

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.66 OF 2020

Ravikishor s/o Madhavrao Karkhane,
Age 60 years, Occupation Agriculture,
R/o Nilanga Tq. Nilanga Dist. Latur. **...Applicant**

VERSUS

State of Maharashtra. **...Respondent**

Advocate for Applicant : Mr. D. A. Madke h/f
Mr. R. B. Deshmukh.
APP for Respondent-State : Ms. V. S. Choudhary.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-12-2020.

ORDER :

1. Present revision application has been filed invoking the revisional powers of this Court under Section 397 of CrPC by the original accused to challenge order below Exhibit 24, in Sessions Case No.33 of 2018, dated 14-02-2020, whereby the learned Additional Sessions Judge-5, Latur has dismissed the application filed by the present applicant under Section 239 of CrPC for discharge.
2. Heard learned Advocate Mr. Mr. D. A. Madke holding for Mr. R. B. Deshmukh and learned APP Ms. V. S. Choudhary for respondent-

State.

3. It has been vehemently submitted on behalf of the learned Advocate for the applicant that the learned Trial Judge has not appreciated the documents properly. Perusal of the FIR would show that it does not attract ingredients of Section 307 of IPC. It has been filed by the Taluka Inspector of Land Records, Latur in respect of alleged incident dated 04-04-2005. It says that there was absolutely no connection of the present applicant in respect of the inquiry that was going on in the said office and yet he started addressing one Mr. Ghadge that he has no concern with the matter. The present applicant had abused Mr. Ghadge. Mr. Ghadge thereafter requested Superintendent of Land Records that he should ask the present applicant to go outside, at that time the present applicant got annoyed and abused. The FIR says that he had received injury to the left eye. A person cannot die due to such injury. Further the injury that has been submitted shows that it was simple injury and it was not caused due to any use of weapon. At the most the allegations would attract Section 324 of IPC which would then be triable by the learned Magistrate. The entire charge-sheet does not show that any of the public servant was deterred

from discharging their duties on account of the alleged behaviour of the applicant. The learned Additional Sessions Judge ought to have discharged the accused under Section 239 of CrPC.

4. Per contra, the learned APP strongly objected the revision and submitted that perusal of the entire charge-sheet would provide that there are eye-witnesses to the incident. Further, in fact the present applicant had attacked Taluka Inspector of Land Records, Latur Mr. S. D. Jadhav. He had taken out the wooden log from the chair and assaulted informant with the help of said wooden log. He received injury to his left eye, forehead and right elbow. He then made the informant to lie-down and sat on his chest, and thereafter, tried to strangle him, and therefore, Section 307 of IPC has been added. There was absolutely no reason for the applicant accused to enter the said office on that day and he has done such activity which has definitely amounted to deterring the informant and other employees working in the said office from discharging their official duty. Those other employees who were present at the spot and who had then separated the informant from the applicant have given supporting statements. Under such circumstances, there is no question of discharge of the accused under Section 239 of CrPC.

5. At the outset it is to be noted that for some or the other reason it appears that though the FIR has been filed on 04-04-2005, yet till today the charge has not been framed. The Sessions Case has been numbered in 2018. As the entire charge-sheet has not been properly provided by the learned Advocate for the applicant, we cannot have further details as to when the charge-sheet was filed. But it can be said that it is very sorry state of affairs that the matter is still pending for framing of charge. It appears that it has given advantage to the present applicant to file application under Section 239 of CrPC. Only on the basis of injury certificate it has been tried to be contended that informant has not received any such injury which could have caused his death, and therefore, the ingredients of Section 307 of IPC has not been attracted. It is always not necessary that there should be injury to the informant or the victim when offence under Section 307 of IPC is invoked. In a case where an accused holds a gun towards the informant or the victim and does any such act either in the form of trying to pull the trigger or in that direction that may, taking into consideration the entire circumstances, would amount to attempt to commit murder. In such case there will not be any injury to the informant or the

victim. Here in this case, in FIR itself which is lodged almost immediately, it is specifically stated that, by sitting on the chest of the informant, the present applicant had tried to strangle him. There were other employees who were present in the said office who had then separated them. If they would not have been present then the possibility of accused succeeding could not have been ruled out. Further this statement in the FIR appears to be corroborated in the statement under Section 161 of CrPC of those employees in the same office who had separated the informant from the applicant. Therefore, the learned Trial Judge was justified in saying that here is the case which amounts to attempt to strangle which is the crux of framing of the charge under Section 307 of IPC against the accused. Further as regards Section 353 of IPC is concerned, it is on record that informant who is a Taluka Land Record Inspector was discharging his duty at the relevant time, and he in clear terms say that the present applicant had no occasion at that time to enter the said office and abuse said Mr. Ghadge who was interacting with the Superintendent of Land Records. After the alleged act of assault with applicant, definitely there would have been some deterrence and the employees would have been stopped from doing their official activities, and therefore, prima facie there appears to be substance

to frame charge under Section 307, 353, 504 of IPC.

6. The learned Trial Judge has taken appropriate view, and therefore, no interference is required.

7. No case is made out to exercise the revisional powers of this Court under Section 397 of CrPC, and therefore, the revision application stands rejected. Hope that the Trial Judge would give preference to the sessions case since it relates to the incident dated 04-04-2005.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-