

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 143 OF 2019

1. Rashid s/o Mohammad Chaus,
Age 47 years, Occ. Driver,
R/o. Samta Nagar, Gangapur,
Tq. Gangapur, Dist. Aurangabad.
2. Dr. Arshad s/o Mohammad Chaus,
Age 56 years, Occ. Medical
Practitioner, R/o. As above.
3. Shaker alias Raju s/o Mohammad Chaus,
Age 45 years, Occup. Private Service,
R/o. As above.
4. Nadeem s/o Babu Pathan, Age 29
years, Occup. Private Service,
R/o. Near Post Office, Gangapur,
Tq. Gangapur, Dist. Aurangabad.
5. Sayara Begam w/o Arshad Chaus,
Age 45 years, Occ. Household,
R/o. Samta Nagar, Gangapur,
Tq. Gangapur, Dist. Aurangabad.
6. Barkha Begam w/o Mohammad
Chaus, Age 74 years, Occ. Household,
R/o. As above.
7. Nilophar d/o Mohammad Chaus,
Age 42 years, Occ. And r/o. As above. ... **Applicants.**

VERSUS

1. The State of Maharashtra,
Through the Officer Incharge,
Gangapur Police Station,
District Aurangabad.
2. The Assistant Police Inspector,

Gangapur Police Station,
Gangapur, Tq. Gangapur,
Dist. Aurangabad.

... **Respondents.**

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Advocate for the Applicants : Mr. Deshmukh Rajendra S.
APP for the Respondents : Mr. B.V. Virdhe.

CORAM : **MANGESH S. PATIL, J.**
RESERVED ON : **30/09/2019**
PRONOUNCED ON : **05/11/2019**

JUDGMENT:

Heard. Rule. The rule is made returnable forthwith. Learned APP waives service for both the respondents. On the request of both the sides the matter is heard finally at the stage of admission.

2. The petitioners who are the accused in Sessions Case No. 38/2017 pending on the file of the learned Additional Sessions Judge, Vaijapur, District Aurangabad, are challenging the order of rejection passed by the learned Additional Sessions Judge on their application (Exhibit 26) seeking discharge, though styled as under section 239 of the Code of Criminal Procedure, instead of under section 227 of the Code of Criminal Procedure since it was a Sessions Case, for the offences punishable under section 307, 353, 323, 188 read with Section 34 of the Indian Penal Code and Section 132 read with Section 177 and 179 of the Motor Vehicles Act.

3. Shortly stated the prosecution case as can be gathered from

the entire charge-sheet is to the effect that the informant who was then posted as Assistant Police Inspector at Gangapur Police Station, along with his staff were on patrolling duty pursuant to an order of the Assistant Election Officer, Gangapur, on 05.04.2014. One Gorakh Manal was also accompanying them as per the directions of the Tahsildar who was a Videographer, who was supposed to video-graph whenever the police party was supposed to open the boot and doors of the vehicles intercepted by them. They were also accompanied by one Dinesh Rajput who was the Awwal Karkoon and Special Executive Magistrate of Tahsil office Gangapur who was heading the team. Accordingly when they were intercepting vehicles in order to undertake search in the afternoon at about 2.30 p.m., a red Tata Safari vehicle bearing No. MH-20/BE-1001 was seen proceeding from Aurangabad towards Gangapur. The police party indicated the vehicle driver to stop it. But in dereliction to such direction the vehicle tried to run over the police party. The person who was sitting by the side of the driver and couple of persons sitting in back side seat were seen asking the driver to speed away. In the process the police personnel tried to dodge but Police Constable Dharkar fell on ground and sustained injury. Because of such movement of the vehicle the police party suspected that there must be something objectionable in the vehicle. The informant then telephonically informed the Police Station

Gangapur giving description of the vehicle and informing that the vehicle had proceeded towards Gangapur.

4. The informant thereafter alleged that when the police party went towards Gangapur and reached Shivaji Chowk couple of constables who were present there told him about having asked to intercept the vehicle. However, when they tried to intercept the vehicle accused Dr. Arshad Chaus and three other persons to whom one of these Constables Mr. Avhad was knowing manhandled these Constables, assaulted them by asking them if they were not knowing these persons.

5. It is further alleged that since Constable Avhad was knowing all these persons they suspected that they must have gone to the house of accused Dr. Chaus. The entire episode was then narrated to the Police Inspector Nandedkar and the police party went to the house of Dr. Chaus. The vehicle was seen parked there but nobody was present inside it. When they gave a call to the inmates of the house there was no response. Thereafter Police Inspector Nandedkar along with police staff decided to rush inside the house. When they went inside, the person who was sitting by the side of the driver and was wearing white safari suit was inside the house. He along with two to three women from the house started shouting and pushing the police personnel.

When Police Inspector Nandedkar tried to pacify them one of the accused caught hold Mr. Nandedkar with his collar and pulled his shirt. Other inmates also started pushing and pulling the police personnel but they were overpowered. Police Constable Avhad who was knowing all the inmates of the vehicle identified Dr. Chaus. The F.I.R. was lodged on the same day at 15.50 hours and the Crime was registered under the aforementioned sections.

