



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APL) NO. 911 OF 2024

Mohammed Javed Abdul Wahab
Aged About : 35 Years; Occu : Labour;
R/o Deulghat, Tahsil and District Buldhana.

... APPLICANT

V E R S U S

State of Maharashtra
Through Police Station Officer, Police
Station, Buldhana City, Tahsil and District
Buldhana.

... RESPONDENT

Mr. S. V. Sirpurkar, Advocate a/w Ms. Garima Jain, Advocate a/w Ms. Rohini Pande, Advocate for Applicant.
Ms. D. I. Charlewar, APP for Respondent/State.
Mr. S. R. Charpe, Advocate for Intervener/Informant.

CORAM : PRAVIN S. PATIL, J.
DATE : JANUARY 29, 2026.

ORAL JUDGMENT

. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel for both sides.

2. By the present Application, the Applicant has questioned the order dated 30/4/2024 passed below Exhibit-1 in RCC No. 224/2018 (*State V/s Mohd. Javed & Ors.*) by the Chief Judicial Magistrate, Buldhana, whereby the

case has been committed to the Court of Sessions on the ground that offence under Section 467 of Indian Penal Code is punishable upto life imprisonment which may extend to ten years i.e. of severe nature, and the Chief Judicial Magistrate is empowered only to inflict punishment upto seven years. While exercising the powers, no reasons are recorded to justify the commitment of proceeding to the Sessions Court.

3. The undisputed facts of the present case is that Informant/Suman Rajput lodged a complaint against the present Applicant which was registered vide Crime No. 682/2018 for the offence punishable under Sections 420, 467, 468, 471, 170, 171 read with Section 34 of Indian Penal Code. After registration of offence, the Investigating Officer has conducted investigation and filed chargesheet against the present Applicant before the Chief Judicial Magistrate, Buldhana. Accordingly, cognizance of the matter was taken by the Chief Judicial Magistrate and framed charges against the Applicant and recorded evidence of the parties. After recording of evidence, matter was fixed for recording statement of Applicant/Accused under Section 313 of the Code of Criminal Procedure.

4. At the later stage of matter, the learned Magistrate passed the impugned order by recording the fact that offence against the Applicant is

under Section 467 of IPC and the punishment prescribed for the said offence is upto the imprisonment of life or with the imprisonment of either description for term which may extend to ten years and shall also be liable to pay a fine. According to the learned Magistrate, he is empowered to inflict punishment only upto seven years, therefore, he has committed the trial to the Court of Sessions.

5. The learned Counsel for Applicant submitted that for exercising the powers under Section 323 of the Code of Criminal Procedure, if it appears to the Magistrate, at any stage of proceeding that, case ought to be tried by the Court of Sessions, it would be necessary for him to record the skeletal reason after discussing the evidence and formulate the opinion as to how punishment more than seven years can be inflicted against the present Applicant. However, in the present case there is no discussion at the instance of learned Magistrate as to how and on what basis he has formulated the opinion of guilt. He has only stated that under Section 467 of Indian Penal Code the punishment is permitted upto the life imprisonment or may extend to ten years, and therefore, committed the case to the Court of Sessions. Hence, the Applicant seeks indulgence of this Court in the matter.

6. The learned APP as well as learned Counsel for Intervener/Informant has strongly opposed the Application. According to them, the bare perusal of Section 323 of the Code of Criminal Procedure only states that if it appears to the Magistrate at any stage of the proceedings that the case which ought to be tried by the Court of Sessions, he can commit it to the Court of Sessions, and therefore, while exercising these powers, Section 323 of the Code nowhere provides recording of reasons in the matter. Hence, there is no error committed by the learned Magistrate while exercising the powers, consequently there is no force in the submission of the learned Counsel for Applicant and the present Application deserves to be dismissed.

7. In the light of above submissions made by learned Counsel for both sides, it will be relevant to consider Section 323 of the Code which is reproduced as under :

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed. — If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Sessions, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].”

