantnagar Police Station, Mumbai for the offence punishable under Sections 420, 408 and 511 of the Indian Penal Code (for short, “IPC”). Chargesheet has been filed in the said proceedings and has been numbered as CC/232/PW/2010.

5) On 17th December 2012, the Petitioner filed a discharge application under Section 239 of CrPC below Exh. 5 before the Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai. The Court, after hearing the parties, by its Order dated 7th December 2016 was pleased to reject the said application. The Petitioner, being aggrieved by the said Order, preferred a Criminal Revision Application No. 222 of 2017 before the Additional Sessions Judge, Greater Bombay. The Sessions Court by Order dated 7th July 2017 rejected the said discharge application. The Petitioner seeks to challenge the Orders dated 7th December 2016 and 7th July 2017, hence the petition has been filed.

6) Mr. Pritam Runwal, learned Advocate appearing for the Petitioner submitted that:-

6.1) Perusal of the FIR would indicate that, there is no ground/basis to proceed against the Petitioner. That, the Petitioner has been falsely implicated. That, there is no evidence to connect the Petitioner with the alleged crime. That, there is no recovery of any incriminating article or material from the Petitioner.

6.2) That, the Petitioner has resigned from the said company. That, the company had not entrusted any property to the Petitioner and, therefore, allegation of offence under Section 408 of the IPC is completely groundless. That, the company has not suffered any wrongful loss nor has the Petitioner made any wrongful gain. That, the chargesheet comprises statements of interested witnesses. That, no cheque is annexed or recovered from the Petitioner or any witness to support the charge against the Petitioner.

6.3) No prima facie case is made out against the Petitioner to make out an offence under Section 420 of the IPC.

6.4) Mr. Sachin Sharma is the friend of the owner of the company and, therefore, has falsely implicated the Petitioner. Apart from the statement of Mr. Sachin Sharma, there is no other evidence against the Petitioner. Therefore, Section 511 of the IPC has been added to show an attempt.

7) Mr. Prashant Jadhav, learned APP for the Respondent-State submitted that, the offence against the Petitioner is clearly made out inasmuch as the Petitioner sought, represented and got issued a cheque of Rs. 1,43,120/-, (which was due to Manmachine India Pvt. Ltd.) in the name of an unrelated company by the name of Arvind Clean Line. That, only because of cross-checking done by Mr. Yogesh Parmar, the said cheque was stopped and payment was not made. That, the dishonest intention of the Respondent No. 2 to cheat is clearly made out.

8) Perused the entire record. Perusal of the FIR would prima facie indicate that, the duty of the Petitioner was to collect the money due to the

said company in the name of the company i.e. Manmachine India Pvt. Ltd. The Petitioner was an employee of the said company. The amount of Rs. 1,43,120/- which was to be collected, was due from Mr. Yogesh Parmar to Manmachine India Pvt. Ltd. The Petitioner, prima facie appears to have made false representations and mislead the creditor in issuing cheque in the name of Arvind Clean Line i.e. a completely unrelated entity. The intention of the Petitioner to commit the offence of cheating is prima facie made out.

9) Perusal of the Order dated 7th December 2016 clearly indicates that, the Metropolitan Magistrate, 73rd Court, has concluded that there is prima facie material/evidence on record against the Petitioner. Only because the creditor came to know of the fact that, it had been deceived and the cheque was fraudulently got issued in the name of Arvind Clean Line Ltd., the payment was stopped. The Trial Court has concluded that, prima facie evidence is available on record and, therefore, the prosecution must be given an opportunity to prove its case by adducing evidence. The Trial Court has observed that it cannot be said that the charges are totally baseless and that the accused has no concern with the alleged offence. Based on the said observations, the discharge application has been rejected.

10) Perusal of the Order dated 7th July 2017, passed by the Sessions Court would indicate that the Revisional Court, has also observed that there is material available on record to make out a prima facie case. The elements of fraud and cheating present against the Petitioner. A prima facie finding has

been recorded that, there appears to be good grounds to proceed against the present Petitioner and there is enough material available to draw an assumption against the Petitioner. I find that there is no reason or material available on record to interfere with the findings. From the perusal of the FIR, material, documents and chargesheet, it cannot be said or considered that the charge against the Petitioner is groundless. Both the orders contain reasons which prima facie indicate that there is material and evidence against the present Petitioner.

