

MHAM030006142002



R.C.C. No. 847/2002

State of Mah.

.. Vs. ..

Vasantrao Saurkar & Others.

ORDER BELOW EXH. 1123

(Passed on 07/05/2025)

This is an application for recalling the order dated 01.07.2024, filed by accused No.21.

2. I have heard the learned advocate for the accused and the learned A. P. P. for the State so also perused the record.

3. It is seen that the present application has been filed for recalling the charge framed by this Court on 01.07.2024 or it can be said that the present application is filed for discharging the accused from the offence punishable under section 406, 409 and 420 read with section 34 of the Indian Penal Code. In support of his arguments the learned advocate for the accused has put his reliance upon the authority of **Delhi Raised Club (1940) Ltd. Anr V/s. State of Uttar Pradesh and Ors. Reported in 2024 INSC 626 (Neutral citation)**.

4. As per submission of the learned advocate for the accused in the above mentioned authority, it has clearly been mentioned that offence under section 406 and 420 of the Indian Penal Code are independent and distinct. These two offences cannot coexist simultaneously in same set of facts. The learned advocate for the accused has further submitted that hence the charge framed by this court be recalled and after hearing the parties again charge be framed.

5. As per submission of the learned A. P. P. for the State as the charge is already framed the application for discharge cannot be

entertained. This is not an application for making amendment or making correction or alteration in the charge. She has prayed for rejection of the application.

6. I am of the view that no one would dispute the ratio laid down in the authority mentioned above. But at the same time it is also to be seen that the present application has not been moved for alteration of charge or making any correction in the charge. The application for recalling of the charge framed by this court which is as good as an application for discharging the accused. The charge can be altered any time by the Court. But this application is in that regard. Therefore, I am of the view that when the matter is for evidence and the matter is more than 20 years old without any reason this application has been filed on record by the accused.

7. It is also seen from the record that the charge is framed on 01.07.2024 and thereafter, this application has been filed after lapse of about two months. I do not find any reason to recall the order. The court can alter the charge if feel it necessary, in view of the ratio laid down in the above mentioned authority. Considering the above discussion, I am of the view that this kind of application for recalling of the framed charge is not maintainable. Hence, with due respect to the ratio laid down in the above mentioned authority, the application (Exh.1123) is rejected.

Date : 07/05/2025.

(Sanjay J. Bhattacharya)
Chief Judicial Magistrate, Amravati.