

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Revision No. 139 of 2019

Riyazoddin Sheikh and Others

Vs.

State of Maharashtra Through P.S. Telhara and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.S.U. Bhuyar, learned appointed Advocate for applicants.
Mr. A.D. Sonak, APP for non-applicant No.1.

CORAM : MANISH PITALE, J.

DATED : AUGUST 08, 2019

Heard learned counsel for the applicants.
By this application, the applicants have challenged order dated 13/05/2019, passed by the Court of Additional Sessions Judge, Akot Dist. Akola in Sessions Trial No.26/2013, whereby the application for discharge filed on behalf of the applicants has been rejected.

2. In the present case, the Trial Court has framed charge against the applicants under Sections 307, 324, 504, 506 R/w 34 of the Indian Penal Code. The incident in the present case is alleged to have taken place on 09/1/2013, leading to registration of FIR against the applicants. It has come on record that charge against them stood framed on 20th April, 2018, and thereafter the application for discharge (Exh.79)

was filed on 07/08/2018.

3. While dealing with the application filed on behalf of the applicants and rejecting the same, the Trial Court has observed as follows :

“6] In this case, if report and police papers are seen, presence of all accused is alleged in First Information Report and statements of witnesses. At the time of First Information Report, injuries and weapons are mentioned and name of persons who assaulted the injureds is also mentioned. Injuries was referred to hospital and if medical certificate of injured Umesh Haribhau Gawande is seen, incised wound having length 3 c.m. was noticed by the doctor on posterior upper part of scalp. The weapon is sharp cutting weapon. The injury is grievous in nature and patient was referred to Government Medical College, Akola. If report of Government Medical College and Hospital, Department of Radiology and Imaging, Akola is seen, there is observations, a large extradural hemorrhage in left frontal region with its mass effect and midline shift of 7 m.m. to right side. The other observation is that, comminuted depressed, segmental fracture in right parietal bone with adjacent extradural hemorrhage I right fronto-parietal region with its mass effect. So, from the medical report, there is grievous hurt near the brain and if treatment is not provided immediately, there is likelihood of death of the injured. So, if the nature of the injuries itself is seen, then in the report of doctor, the injuries to the vital part i.e. brain and scalp is seen. Hence, in the such circumstances, the death of the patient may occur.

7] The charge is under Section 307 R/w 34 of the Indian Penal Code. Presence of all the accused on the spot is mentioned in First Information Report. On the basis of medical certificate, Section 307 of the Indian Penal Code is added by the police in this crime. Accused

alleged that offence under Section 307 of the Indian Penal Code is not made out, but from the police papers prima facie there is sufficient material to frame charge against the accused. The case is more than five years old. Accused avoided to frame charge. The charge was framed against accused in presence of their counsel. Accused did not file application for discharge for five years after filing of charge-sheet. So, in such circumstances, the application is filed with intention to prolong the matter. Once charge is framed, accused filed this application for discharge of prolong the matter and it appears that they do not want to face trial. If charge under Section 307 of the Indian Penal Code is not made out and offence is proved under lesser section, then accused will not be convicted under Section 307 of the Indian Penal Code. So, no prejudice will be caused to the accused. Hence, the application is deserves to be rejected. So, I proceed to pass the following order :

ORDER

The application is hereby rejected.”

4. The above quoted observations of the Trial Court demonstrate that the Trial Court has taken into consideration the material on record, particularly, the medical report wherein it is specifically found that due to grievous injuries suffered by the victim there was likelihood of death, but for treatment being provided immediately. In the present case, the victim suffered head injury. The Trial Court has also observed that the applicants (accused) had avoided framing of charge in the present case and that the application for discharge was filed five years after filing of charge-sheet. The said observations made by the Trial Court are also

relevant and in any case view taken on merits by the Trial Court does not deserve any interference. Although, this application is listed for consideration for the first time before this Court, since an advance copy was already served on the Government Pleader and learned APP has appeared in the present case, the counsel for rival parties were heard before passing the present order.

5. For the reasons stated above, the application is dismissed.

JUDGE