



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (APL) 415 OF 2012**

Smt. Shobha Ramesh Bawane,  
aged about 45 yrs., Occp. Household work,  
r/o Fukta, Tah. Hinganghat,  
Distt. Wardha. ::

**APPLICANT**

**.. Versus ..**

1. State of Maharashtra,  
through P.S.O., Wadner,  
Tah. Hinganghat, Distt. Wardha,
2. Arvind s/o Pandurangji Warghane,  
aged about 46 yrs., Occp. Cultivator,  
r/o Fukta, Tah. Hinganghat,  
Distt. Wardha.
3. Rakesh @ Banti s/o Ramesh Deotale  
aged about 33 yrs., Occp. Cultivator,  
r/o Mandheli, Tah. Warora,  
Distt. Chandrapur. ::

**NON-APPLICANTS**

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Shri R. M. Patwardhan, Advocate for the applicant.  
Shri M. M. Ekher, A.P.P. for non-applicant No.1.  
Shri A. D. Ramteke, Advocate for non-applicants No. 2 & 3.  
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**CORAM : S. B. SHUKRE, J.**  
**DATED : 02 MARCH, 2015.**

**ORAL J U D G M E N T**

1. Heard.
2. Admit. Heard finally by consent.
3. It is seen from the impugned order dated 10/02/2012 discharging respondents No. 2 and 3 from the case that the learned Additional Sessions Judge appreciated the evidence and meticulously examined the statement of witnesses, which is not permissible while considering the application filed for discharge of the case under Section 227 of the Criminal Procedure Code. What is required to be seen as to whether or not there are sufficient grounds for proceeding further in the matter and even if there is some strong suspicion with some material prima-facie showing involvement of the applicant/accused in the alleged crime, it would be sufficient for proceeding further in the matter. The law in this regard is well settled and a useful reference can be made by relying upon the cases of (i) *Amit Kapoor Vs. Ramesh Chander & another* – (2012) 9 SCC 460 and (ii) *Onkar Nath Mishra & others Vs. State (NCT of Delhi) & another* - (2008) 2 SCC 561.
4. The law settled by the Hon'ble Apex Court in the afore stated cases has been completely ignored by the learned Additional Sessions Judge. The statement dated 06/5/2010 of Avinash Kamble, an eye witness to the incident, recorded under Section 161 Cri. P. C. is

quite significant. If this witness has changed his stand subsequently, it would not mean that what he has stated at the earliest first available opportunity can be said to be false at this stage. It would be something, which can be considered on merits of the case at the conclusion of the trial. In fact, the statement recorded at the first available opportunity is very important and this fact ought not to have been ignored by the learned Additional Sessions Judge while deciding the application seeking discharge. In such a situation, I find that the learned Additional Sessions Judge has acted arbitrarily in exercising his discretion and went against the well settled principles of law. There being available sufficient material giving rise to strong suspicion of commission of the alleged offence by both the accused, the trial of the case must proceed against them.

5. Accordingly, the impugned order is hereby quashed and set aside.

The trial of the case against the applicant shall proceed in accordance with law and necessary charge be framed.

The application is allowed in these terms.

**JUDGE**

