



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

CRIMINAL APPLICATION NO.3948 OF 2024

- 1) Sandip S/o Namdeo Khade,
- 2) Kailas S/o Baburao Sonawane,
- 3) Babu S/o Arjun Kekan

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) Maruti S/o Dhondiba Ugammugale

...RESPONDENTS

...
Mr. Kishor D. Khade Advocate for Applicants.
Mr. G.A. Kulkarni, A.P.P. for Respondent No.1.
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 11th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashment of the proceedings in Sessions Case No.55 of 2017 pending before the learned Sessions Court, Beed arising out of the First Information Report (for short "the FIR") vide Crime No. 173 of 2016

registered with Shivaji Shivajinagar Police Station, Beed for the offence punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Khade for the applicants, learned APP Mr. Kulkarni for respondent No.1. It is not necessary to issue notice to respondent No.2.

3. Learned Advocate for the applicants has taken us through the contents of the FIR as well as the charge-sheet and he submits that the offence under Section 307 of the Indian Penal Code was not made out. Perusal of the FIR would show that the informant has stated that applicant No.1 had assaulted him with iron rod and it was on the count that the agricultural land has not been transferred in his name for which the informant was supposed to help him. He says that accused Sandip and Kailas along with one unknown person had assaulted to the informant and one Sarjerao. However, perusal of the injury certificate would show that simple injuries have been caused. Therefore, there was no question of coming to the conclusion that the accused persons had intention to kill. Though the charge is also framed, yet when cognizance of the offence under Section 307 of

the Indian Penal Code ought not to have been taken, it would be unjust to ask the applicants to face the trial.

4. Learned APP strongly opposed the application. He reiterates that the charge was framed on 20th September 2019 and the applicants have come belatedly. The matter is posted for hearing. There is ample evidence against the applicants.

5. Here, when inquiry was made with the learned Advocate for the applicants, he reiterates that the applicants have come before this Court to challenge invoking of Section 307 of the Indian Penal Code. Whether the particular section is attracted or not, would be considered by the Court at three stages, firstly after the charge-sheet is filed and when the Judicial Magistrate First Class takes cognizance of the offence then the scrutiny will have to be done by the Magistrate. Herein this case the cognizance of the offence has been taken on 22nd November 2016, by the Magistrate, for the offence under Section 307, 323, 506 read with Section 34 of the Indian Penal Code. It appears that this order was never challenged by the present applicants. Thereafter committal order has been passed under Section 209 of the Code of Criminal Procedure by the learned Magistrate on 6th April 2017, wherein it is stated that the accused persons have

been charged with the offence under Section 307, 323, 506 read with Section 34 of the Indian Penal Code and offence under Section 307 of the Indian Penal Code is exclusively triable by the Court of Sessions, hence after making compliance under Section 207 of the Code of Criminal Procedure, the said committal order has been passed. Thus, this is the second stage where the Magistrate had considered whether Section 307 of the Indian Penal Code is attracted or not. Thereafter it can be seen that after the committal of the case, the learned Additional Sessions Judge, Beed has framed the charge on 20th September 2019. Before framing charge as per Section 226 and 227 of the Code of Criminal Procedure, the opening of the case should be by the prosecution and then upon consideration of the record and documents as well as after hearing the submissions of the accused and the prosecution, the Sessions Judge should consider whether there is sufficient ground for proceeding against the accused and if it is not there, then he shall discharge the accused by recording the reasons. The stage of Section 226 and 227 of the Code of Criminal Procedure is mandatory. Here in the present Application no ground has been taken that the concerned Judge had not heard the applicants before framing charge. When it was found that the case is exclusively triable by

the Court of Sessions, the charge has been framed and at the cost of repetition, we would say that it includes Section 307 of the Indian Penal Code. That was the best opportunity available to the accused to put forth that the offence is not made out against them.

6. Present Application has been filed in 2024, when the charge itself is framed in 2019. Then the obvious question was, as to why the applicants have approached belatedly, and the answer that we get is that Section 307 of the Indian Penal Code has been wrongly invoked. There is absolutely no justification for not approaching the appropriate Court at the appropriate stage to challenge this fact. Unfortunately the Roznama shows that after framing of charge the matter has not progressed. But that cannot be the ground for the present applicants to invoke the powers under Section 482 of the Code of Criminal Procedure.

7. In *Nandkishor Rampal Lohiya and others vs. State of Maharashtra*, 2001 Criminal Law Journal 2742, this Court has observed that once charge was framed in warrant case instituted either on complaint or a police report, the Magistrate has no power to pass order of discharge. After framing of charge under Section 228 of the Code of Criminal Procedure there was no

provision for dropping of charge. The accused was required to exhaust his remedy of discharge given to him under Section 227 of the Code of Criminal Procedure before stage of framing charge and not thereafter. Similar view has been taken in ***Ratilal Bhanji Mithani vs. State of Maharashtra, AIR 1979 SC 94***. Similarly, now though the Application is under Section 482 of the Code of Criminal Procedure, yet when the accused themselves had not raised the point at the appropriate stage, this cannot be the fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

8. Hence, the Application is rejected.

9. Taking into consideration the pendency of the case and from the Roznama it appears that the learned trial Judge is not making any positive efforts for proceeding the matter further, we expedite the trial.

10. Learned Registrar (Judicial) to inform the order to the learned Additional Sessions Judge, Beed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE