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

CRIMINAL REVISION APPLICATION NO.415 OF 2016

Santosh Bhimrao Kamble and Ors.

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr.Amol J. Phoujdar, i/b Mr.K.S.Patil, for the Applicants

Mr.A.S.Shitole, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 4th AUGUST, 2016

P.C. :

1. Heard learned Counsel for the applicants and the learned A.P.P.
2. By this application, the applicants have impugned the Order dated 3rd May, 2016, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Bombay, below Exhibit – 1, in Sessions Case No.31 of 2015, by which their application seeking discharge only from the offence punishable under Section 307 of the Indian Penal Code came to be rejected.

3. Learned Counsel for the applicants submitted that considering the facts of the case and taking the facts as they stand, no offence under Section 307 is disclosed in the present case. He submitted that the applicants are ready to face trial, for rest of the alleged offences, except Section 307 of the Indian Penal Code. He submitted that the injury certificate shows that except an eye injury, the injured had not sustained any other injury. He submitted that it is not the prosecution case, that the applicants gave repeated blows, for their acts to constitute an offence under Section 307. He submitted that considering the material on record, the applicants be discharged from the offence punishable under Section 307.

4. Learned APP opposed the application. He submitted that the facts as disclosed in the complaint, clearly disclose an offence punishable under Section 307 of the Indian Penal Code. He submitted that the injured is a police officer who was on duty at the relevant time and a perusal of his statement clearly discloses an offence under Section 307. He submitted that it is not the injury sustained by the injured which is relevant, but it is the 'intent' of the accused, for an act to constitute an offence under Section 307 of the Indian Penal Code.

5. Perused the papers, in particular the statement of PSI –Rohit K. Narvekar. He has stated that on the day of the incident, he was on official duty at the Worli Police Station and was patrolling at the relevant time; and that he was in uniform when the incident took place. He has stated that on 6th October, 2014 at about 1.30 a.m., he saw 4 persons sitting on a bench near Harmony Tower Gate, Worli. He has stated that he was on the motorcycle at the relevant time along with PSI – Choudhary. He has stated that on seeing the said 4 persons, he got down from his motorcycle and went towards them to make enquiry. He has stated that the said 4 persons were sitting on the bench and drinking beer and there were beer bottles near them. He has stated that when he asked them not to drink alcohol, one person got enraged and broke a beer bottle and stated that they were not afraid of police and used filthy and abusive language. He has further stated that when he asked the said persons not to use abusive language, one person held his hands and one person assaulted him on his left eye. He has stated that thereafter, another person picked up the broken beer bottle and came towards him and stated “तु जास्त शहाणपणा करतोस का, तुझा आता मर्डरच करून टाकतो” and assaulted him with the broken beer bottle on his

abdomen, however, he dogged the said attack, pursuant to which a scuffle took place between them.

6. A perusal of the statement of the injured shows the intention of the applicants, coupled with the overt act. The judgment relied upon by the learned counsel for the applicants in the case of ***Sagayam v/s State of Karnataka***,¹ is clearly distinguishable, more particularly, as the Judgment was rendered after the trial was over and after the evidence was led. From the facts of the present case, in particular, the statement of the injured – Rohit Narvekar, *prima-facie* the intention of the applicants becomes evident, coupled with the act of the assault, so as to attract Section 307 of the Indian Penal Code. As far as the submission by the learned counsel for the applicants that repeated blows were not given by the applicants and other submissions, the same cannot be considered at this stage and is a matter which can be considered after evidence is led.

7. Considering the aforesaid, the application is rejected and disposed of as such.

1 (2000) 4 SCC 454

8. It is made clear that the observations made herein are *prima facie*, for considering the aforesaid application, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.