

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.31 OF 2020**

The State of Maharashtra,
Through Police Station Officer,
Police Station, Kranti Chowk,
Aurangabad.

...APPLICANT

VERSUS

Shaikh Gaffar Shaikh Jabbar,
Age-35 years, Occu:Rickshaw Driver,
R/o-Silkmill Colony, shah Nagar,
Beed Bypass road, Aurangabad.

...RESPONDENT

...
Ms. P.V. Diggikar A.P.P for Applicant.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 19th JANUARY, 2023

ORDER :

1. Heard learned APP.
2. The facts of the case as emerging are that the informant Manik Bhausahab Chaudhari, who is PSI of Traffic Branch, Chhawani area, Aurangabad was on patrolling duty on 29th

September 2015. He found one auto rickshaw parked in no parking area at about 11.30 hours. Present respondent – original accused was the driver of said rickshaw. He started abusing the informant and other police officers in filthy language when the informant was about to issue challan against the accused. It is then stated that the accused parked his auto rickshaw on road in front of out gate of railway station and started scuffling with the police. It is the further prosecution story that suddenly the absconding accused, namely, Shaikh Imran rushed to the spot and started abusing informant and had thought to ablaze the auto rickshaw. It is then stated that both the accused started to set the auto rickshaw on fire, in which the minor son of present respondent - accused Shaikh Gaffar was sitting. Informant had tried to restrain the accused persons but he was caught hold by the accused. It is then stated that absconding accused Shaikh Imran opened back side compartment of the auto rickshaw and lid of petrol tank and by lighting match stick, it is stated that he has tried to ablaze the auto rickshaw, however other police staff members obstructed the absconding accused. The absconding accused had then taken bite on index finger of left hand of police constable Solanke and pushed him aside. Thereafter, it is said that absconding accused Shaikh Imran succeeded to set the auto

rickshaw on fire. Informant and one ASI Khan had rescued the child of the accused – present respondent who was sitting in the auto rickshaw at the relevant time. It is also then stated that the present respondent has made unsuccessful attempt to snatch the child with intend to throw him in the burning auto rickshaw. The other police persons on the nearby duty, rushed to the spot and at that time present respondent and co-accused started pelting stones towards those police persons. One of the stones had hit PSI Chauthmal causing him head injury. It is alleged that situation was brought under control by calling extra police force and even the fire brigade. In the meantime, absconding accused Shaikh Imran managed to escape. Respondent-accused was arrested at the spot and was taken to Kranti Chowk Police Station.

3. It appears that the prosecution has examined in all six witnesses to bring home the guilt of the accused. Learned Additional Sessions Judge-10, Aurangabad held respondent guilty of committing offence punishable under Sections 353, 332, 336 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act. However, respondent has been acquitted for the offence punishable under Sections 307, 333, 435, 427 of the

Indian Penal Code. As against acquittal, the present application has been filed, and whereas under other sections in which the respondent has been held guilty and lesser sentence has been imposed, separate Criminal Appeal bearing No.181 of 2020 has been filed by the State under Section 377(1)(b) of the Code of Criminal Procedure for enhancement. It will not be out of place to mention here that respondent – accused has also filed Criminal Appeal No.834 of 2019 challenging his conviction.

4. Perusal of the matter would show that Section 307 of the Indian Penal Code was tried to be invoked on two counts i.e. firstly trying to set the auto rickshaw on fire when the child of present respondent was occupying the seat in the auto rickshaw. However, it is to be noted that why the father would try to do so, that too when the dispute was going on against the police, is not clarified. Therefore, the intention is missing. The second limb of the fact on the basis of which it was tried to be contended that Section 307 of the Indian Penal Code would attract, is injury to the head of PW-3 Sunil Chouthmal. However, it is to be noted that as per the prosecution story itself the stones were pelted and many police persons were there. It appears that it is not coming forward that stone was pelted with aim and therefore,

again the intention is missing. Learned trial Judge has observed that the injuries those have been sustained by the informant as well as PW-3 Sunil Chouthmal are simple injuries with stones. It has been rightly observed by the learned trial Judge that the nature of injuries is not a determinative factor to invoke Section 307 of the Indian Penal Code but the intention to commit murder has to be proved and the evidence in respect of that intention is missing.

5. Another fact is that none of the public servant has received grievous hurt and therefore offence under Section 333 of the Indian Penal Code cannot be said to be made out. Section 435 of the Indian Penal Code describes punishment for mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees. Here the facts and the evidence goes to show that it is the absconding accused who ultimately managed to set the auto rickshaw on fire. Secondly, he had suddenly appeared and there was no prior meeting of mind between him and present respondent. Under such circumstance, there was no question of offence under Section 435 of the Indian Penal Code against the respondent. So also Section 427 of the Indian Penal Code i.e.

mischief causing damage to the amount of fifty rupees, cannot be said to be attracted against the present respondent and therefore, no illegality or error can be said to have been committed by the learned trial Judge in acquitting the respondent from the offence punishable under Sections 307, 333, 435, 427 f the Indian Penal Code. No case is made out to grant leave to appeal.

6. For the reasons stated above, the Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE