

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.750 OF 2016

Rajesh Bharat Latkar

..Petitioner.

V/s.

State of Maharashtra and Ors.

..Respondents.

Mr.Tanaji Mhatugade for the petitioner.

Mrs.S.D. Shinde, APP for respondent-State.

**CORAM : NARESH H. PATIL AND
A.M.BADAR, JJ.**

DATED : 30TH MARCH, 2016

P.C. :-

1. Heard learned counsel for the petitioner and learned APP for the State.

2. The grievance of the petitioner is that F.I.R. bearing C.R. No.349/2015 was registered on 26th October, 2015 with Shahupuri police station, Kolhapur for offences punishable under sections 307, 143, 147, 148, 149, 452 and 427 of the Indian Penal Code and section 37(1), 135 of the Bombay Police Act. While filing remand report before the Chief Judicial

Magistrate, Kolhapur, the police deleted the offence punishable under section 307 of the Indian Penal Code and filed charge-sheet for lesser offences. Counsel submits that perusal of the charge-sheet shows that the complainant had made out a *prima facie* case for filing report for offence under section 307 of the Indian Penal Code.

3. Learned APP submits that after investigation, police were of the opinion to delete offence under section 307 of the Indian penal Code and accordingly intimation was given to the learned Chief Judicial Magistrate, Kolhapur during the remand proceedings by a communication dated 28th October, 2015. We have perused the remand communication and endorsement of the learned Chief Judicial Magistrate, Kolhapur appearing at Exhibit-C (page 15 of the paper-book).

4. The provision of section 226 of the Code of Criminal Procedure Code, 1973 provides for the prosecution to open the case and Section 228 refers to framing of charge. The said provision states that if after such consideration and hearing, the Judge is of the opinion, then, he shall accordingly frame charge against the accused.

5. The concerned Judge will be entitled to look into the record, hear the prosecution and then frame the charge. In case if the concerned Judge is of the opinion that charge is required to be framed for an offence punishable under section 307 of the Indian Penal Code then, the Judge is free to take appropriate decision in accordance with law. The complainant is also entitled to assist the prosecution at the relevant time.

6. In the facts of the case, the concerned Judge to take appropriate decision while formulating the charge at the time of framing of the charge.

7. All issues on merits are kept open. The petition is disposed of.

8. A copy of the order be forwarded to the Superintendent of Police, Kolhapur.

(A.M. BADAR, J.)

(NARESH H. PATIL, J.)