



**THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Writ Petition No. 2595 of 2023

Rohan Vishwas Kulkarni

Age 36, Adult, Indian Inhabitant,

Residing at 202, Ameya Apts,

212 Shaniwar Peth, Pune – 30.

... Petitioner

versus

1. The State of Maharashtra

via Kothrud Police Station, Pune.

2. Ramesh Madhukar Modak

Alias Shivkrupanand Swami

Having his residence at

Shri Baba Swami Dham, Nisal

Faliya, Mogar, District Navsari,

Gujarat.

... Respondents

with

Criminal Writ Petition No. 298 of 2025

State of Maharashtra

... Petitioner

(Orig. Complainant)

versus

Ramesh Madhukar Modak @

Shivkrupanand Swamiji

Age 65 years, R/at. Shri Baba

Swami Dham, Nisal Faliya,

Mogar, District Navsari,

Gujarat State.

... Respondent

(Orig. Accused)

Mr Arjun Kadam, for the Petitioner in WP/2595/2023.

Mr Arfan Sait, APP, for Respondent No.1/ State in WP/2595/2023 and for the Petitioner / State in WP/298/2025.

Mr Siddharth Sutaria, a/w Mr Abhijit Aher i/b Mr Suyash Khose, for Respondent No.2 in WP/2595/2023 and Respondent in WP/298/2025.

API Rajkumar R Adgale, Kothrud Police Station, Pune City, is present.

Coram: R.N. Laddha, J.

Date: 2 April 2025

P.C.:

By these petitions, the petitioners, the first informant and the State, seek to challenge the concurrent findings of the discharge of Ramesh Madhukar Modak alias Shivkrupanand Swami, the accused, in Regular Criminal Case No.6337 of 2017, which was pending before the Judicial Magistrate First Class, Pune.

2. As per the prosecution, the following events prompted the informant to lodge an FIR bearing No.3101 of 2014 with the Kothrud Police Station, Pune, on 1 May 2014: Back in 2011, one Priyadarshan Deshmukh informed the informant about the accused and his spiritual activities. In June 2012, the informant attended the accused's one-day workshop at Shivaji Vyayam Mandal, Shivajinagar, Pune. During this workshop, the accused

claimed to possess extraordinary spiritual powers that allowed him to guide young people in making career choices by foreseeing their future. As the informant later investigated, he found that the accused manipulated him into taking on work activities in Tamil Nadu under false pretences. The accused and his associate, Narendra Patil, further deceived the informant by claiming that joining their trust and participating in the workshop would lead to wealth and success in life. Believing these promises, the informant travelled to Navsari, Gujarat, to meet the accused for career guidance. However, upon arrival, he was not allowed to meet him; instead, he was asked to attend an eight-day workshop. Subsequently, in 2013, the informant came across an advertisement for the accused's eight-day workshop at the residence of one Kashikar in Gururaj Society in Pune and decided to attend. To his dismay, he discovered that the accused would not be physically present at the event; instead, he would communicate through his powers and subtle body. The event organisers informed the attendees, including the informant, that the accused would deliver a two-hour discourse each day via an audio-visual compact disk (CD) containing the pre-recorded material. They falsely claimed that the powers would manifest through the video recording on the CD and that the accused's abilities also blessed the CD. Additionally, this CD was sold to the participants for Rs.250/-

under the deceptive pretext of cheating the public and gaining monetary benefits. After completing the eight-day workshop, the informant was invited to join a forty-five-day course, during which he was given a Mantra to chant while closing his eyes. He was assured that reciting this Mantra would resolve all his troubles. Following this advice, the informant began his daily recitations at 7 p.m. at Omkareshwar Temple. As a result, he ended up experiencing significant mental and physical distress that even a medical professional couldn't alleviate. Additionally, the informant alleges that under the guise of discourse and meditation, the accused instilled fear in him by promoting and propagating disturbing practices like human sacrifice, as well as other inhumane and aghori practices, along with black magic, all advertised through an audio-video CD.