6. According to learned advocate for the petitioners, a false and concocted story has been developed to implicate the petitioners. The petitioner No. 2 belongs to a political party and a Medical Practitioner and the other accused-petitioners are his family members. Since it was an election time, attempt was made to implicate them falsely. None of the offences can be made out. There is serious dispute about identity of the persons involved. In fact the episode was otherwise. The police party had without any rhyme or reason raided the house of the petitioners and by misusing their power assaulted the petitioners inside their house. The petitioner No. 2 had to file a private complaint in the Court of Judicial Magistrate First Class bearing Criminal Misc. Appln. No. 226/2014. The Magistrate issued direction under section 156(3) of the Code of Criminal Procedure for carrying out investigation. Accordingly Crime No. 152/2015 was registered against Police

Inspector Mr. Nandedkar and since it was being investigated by Police from the same police station a false 'B' summary report was submitted stating that the complaint was lodged as a counter blast to the present Crime No. 92/2014. The Magistrate thereafter directed Regular Criminal Case No. 03/2015 to be registered against Police Inspector Nandedkar and other police persons for the offences punishable under section 341, 323, 354, 504, 506 read with Section 34 of the Indian Penal Code.

7. The learned advocate would further submit that accepting the allegations at their face value ingredients for none of the offences can be made out. In fact though the incidents have been said to be interlinked there are two independent episodes. The first at Bhendala Phata on Aurangabad to Nagar road and the other one inside the house of the petitioners. Only four of the accused were involved in the first episode. Just to harass the petitioners a concocted story regarding second episode has been developed even by including some of the petitioners who are women present inside the house. Therefore there is no reason to believe about petitioners involvement in commission of the crime. There is no sufficient material to proceed against them by framing charge.

8. The learned advocate would submit that the learned

Additional Sessions Judge has not at all appreciated the aforementioned facts and circumstances and has perfunctorily rejected the application (Exhibit 26) by the impugned order which is perverse and arbitrary and may be quashed and set aside and the petitioners may be discharged.

9. The learned APP strongly opposed the revision. He submitted that even according to petitioners, a counter F.I.R. has been registered at their instance in respect of the same episode which had taken place inside their house wherein Police Inspector Nandedkar and other police personnel have been implicated for variety of offences mentioned herein above. Therefore this much of material is sufficient to infer that some episode had taken place inside the petitioners' house. The fact even the women folk from the family i.e. some of the petitioners have also alleged about Police Inspector Nandedkar and other police staff having outraged their modesty even their presence inside the house stands admitted. The learned APP would submit that it is highly improbable for a police party which was busy in election duty to have entered into the house of the petitioners without any rhyme or reason. In fact it is not that the police party was only comprising of police personnel in fact it was headed by a Awwal Karkoon Dinesh Rajpoot from Tahsil Office Gangapur. Even his

statement under section 161 of the Code of Criminal Procedure corroborates the prosecution version. Police Constable Dharkar fell to the ground when the vehicle tried to run over the police party. There is an injury certificate. The conduct of the petitioners who were travelling in the vehicle in avoiding to be intercepted and searched and to speed away and further even threatening couple of constables at Shivaji Chowk and then their availability inside their house are all material circumstances which clearly indicate the motive on the part of the petitioners. The learned APP would further submit that the subsequent episode inside the house of the petitioners has been promptly reported and the F.I.R. was registered first in point of time. It is only to give a counter blow that the petitioners have come out with their own concocted version at later point of time. Considering all these aspects, the material on record is sufficient enough to proceed against the petitioners.

10. I have carefully gone through the entire charge-sheet with the able assistance of both the sides. At the outset it is necessary to emphasize that even according to petitioners version in the form of their private complaint, some episode had taken place inside their house at the material time. At this juncture there is no other material to show as to why Police Inspector Nandedkar and other police

constables had gone to the house of the petitioners. This much of material at this juncture is sufficient to lend credence to the prosecution version about some incident having taken place inside the petitioners' house. Whether and in what manner the prosecution would be able to establish the guilt is a different aspect. But so far as occurrence of incident and involvement of the petitioners' is concerned, one can safely proceed on the premise that some incident did take place inside the house and which needs to be probed into at a full fledged trial.

11. As far as the first episode is concerned, at this juncture the only material aspect that needs to be borne in mind is that the police party was on election duty as per the instructions of the Election Officer. Even a Awwal Karkoon from Tahsil office was a member of that party. His statement under section 161 of the Code of Criminal Procedure is also eloquent and corroborates the prosecution version. There is an injury certificate of constable Dharkar who fell to the ground when the vehicle was tried to be intercepted but was attempted to run over the police party. The F.I.R. has also been lodged promptly without any delay. If such was the state of affairs, it cannot be said that there is no sufficient ground for proceeding against the petitioners within the meaning of Section 227 of the Code of Criminal Procedure.

12. Needless to state that, even for charging a person for attempting to commit murder punishable under Section 307 of the Indian Penal Code it is not necessary that the incident should invariably be demonstrated on the basis of some injury to the victim. But the allegations of the prosecution are to the effect that when the police party tried to intercept the vehicle and signaled to stop it it speeded away and in the process even the police personnel were tried to be run over. Knowledge and intention can easily be attributed to a person when such a vehicle runs over persons.

13. As has been mentioned by the learned Additional Sessions Judge it would be a matter of inference to be drawn based on the evidence to be led as to whether intention or knowledge to kill police personnel can be attributed/made out. At this juncture, there is indeed sufficient material to frame appropriate charges based on the prosecution version. The observation and the conclusions drawn by the learned Additional Sessions Judge show that he has taken a plausible view which cannot be interfered with in exercise of the revisional powers of this Court.

14. The Revision is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

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