11) A useful reference can be made to the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Prafulla Kumar Samal,* reported in ***AIR 1979 SC 366.*** It is necessary and useful to refer to paragraph 10 of the said judgment which reads as under:-

> *"**10.** Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
> *(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:*
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial*
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the*

accused

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial"

12) The Supreme Court in the case of *R.S. Nayak vs. A.R. Antulay and Anr.* reported in *AIR 1986 SC 2045,* while analyzing provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocable terms in Para 44 has held as under:-

"The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be

heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

13) A further reliance can also usefully be placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Soma Nath Thapa* reported in *(1996) 4 SCC 659* wherein, the Supreme Court has held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

14) The Supreme Court in the case of *Palvinder Singh Vs Balwinder Singh and others* reported in *(2008) 14 SCC 504* while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

15) The Hon'ble Supreme Court in the case of *State of T.N. v. R.*

Soundirarasu, reported in *(2023) 6 SCC 768* observed that:-

> *"**60.** In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.*
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> ***61.** Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See : V.C. Shukla v. State [V.C. Shukla v. State, 1980 Supp SCC 92 : 1980 SCC (Cri) 695]).*
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> ***62.** Section 239CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the*

accused. The word "groundless", in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word "groundless" used in Section 239CrPC means that the materials placed before the court do not make out or are not sufficient to make out a prima facie case against the accused.

***67.** Thus the word "groundless", as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.*

***69.** The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words "a very strong suspicion" used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting the offence alleged.*

***72.** The real test for determining whether the charge should be considered groundless under Section 239CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.*

***73.** The provisions of discharge under Section 239CrPC fell for consideration of this Court in K. Ramakrishna v. State of Bihar [K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547 : 2001 SCC (Cri) 27] , and it was held that the questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by the trial court under Section 239 and the High Court under Section 482. It was observed as follows : (SCC p. 549, para 4)*

> *"4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the*

documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State (NCT of Delhi) [Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259 : 1999 SCC (Cri) 401] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.""

16) Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the prima facie case as made out by the Complainant/prosecution.

17) It is settled law that, no detailed evaluation of material or meticulous consideration of the possible defences is required to be undertaken at the stage of considering a application seeking discharge. What is required to be considered is only whether the allegation and charge against the accused is groundless. What is required to be seen is whether the material is of such nature that, even if the same is unrebutted, it makes out no case whatsoever against the accused. In the present case, it cannot be said that, there is no basis or foundation or grounds to proceed against the Petitioner. Prima facie the Petitioner has collect the amounts due to the said company in the name of a entirely different and distinct company i.e. Arvind Clean Line. The said company has no relation or link to the company/creditor i.e. Manmachine

India Pvt. Ltd. The conduct of the Petitioner prima faice make out a case against the Petitioner. The conduct and acts of the Petitioner is raise doubts and a strong suspicion. The suspicion is founded on the material available on record.

18) While considering the application of discharge, even a strong suspicion founded on the material available before the Magistrate would be sufficient to proceed against the accused. Where there is prima facie material available on record to frame the charge against the accused, it cannot be said that the charge is groundless and therefore the accused cannot be discharged under Section 239 of the CrPC. At the time of considering the discharge application the Court considers the police report and documents available to decide whether the allegations against the accused are groundless or whether there is ground for presuming that the accused has committed an offence. Assuming that the presumption is raised, it is always available for the accused to rebut the said presumption at the trial.

19) A charge can be said to be groundless only when there is no incriminating material as against the accused or even a strong suspicion. If there are sufficient grounds to proceed against the accused, or even a strong suspicion it cannot be said that the charge is groundless. At the initial stage, even a strong suspicion which leads the Court to think that there are grounds for presuming that the accused committed an offence, it will not be open to the Court to say and conclude that there is no sufficient ground for proceeding

against the accused. If strong suspicion is created, it cannot be said that the charge is groundless.

20) Considering the law as laid down by the Hon'ble Supreme Court, the facts of the present case and the conduct of the Petitioner this Court is of the view that no case has been made out for seeking discharge by the Petitioner.

21) In view thereof, the petition is dismissed.

22) The Registry is directed to communicate a copy of this Order to Respondent No. 2 for information.

(RANJITSINHA RAJA BHONSALE, J.)

SAGAR SANTOSH MAGAR

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