3. On 8 March 2018, the accused applied for discharge under Section 239 of the Code of Criminal Procedure, 1973 ('CrPC'). By an order dated 3 March 2020, the trial Court allowed the application and discharged the accused for the offences punishable under Sections 3(1) and 3(2), read with clauses (2) and (5) of the Schedule appended to the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and *Aghori* Practices and Black Magic Act, 2013 ('the Black Magic Act'). Aggrieved thereby, the State

filed the revision application bearing No.222 of 2020 before the Sessions Court, Pune. By the judgment and order dated 9 May 2023, the learned Additional Sessions Judge dismissed the revision and confirmed the accused's discharge. Dissatisfied with the verdict, the informant and the State have invoked this Court's writ jurisdiction by filing these petitions.

4. Mr Arjun Kadam, the learned Counsel appearing on behalf of the first informant/ the petitioner in writ petition No.2595 of 2023, contends that Mr Kashikar's statement corroborates the informant's version of events, more particularly, the playing of the CD at his residence as a part of the eight-day workshop. The revisional Court erred in concluding that the offence occurred in 2008 and, therefore, did not fall within the ambit of the Black Magic Act, which came into force in 2013. The contents of the CD clearly establish the accused's involvement in the offence. Furthermore, the learned Counsel asserts that the accused expressly violated the provisions of the Black Magic Act by claiming to perform miracles in the circulated CD. According to the learned Counsel, the impugned orders are arbitrary, legally untenable, and should be set aside. In support of his submissions, Mr Kadam relies on (i) *Rajendra s/o Ganpatrao*

Ambhore v. Union of India,¹ (ii) *Captain Manjit Singh Vardi (Retd.) v. Hussain Mohammed Shattaf*,² and (iii) *Dinesh Harakchand Sankla v. Kurlon Ltd*,³.

5. Mr Arfan Sait, the learned Additional Public Prosecutor representing the petitioner/ State in writ petition No.298 of 2025, also challenges the impugned orders, contending that deceiving people through the propagation and circulation of miracles falls within the purview of the Black Magic Act. The accused instilled fear in the minds of the public, including the informant, by pretending to possess supernatural powers. According to the learned APP, both the trial Court and the revisional Court erred in discharging the accused without properly considering the material available on record. To bolster his contentions, Mr Sait also relies on *Rajendra s/o Ganpatrao Ambhore (supra)*.

6. On the other hand, Mr Siddharth Sutaria, the learned Counsel appearing for the accused/ respondent, opposes the petitioners' request, arguing that it is undisputed that the informant never had any direct interaction with the accused nor the informant ever met him. Aside from the informant, no other individual has raised any grievance against the accused.

¹ (Criminal Writ Petition No.469 of 2015 dated 5 January 2021 Bombay High Court at Aurangabad)

² 2023 SCC OnLine SC 653,

³ ILR 2006 Kar 234

There is no connection between attending the alleged video seminar, which was free of charge, or chanting the Mantra, and the physical or mental issues experienced by the informant. Furthermore, relying upon the statement of Dr Swapnil Deshmukh, the informant's treating physician, the learned Counsel asserts that the informant was undergoing treatment for a psychological disorder and mental distress, which is unrelated to meditation. He further contends that the accused did not in any manner fraudulently induce the informant to purchase the alleged CD or part with money. Additionally, the accused is neither the publisher of the CD nor the owner of the website from which the alleged printouts were obtained.

7. The learned Counsel further submits that the accused is a preacher of meditation and ancient traditional knowledge, which is exempt under Section 12 of the Black Magic Act. He asserts that the alleged seminar where the alleged CD was played was not conducted at the instance of the accused. The CD was recorded in 2008 in Ajmer, Rajasthan, and no statements were taken from those who recorded it. Additionally, the learned Counsel points out that when the crime was reported in 2014, the informant made no mention of the CD, only bringing it up in 2016 at the time of recording the supplementary statement.

8. Mr Sutaria contends that no material exists to prosecute the accused for the alleged offence. He highlights a significant delay in filing the complaint. Additionally, he points out that, after the completion of the investigation, the investigating agency initially submitted C-Summary reports to the trial Court on two occasions, and withdraw them later for unknown reasons. Despite this, a charge sheet was eventually filed against the accused. The learned Counsel further argues that even on its face value, the provisions of the Black Magic Act are not attracted to this case, as the alleged seminar where the CD was allegedly played took place in June 2012, prior to the enactment of the Black Magic Act in 2013. He further asserts that, after considering all these aspects, both the trial Court and the revisional Court rightly discharged the accused. In support of his submissions, Mr Sutaria cites the decisions in (i) *Soni Devrajbhai Babubhai v. State of Gujarat*⁴, (ii) *Union of India v. Prafulla Kumar Samal*⁵, and (iii) *State of Maharashtra v. Kaliar Koli Subramaniam*⁶.

9. This Court has given anxious consideration to the rival submissions canvassed across the Bar.

⁴(1991) 4 SCC 298

⁵(1979) 3 SCC 4

⁶(1977) 3 SCC 525

10. Section 239 CrPC deals with the discharge of an accused in a trial of a warrant case instituted on a police report. A magistrate, after carefully examining the police report and accompanying documents and hearing the prosecution and the accused, is obligated to discharge the accused if it is determined that the accusations are groundless by providing reasons for such a decision.

11. It is a settled position in law that, under Section 239 CrPC, if a Magistrate finds *prima facie* evidence against the accused, he must frame charges as per Section 240 CrPC. Conversely, if the Magistrate determines that the evidence does not support a *prima facie* case and the charges lack substance and are groundless, he must discharge the accused. The standard for assessing whether a charge is unfounded hinges primarily on whether the material presented, if uncontested, would be inadequate to establish any case. In this context, a profitable reference can be made to the Hon'ble Supreme Court's decision in *State of T.N. v. R. Soundirarasu* ⁷.

12. Further, it is also a well-settled legal principle that the scope of the revisional Court's powers under Section 397 of the CrPC is limited to examining the correctness, legality or propriety of the trial Court's order.

⁷(2023) 6 SCC 768

13. The Black Magic Act was enacted to curb harmful practices that posed serious risk to individuals and society, including human sacrifices, fraudulent rituals, and psychological exploitation; and explicitly excludes legitimate religious practices, the sharing of traditional knowledge, and cultural or artistic expressions.

14. Upon carefully evaluating the records, it becomes evident that the informant had no direct interaction with the accused and voluntarily attended the seminars where the alleged CD was played. It is undisputed that the accused did not organise these seminars. There is no material available on record to suggest that the accused was either the publisher of the CD in question or owner of the store from where it was purchased. A significant aspect of this case is the timeline of events. The complaint was lodged in 2014; however, the informant did not bring up the contents of the CD until 2016, when providing a supplementary statement. This delay raises concerns about the credibility of the allegations. During this intervening period, the prosecution submitted C-Summary reports, only to later withdraw them for reasons that remain unclear.

15. A close examination of the impugned orders indicates that the decision to discharge the accused was reached after a

meticulous assessment of the material on record. This assessment encompassed the complaint, statements of the witnesses, the informant's supplementary statement, and the transcript of the CD. Both Courts below conducted a detailed assessment of the allegations and, based on the material available on record, rightly concluded that the accused should be discharged. Furthermore, there is no discernible legal error, procedural irregularity, or erroneous finding in the impugned orders that would necessitate intervention by this Court. The trial Court and the revisional Court have exercised their discretion judiciously and adhered to established legal principles. In the absence of any compelling grounds to challenge the validity of these findings, this Court finds no basis to interfere with the impugned orders.

16. As a result, these petitions stand dismissed.

(R.N. Laddha, J.)