



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

CRIMINAL WRIT PETITION NO. 610 OF 2025

PADAMSING KAWARSING THAKUR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Gautam J. Pahilwan
APP for Respondents/State : Mr. S. M. Ganachari
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 22-09-2025

PER COURT:-

1. Heard the respective learned counsels for the litigating sides at length.
2. The petitioners are challenging the impugned order dated 28/3/2024 passed by the learned Additional Sessions Judge, Gangakhed, District Parbhani, in Criminal Revision No.11 of 2016, filed by respondents No.2 to 4/accused has been allowed and order dated 03.02.2016 passed by the learned Judicial Magistrate First Class, Gangakhed, in Regular Criminal Case No.36 of 2003, is set aside.
3. Initially, the informant filed an application seeking addition of charge (Exhibit-43), was allowed by the learned Magistrate. The said order was subject matter of challenge in the revision application before the learned Additional Sessions Judge,

Gangakhed, which was allowed. The learned Additional Sessions Judge has observed that in the event, if additional material is collected and made available on record, the learned Magistrate would be at liberty to invoke the provisions of Section 323 of the Code of Criminal Procedure ("Cr.P.C.").

4. After the registration of complaint and completion of investigation, the chargesheet was filed. Accordingly, the charge came to be framed against the accused.

5. It is, thereafter, an application was presented on behalf of prosecution seeking addition of charge under Section 307 of the Indian Penal Code (for short, "IPC"), contending that the accused had intention to kill. Resultantly, the charge of Section 307 of the IPC was directed to be added by the learned Magistrate. Aggrieved by the same, the accused presented revision application before Sessions Court, Gangakhed, which was allowed.

6. The learned Sessions Judge, having considered the material on record, the charge is framed and further evidence of the prosecution is yet to conclude. Resultantly, in absence of material on record regarding offence under Section 307 of the IPC against the accused, allowed the revision application. While granting liberty to the Magistrate to invoke Section 307 of the IPC in the event of additional material by recording a finding to that effect.

7. Aggrieved by the same, the informant/petitioners have approached this Court under Article 227 of the Constitution of India.

8. Learned counsel for the petitioner submits that the learned Sessions Judge had no reason to upset the order of the learned Magistrate and that the accused had an intention to kill. *Prima facie* the offence under Section 307 of the IPC is attracted. Hence, the charge of the said offence ought to have been framed.

9. Per contra, the learned A.P.P. has supported the order under challenge and prayed to dismiss the writ petition.

10. At this juncture, a necessary reference of Section 240 of the Cr.P.C. is required to be made, which reads as under;

“S.240 Framing of Charge

- (1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.*
- (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”*

11. Thus, the learned Magistrate has duly undertaken the aforesaid exercise of framing of charge to the satisfaction on basis of the material on record. As such, the Magistrate while framing of charge was of the opinion that the only offences under Sections 147, 148, 149 and 324 of the IPC only are made out.

12. Moreover, the evidence of the prosecution is yet to conclude. Apart from the material in chargesheet, no additional evidence is on record. Thus, the learned Sessions Judge has properly held that in absence of additional evidence and material on record to conclude the intention of the accused, charge under Section 307 of the IPC cannot be framed.

13. Resultantly, this Court is of the considered view that the revisional court has rightly considered the aforesaid aspects. Moreover, the learned Magistrate is at liberty to invoke Section 307 of the IPC in the event of additional material or evidence on record is available, no prejudice would be caused to the informant.

14. In the light of above, no error could be noted in the order under challenge. Accordingly, the criminal writ petition stands dismissed.

[SACHIN S. DESHMUKH]
JUDGE

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