

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

CRIMINAL REVISION APPLICATION NO.90 OF 2023

1. Taramati Mahadev Kolekar,
Age : 46 Years, Occ. Household,
2. Vaishali Vishnu Edke,
Age : 33 Years, Occ. Household,
3. Akash Chandrakant Edke,
Age : 25 Years, Occ. Legal Practitioner,

All resident of Kolekarwadi,
Osmanabad.

.. Applicants
(Orig. Accused No.5,7,8)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Dhoki Police Station, Osmanabad.

.. Respondent

...

Advocate for Applicants : Mr. Mohit R. Deshmukh
APP for Respondent: Mr. S. P. Deshmukh

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CORAM : S. G. MEHARE, J.

DATE : 07.07.2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. It is revision against the order of learned Additional Sessions Judge, Osmanabad passed below Exh. 35 in Sessions Case No.

146/2021 dated 08.03.2023 rejecting the application for discharge.

3. The learned counsel for the applicants has vehemently argued that one of the accused is a practicing lawyer. A false report has been lodged though all accused have not played any role in the offence and they have been arraigned as an accused. Even the women were also not excused. Reading the first information report it is very difficult to accept the prosecution case that the applicants had a common object to commit the crime. He further argued that considering the nature of the injuries suffered to the injured, it cannot be said that it was an attempt to murder. On the basis of this argument, he prayed to allow the application.

4. Per contra, the learned A.P.P. would submit that the facts reveal that the present applicants had been to the house of the injured. They were the winners of the village panchayat election. One of the co-accused brought an axe from his house and assaulted the injured on head. All the accused were present in front of the house of the injured and they were members of unlawful assembly with common object to commit the murder of the injured. The assault was made on the vital part of the body. To attract Section 307 of the Indian Penal Code injury is immaterial. The applicants had no reason to go to the

house of the injured after winning the election. The entire circumstances reveal that there was sufficient material to frame the charge and proceed with the matter against the applicants. The impugned order is legal, correct and proper and does not warrant interference.

5. The F.I.R which was read over by the learned counsel for the applicant reveals that the applicant had been to the house of the injured and one of the co-accused went to his home and brought an axe and gave it to the another co-accused and he gave a blow on his head. The applicants were eight in numbers. So *prima facie* it may be presumed that they had formed an unlawful assembly. The place of the incident was not a public place. The incident happened in front of the house of the injured. It is also not the fact that the applicant and the injured were neighbourers. They are resident of different locality. Such a conduct of the accused reveals that the applicants were prepared with to cause the injury to the injured. They have put their intention into action by causing him injury. The learned A.P.P. has rightly pointed out that for applying Section 307 of the Indian Penal Code the injury is immaterial. The Court has to consider the papers and documents from record to form an opinion that there is sufficient

material to frame the charges and proceed with the matter. After having gone through the entire papers placed before this Court, the conduct of the applicants, the forming of unlawful assembly, going to the house of the victim/injured and using the weapon, is the sufficient material supported with the medical evidence and recovery of the weapons to believe that there is a sufficient material to frame the charges. Whether the applicant had intention to kill the injured is a matter of evidence to be decided during the course of the trial. The Court has also gone through the impugned order of the learned Additional Sessions Judge, Osmanabad and did not find any error on the face of the record. The revision application devoid of the merits. Hence it stands dismissed. No order as to costs.

Rule stands discharged.

(S. G. MEHARE)
JUDGE