

Vidya Amin.

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

CRIMINAL REVISION APPLICATION NO. 427 OF 2018

Appasaheb @ Balu Narayan Khandare	...	Applicant
VS.		
The State of Maharashtra	...	Respondent

Mr. Priyal G. Sarda, Advocate for the applicant.
Mr. A.R. Patil, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 13th February, 2019**

P.C. :

In this Revision Application, the order dated 22nd June, 2018 passed by the learned Additional Sessions Judge, Pune below Exhibit 10 in Sessions Case No. 846 of 2013 thereby rejecting the Application for discharge.

2. The applicant/accused is facing prosecution for the offences punishable under sections 307, 323, 506(2), 504 r/w. 34 of Indian Penal Code. The incident of manhandling and assault have taken place on 18th May, 2013 on account of encroachment on the agricultural land. As per the case of the prosecution, this applicant Appasaheb alias Babu Narayan Khandare was present on the land of the complainant-Satish Kanade along with Santosh alias

Shankar Pratap Binavat, who threatened the complainant and other witnesses that they should not stay on the land, as he is the influential person and thereafter he pulled out a loaded revolver and pointed it at the complainant and threatened that all should run away otherwise he would kill them. So, the people ran away and thereafter the complaint was lodged against co-accused Santosh and present applicant/accused.

3. The learned counsel for the applicant/accused has submitted that there is no evidence against the applicant/accused for framing charges under any section much less under section 307 of Indian Penal Code. He submitted that no medical certificate is produced either by the complainant or the persons who claimed were manhandled and therefore, he prays that the order rejecting the Application for discharge is to be set aside and quashed.

4. Learned APP while opposing this Revision application for discharge, has supported the order passed by the learned Additional Sessions Judge, Pune. He relied on the FIR given by Satish Sopan Kanade dated 18th May, 2013 and the statement of Purshottam Sopan Kanade, Seema Ishwar Bhalshankar, Sainath

Umaji Hawale and Santosh Sopan Kanade and submitted that the applicant/accused was present on the spot. The applicant has brought co-accused Santosh Binavat, who threatened and pointed the loaded revolver at the informant. He further submitted that this accused has encroached the land of the complainant. On this point, learned APP relied on the statements of Mahadev Manik Wagalkar, Mohammad Harun Shaikh and Reshma Vilas Gavane.

5. Perused the FIR and the statements of the witnesses. Considered the submissions. No medical certificate is produced before the Court. The presence of the applicant/accused is stated by all the witnesses on the spot. However, it appears that there was some quarrel between the complainant, witnesses and the applicant/accused and co-accused. However, in the statement of Mohammad Shaikh, Reshma Gavane and Mahadev Wagalkar they have mentioned that one Satish Kanade has informed them about the encroachment by the present applicant/accused and he calling co-accused Santosh Binavat. However, in the FIR of Satish Kanade, he has not attributed such role of the present applicant/accused. Moreover, the statement of Mohammad Shaikh, Reshma Gavane are identical, as there is no difference of

even a full stop. Under such circumstances, I am of the view that there is no evidence to frame charge under sections 307, 323, 504 and 506 in view of the facts of the case. Hence, the order dated 22nd June, 2018 passed by the learned Additional Sessions Judge, Pune is hereby set aside and quashed.

6. Criminal Revision Application is allowed.

(MRIDULA BHATKAR, J.)