

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

**CRIMINAL WRIT PETITION NO. 1535 OF 2020
AVINASH KESHAVRAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
WITH
CRIMINAL APPLICATION NO. 511 OF 2023**

Mr. Pushkar S.Shendurnikar, Advocate for the petitioners.

Mr. P.N. Kutti, APP for the respondent/State.

Mr.M.N. Kalyane and Mr. A.M. Reddy, Advocate for applicant in
Cri.Application No.511 of 2023.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	12.04.2023
PRONOUNCED ON	:	06.06.2023

ORDER :-

01. Criminal Application No.511 of 2023 filed by the informant for intervention is allowed. The petitioner to carry out amendment to add the informant as party respondent No.2.

02. Rule. Rule made returnable forthwith by consent.

03. The petitioner/original accused No.3 in Sessions Case No.47 of

2018 has filed this petition challenging the order passed by the learned Additional Sessions Judge, Latur, rejecting his application seeking discharge, from the offence punishable under section 307, 109, 323, 504, 506 read with section 34 of the Indian Penal Code.

04. The facts in short are that one Arun Jadhav – applicant in Criminal Application No.511 of 2020 was admitted in the hospital and was assaulted by the accused persons. In the hospital, his statement came to be recorded on 10.07.2017. The petitioner happens to be step-brother of the applicant. In his statement he stated that there is dispute pending between him and his step brother in respect of land Gat No.168. The informant claims to be the owner of piece of land to the extent of 1 ½ acre. On 26.06.2017 at 11.00 a.m. accused persons came to his land and started ploughing the land. On that, the informant accosted the accused persons. The accused persons, therefore, assaulted the informant with an axe. The allegations are against accused Achyut, Venkati and Govind. The wife of the informant came to intervene in the quarrel. On coming to know about this, immediately son of the informant also came to the spot and took the informant to hospital. This statement recorded in the hospital is taken as an FIR and the offence came to

be registered bearing Crime No.211 of 2017 in Gandhi Chowk Police Station, Latur. During investigation statements of various persons came to be recorded. The wife of the informant mentioned name of the present petitioner stating that he instigated other accused persons and therefore other accused persons assaulted the informant. A supplementary statement of Arun came to be recorded on 13.07.2017 in which he again stated that other accused persons have acted as per the say of the present petitioner. The statement of the informant also came to recorded under section 164(5) of the Cr.P.C. on 04.09.2017 before the learned JMFC, Chakur, in which again there is a reference made to the name of this informant. The role attributed to him is that he was standing at some distance at the time of alleged incident. The statement under section 164 of the Cr.P.C. of wife of Arun, namely, Ushabai also came to be recorded. She specifically stated that on the say of the petitioner, other accused persons picked up quarrel against the informant and further assaulted him.

05. After investigation, charge-sheet came to be filed in the Court. The petitioner filed an application Exh.46 for discharge. It is specific case of the petitioner that on the date of incident he was not present on the spot. He

produced on record a certificate issued by the Tahsildar showing that from 01.06.2017 till 30.06.2017 he was in Tahsil office, Ausa on election duty. After filing of the charge-sheet it is stated that in the investigation it is transpired that this petitioner was not present at the time of incident, however, he had instigated other accused persons. The charge-sheet came to be filed on 04.06.2018 for the offence punishable under sections 307, 109, 323, 504, 506 r/w 34 of the IPC.

06. On filing of the charge-sheet, present petitioner filed an application for discharge on 06.11.2019 i.e. after about one and half months, contending that he is not involved in the offence, he is falsely implicated in the crime etc. On the date of incident, he was on election duty and the Tahsildar has issued a certificate to that effect. The statement was recorded after 14 days of the date of incident. The statements of the witnesses recorded by the police are contradictory to each other. On the basis of material collected by the police, it is clear that even police has stated that the petitioner was not present when the alleged offence took place.

07. The learned Sessions Judge by considering the material on

record, however, rejected the application by order dated 03.01.2020, holding that there is some material against the petitioner. Though there appears to be contradictory statements, but same can be gone into only at the stage of trial. The variance in the statement of the witnesses cannot be said to be sufficient ground to discharge the accused. The delay in lodging FIR also is not a ground for discharge.

08. On this the learned Advocate for the petitioner vehemently argued the petition. He submits that the police itself is convinced that at the time of incident the petitioner was not present. There is no propriety in prosecuting the petitioner. Taking the facts and the statement as it is, at the most the allegation is that the petitioner was present at the time of incident at some distance and nothing more. The certificate issued by the Tahsildar clearly shows that in-fact the petitioner was not present as he was on duty and he was present in the Tahsil Office discharging election duty. The learned Trial Court has clearly failed to appreciate this aspect involved in the matter and has committed illegality by passing the impugned order.

09. The learned APP opposes the petition supporting the order passed

by the Additional Sessions Judge. He submits that at this stage, the scope is limited. The Court cannot look into contradictory statements and discharge the accused person. There are two statements recorded under section 164 of the Cr.P.C., in which the informant and his wife Ushabai have clearly stated that it is this petitioner, who is instrumental in the act as he had instigated other accused persons.

10. The learned Advocate for the informant also supports the order submitting that prima facie case is made out. All the questions are questions of fact. When there is specific plea of alibi taken by the petitioner, it is for him to prove the same in the Trial. At this stage, statements of witnesses recorded by the police are required to be accepted as it is.

11. Considering all these submissions, this Court finds that there is a role assigned to the petitioner. Though there is no statement to show that he was actually involved in the incident, however, in the statement of witnesses, it has clearly come that other accused persons have committed act at the instigation of this petitioner. So far as motive is concerned, it is stated that a dispute is going on in Civil Court in respect of landed property. So, there is a

reason to believe that there is enmity between the parties and there is a reason to have quarrel between the parties. So far as presence of the petitioner is concerned, his presence is mentioned in the statements of the witnesses. So far as certificate issued by the Tahsildar is concerned, it cannot be appreciated at this stage. If at all the petitioner is taking defence of alibi, then it is for him to prove the same in the Trial Court. In the charge-sheet, the police has also added section 34 of the IPC. So with the aid of section 34 of the IPC, certainly a case is made out against this petitioner.

12. The learned APP has cited two judgments of the Supreme Court. One is Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey & Ors., arising out of SLP (Cri) No.4599/2021. The Hon'ble Apex Court in the said judgment, has clearly held that the Court has to see whether there is material on record to proceed against the accused or not. In this case, there are statements clearly showing involvement of this petitioner and it needs to be accepted at this stage as it is.

13. In the case of Central Bureau of Investigation Vs. Aryan Singh in Criminal Appeal Nos.1025-1026 of 2023, wherein the Hon'ble Apex Court has

considered that while dealing with the application under section 482 of the Cr.P.C. the High Court had quashed the entire criminal proceedings, as if, the High Court was conducting a mini trial. Further it is held that at the stage of discharge and/or while exercising the powers under section 482 of the Cr.P.C. the Court has a very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not'.

14. Thus, in this case though police have come to a conclusion that the at the time of incident the accused was only present, however, this ground cannot be taken to discharge the petitioner, as the police have also added section 34 of the IPC. Though it is tried to convince that there is even intention or knowledge on the part of the petitioner, same cannot be gone into at this stage. It is further tried to convince that the informant is a reputed lawyer and therefore he has filed false complaint also cannot be gone into at this stage. Considering all these material and the judgments of the Hon'ble Apex Court, this Court finds that no case is made out to exercise jurisdiction vested with this Court under Article 227 of the Constitution of India.

15. Hence, the petition is dismissed. Rule discharged.

[KISHORE C. SANT, J.]