

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

**CRIMINAL REVISION APPLICATION NO.310 OF 2018
WITH REVN/43/2019**

**RANJANA KAILAS BUDHWANT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent No.1 : Mr. S. P. Sonpawale
Advocate for respondent No.2 : Mr. V. D. Sapkal

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**CORAM : S.G. MEHARE, J.
DATE : 27.01.2023**

PER COURT :

1. Heard the respective counsels extensively and vehemently.
2. The order of learned Additional Sessions Judge, Ahmednagar, passed below Exhibit-2, in Session Case No. 236 of 2017 has been impugned on the ground that while discharging the accused for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, the power of the learned trial Court to deal with the matter according to evidence on record and to frame the charge after recording the evidence, has been curtailed by the learned Additional Sessions Judge, Ahmednagar.

3. The learned counsel Mr. Chatterji has vehemently argued that the learned Additional Sessions Judge committed error of law while passing such type of order and restricted the charge under Section 326, 201, 504 and 506 read with Section 34 of the Indian Penal Code without giving an opportunity to the injured/complainant to satisfy the Court about the gravity of the offence.

4. The law is clear that though the charge has been framed for a particular offence, the material produced before the Court on merit proves that a grievous offence has been committed. The Court has power to frame the said charge at any stage of the trial and if such an offence is triable by the Sessions Court, the Magistrate Court can commit the case to Sessions Court.

5. The accused have been discharged for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code. The law is well settled that nature of injury is immaterial to attract Section 307 of the Indian Penal Code. As far as discharge is concerned, it is a observation based upon the material without testing the testimony of the witnesses before the Court. In view of that matter, the Court is of the view that imposing a rider on the trial Court to frame the charges on a particular Section, is erroneous. The Court has to assess the

nature of offence based upon the evidence produced before it after recording evidence of the witnesses. Therefore, the rider of framing the charges for a particular offence appears to be incorrect and illegal. Therefore, without disturbing the order of discharge for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, rider imposed by the learned Additional Sessions Judge, Ahmednagar framing a charge for the particular offence has been set-aside and the petitions are allowed, with direction to the learned trial Court not to get influenced of the impugned order, dated 28.11.2018 of the learned Additional Sessions Judge, Ahmednagar. It is made clear that the Magistrate trying case has liberty to frame the charges based upon the evidence after examination of the prosecution witnesses during the course of the trial.

6. In above terms, the revision stands disposed of.

(S. G. MEHARE)
JUDGE

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