Thus, on perusal of Section 323 of the Code it appears that after conducting an enquiry into an offence, or a trial before the Magistrate, if it appears to the Magistrate that the case is one which ought to be tried by the Court of Sessions, he shall commit it to that Court under the provisions of Code of Criminal Procedure.

8. In my opinion, the learned Magistrate can commit the trial to the Court of Sessions, but the requirement under Section 323 of the Code is that there should be enquiry into the offence or trial before the Magistrate and after conducting the said trial if it appears to him that prosecution has made out a case that accused can be inflicted maximum punishment or it appears to him that trial shall be tried by the Court of Sessions, then only he can commit the matter to the Sessions Court. As such, to reach this conclusion, it would be necessary for the learned Magistrate to discuss the evidence to formulate the opinion of guilt. The said opinion cannot be formulated without discussion of evidence recorded before him. As such, it is but obvious to discuss and record reason for formulating opinion. However, in the present case, no such discussion is *prima facie* seen in the impugned order.

9. It would be further relevant to consider Section 325 of the Code of Criminal Procedure which is reproduced as under :

“325. Procedure when Magistrate cannot pass sentence sufficiently severe. — (1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.”

As per this provision, if the Magistrate is of the opinion that after hearing the evidence for the prosecution and the accused, that accused found guilty and punishment is to be imposed for which the Magistrate is not empowered, he is required to record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

10. In my opinion, Section 323 of the Code is required to be read with

Section 325 of the Code of Criminal Procedure. Section 325 provides the procedure that Magistrate should form an opinion after considering the evidence of the prosecution and the accused recorded before him and then submit to the Magistrate to whom he is subordinate. In my opinion, if this mechanism is provided to submit the proceeding from Magistrate to Chief Judicial Magistrate, same procedure required to be followed while exercising powers under Section 323 of the Code of Criminal Procedure.

11. In the present case, the learned Magistrate is himself being Chief Judicial Magistrate, and therefore, while committing the case to the Court of Sessions, it is expected from him that, in the same manner as provided under Section 325, he should have formed an opinion on the basis of evidence recorded before him and submit his proceedings along with opinion to the Court of Sessions.

12. It is further pertinent to note that the learned Magistrate has simply stated that the offence under Section 467 of IPC is punishable upto the life imprisonment which may extend upto ten years, if it is severe nature, and the learned Magistrate is empowered only to inflict the punishment upto seven years. In my opinion, the maximum punishment provided under the statute does not *ipso facto* means that maximum punishment is to be awarded to the

Accused. In my opinion, it is always depend upon the facts and circumstances and the role attributed to the Accused in the offence. It is, therefore, necessary to record reasons on what basis he was of the opinion that accused be inflicted maximum punishment in the matter.

13. In the present matter, in view of above discussion, I am of the considered opinion that the learned Chief Judicial Magistrate failed to consider Sections 323 and 325 of the Code of Criminal Procedure in a right perspective. In absence of his opinion on the basis of evidence recorded before him, the commitment of the case to the Court of Sessions is not justified.

14. In the circumstances, it will be proper and justified to remand back the present proceeding to the Chief Judicial Magistrate, Buldhana with direction to form an opinion on the basis of the skeletal evidence and then commit the case to the Court of Sessions, if so permissible. Hence, I proceed to pass following order.

ORDER

1. Criminal Application is partly allowed.
2. The impugned order dated 30/4/2024 passed below Exhibit -1 in

Regular Criminal Case No. 224/2018 (*State V/s Mohd. Javed & Ors.*) by the Chief Judicial Magistrate, Buldhana is hereby quashed and set aside.

3. The proceeding bearing RCC No. 224/2018 is remanded back to the Chief Judicial Magistrate, Buldhana to reconsider the matter and by formulating his opinion on the basis of skeletal evidence led before him by the parties, and then if so necessary, by invoking the powers under Section 323 of the Code of Criminal Procedure, commit the case to the Sessions Court.
4. Rule is made absolute in above terms. No order as to costs.

[PRAVIN S. PATIL, J.]