

GRM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 466 OF 2019

Ramjan Guddubhai Sayyed & Ors. ... Applicants

V/s.

The State of Maharashtra ... Respondent

Mr. Kuldeep Patil i/b Mr. Prashant S. Hagare, Adv. for the Applicants.

Mr. M. G. Patil, APP for the State/Respondent.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 6, 2023

P.C. :

Heard.

2. The challenge in this revision application is to the order dated 01/07/2019 passed by Addl. Sessions Judge, Baramati below Exhibit-11 refusing to grant discharge to the applicants herein from the Sessions Case No. 50/2013, C. R. No. 186/2011 registered with Daund Police Station, Taluka-Daund, District-Pune for the offences punishable under Sections 307, 325, 143, 147, 148, 149, 323, 504 & 506 of the Indian Penal Code, 1860 (for short "**IPC**") and Section 135 of Mumbai Police Act.

3. Learned Advocate for the applicants would submit that perusal of First Information Report (for short "**FIR**") and relevant police-papers would suggest that no case for framing of charge for the offence punishable under Section 307 of IPC, is made out.

Learned Advocate however conceded that it may be an offence punishable under Sections 323 & 325 of IPC. He took this Court through the FIR, statement of witnesses and the Injury Certificate. Learned Advocate ultimately urged for allowing the revision application.

4. On the other hand, learned APP would submit that it was an assault made by four persons, two of them were armed with iron pipes. The informant suffered fracture and multiple injuries. It has specifically been averred in the FIR that two of the applicants assaulted the informant and said he would now be eliminated. According to learned APP, this suggests the applicants to have intended to commit murder of the informant. He therefore urged for dismissal of the revision application.

5. Considered the submissions advanced. Perused the FIR and related police-papers.

6. The FIR has been lodged by the victim himself on the day on which the incident took place. It has been averred in the FIR that the informant was a member of Sonawadi Grampanchayat, Taluka-Daund, District-Pune. Village-Sonawadi is situated on the bank of river "Bhima". The applicant Ramjan Guddubhai Sayyed and his six brothers indulge in sand mining unauthorizedly. They committed theft of the sand from the bed of river Bhima. The informant, therefore, asked the applicants not to excavate sand unauthorizedly. The informant had even made complaints to Revenue Authorities.

7. It is further averred in the FIR that on 28/09/2011 at 1.30 p.m., the informant was present in the office of Grampanchayat. The gramsevak Nikam and peon Prakash Kadu were also present there. Applicant nos. 1 to 4 came together. They questioned the informant as to why did he make complaints against them to Revenue Authorities regarding sand mining. The applicants abused him and said that he would now be killed. The applicants started beating him. Thereafter applicant nos. 1 to 4 were joined by their other two brothers viz. Rasool and Abdul (applicant nos. 5 & 6 herein). Those two allegedly instigated applicant nos. 1 to 4 to kill the informant. The informant was again assaulted with iron pipes and fisticuffs. The informant was admitted to Doctor Patil's hospital at Taluka-Daund.

8. For ready reference, Section 307 of IPC is reproduced, which reads thus :-

“307. Attempt to murder. – Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

9. Whether the applicants had intended to kill the informant could only be ascertained from the nature of injuries suffered by the informant and part of his body, on which the assault was made. Merely because one or two of the applicants uttered the

words “let the informant be now killed”, would in noway be taken them to have intended to commit an offence of attempt to commit murder, unless their action was to translate their intention into action. Admittedly, two of the six applicants assaulted the informant with iron pipes and others gave him fisticuffs. By no stretch of imagination, those who assaulted the informant with fisticuffs, could be attributed with an intention to have made an assault to eliminate the informant. True, they may be liable for the offence punishable under Section 307 read with Section 34 or 149 of IPC.

10. Admittedly, none of the applicants assaulted the informant, either on his head or any other vital part of the body, so as to infer the applicants to have committed an assault with an intention to commit murder of the informant. The Injury Certificate suggests the informant to have suffered communitied fracture, shaft (left) ulna, contusion and internal degloing injury (right) forearm, contusion (right) arm, (right) thigh and leg. Injury sustained by him are grievous injuries. One of the injuries suffered by the informant is grievous in nature. It is reiterated that considering the averments in FIR and the injuries suffered by informant, it can by no stretch of imagination, be said that the intention of applicants was to cause informant's death. Learned Trial Court ought to have partly allowed the application. Be that as it may, for the reasons given hereinabove, the revision application is partly allowed in terms of the following order :-

ORDER

1. Criminal Revision Application No. 466 of 2019 is partly allowed.
2. The order dated 01/07/2019 passed by the Court of Additional Sessions Judge, Baramati below application (Exhibit-11) in Sessions Case No. 50 of 2013, is partly set aside.
3. Applicant no. 1 **Ramjan Guddubhai Sayyed**, applicant no. 2 **Gulab Guddubhai Sayyed**, applicant no. 3 **Hamid Guddubhai Sayyed**, applicant no. 4 **Rehman Guddubhai Sayyed**, applicant no. 5 **Rasul Guddubhai Sayyed** and applicant no. 6 **Abdul Guddubhai Sayyed** stand discharged from the case registered vide C. R. No. 186/2011 by Daund Police Station, Taluka-Daund, District-Pune for the offence punishable under Sections 307 read with Sections 34 and 149 of the Indian Penal Code, 1860.
4. Learned Sessions Judge, Baramati shall remit the case back to the competent Court to try the applicants for rest of the offences on compliance of Section 228(1)(a) of the Code of Criminal Procedure, 1973.
5. Criminal Revision Application No. 466 of 2019 stands disposed of accordingly.

(R. G. AVACHAT, J.)