



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

CRIMINAL REVISION APPLICATION NO. 280 OF 2024

1. Rohit Ramesh Khune
Age: 30 years, Occu.: Business,
R/o. Sant Sai Baba Society, Tuljapur Naka,
Osmanabad, Tq. and Dist. Osmanabad.
2. Rohan @ Munna Ramesh Khune
Age: 35 years, Occu.: Business,
R/o. Sant Sai Baba Society, Tuljapur Naka,
Osmanabad, Tq. and Dist. Osmanabad.Applicants
(Ori. Accused)

Versus

- . The State of Maharashtra
Through Police Station, Tuljapur,
Tq.Tulajapur, Dist.Osmanabad.Respondent

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Advocate for Applicants : Mr. Rahul Pandhari Cheble
APP for Respondent : Ms.Vaishali S.Chaudhari
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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 05 MARCH, 2025
PRONOUNCED ON : 07 MARCH, 2025**

ORDER :

1. Both applicants are taking exception to the order dated 15-04-2024 passed on Exh.17 in Sessions Case No.21 of 2023 rejecting prayers for discharge under Section 227 of the Code of Criminal Procedure (Cr.P.C.).

2. Learned counsel pointed out that, there is false implication. That, there are allegations that Excise Officer and his subordinates, who were public servants, were attacked and assaulted. That, infact the Officers got annoyed for honking horn while applicants were in their own vehicle and proceedings towards Tuljapur. That, there was no force alleged. That, false and afterthought allegations are levelled about hitting by stone. Learned counsel submitted that apparently it is impossible for two persons to mount attack on 20 public servants. That, essential ingredients for attracting offence under Section 307 of the Indian Penal Code (IPC) were not at all available, but still to exaggerate magnanimity of allegations, said charges are levelled. That, there was no guilty mind or *mens rea*. That, incident had occurred all of sudden, moreover, present applicants had moved learned Judicial Magistrate First Class, Tuljapur for invoking powers under Section 156(3) of the Cr.P.C. That, during entire investigation, nothing was revealed as regards to applicant no.1 is concerned, but still alongwith applicant no.2, he is also framed and therefore, prayers were raised for discharge by invoking provisions under Section 227 of the Cr.P.C.

According to learned counsel, there was no material in the chargesheet to make them face trial and therefore, said statutory

provision was invoked, but the same has not been correctly appreciated by the learned trial Judge and hence, he seeks interference by setting aside impugned order by allowing revision.

3. Learned APP strongly opposed by taking this Court through the statement of witnesses, more particularly, Prakash Savant and others and submitted that on that day, when flying squad had received secret information and they were conducting duty and waiting for a vehicle of which details were received for unauthorizedly carrying banned foreign liquor. It is alleged that at that time black Toyato Car was intercepted and on enquiry, the Driver and incumbent of the vehicle gave their names as Rohit Khune and Dinanath Tiwari. While enquiry was made with them, another vehicle of Ford Company vehicle came and halted there. Said vehicle had no number. It is alleged that all persons manhandled Excise Officers, beat them, pelted stone and have been tried to run vehicle over Excise Officers and therefore, above crime was registered. According to learned APP, upon investigation, sufficient material has been gathered against both present applicants and she further pointed out that charges are invoked by applying Section 34 of the IPC. Thus, she found no fault in rejection of the order passed by the learned trial Judge.

4. After considering the submissions and on going through the papers, it seems that present applicants are arrested in crime no.0335 of 2020 registered by one Ankush Ramchandra Autade against both present applicants and two absconding accused. Sum and substance of the FIR is that on 03-10-2020 on secret information about illegal transportation and sale of banned foreign liquor, trap was laid and two persons namely Prasad and Sharanbasappa were found selling banned foreign liquor at Mauje Mandrup, Solapur. On further enquiry, they told that they received banned foreign liquor from Tuljapur. On getting further secret information, trap was laid by a team comprising of 10-12 Officers from Excise Department at Naldurg Road, Tuljapur. It is reported that, at that time, Black Toyota Etios Car bearing No.MH25 R2781 was intercepted and vehicle was found to be carrying banned foreign liquor from Goa. The incumbents of Car gave their names as Rohit Khune and Dinanath Tiwari and further procedure being undertaken. While taking the vehicle towards Excise Office, it is alleged that another White vehicle of Ford company came and intercepted and said vehicle had no number. It is alleged that persons came in said vehicle tried to release accused earlier taken in custody and they tried to facilitate

their run. Description of the persons coming in another vehicle at subsequent point of time is also given and there are allegations that after abusing, scuffling, pushing Excise Officers, there was pelting of stone. There are allegations of even declaring about being armed with Pistol. Taking disadvantage of such scuffle, one of apprehended persons flee. There are allegations that attempts are made to run vehicle on Excise Officers. Therefore, on above report, crime has been registered. Statements of other Officers, who were party to raid are also recorded.

5. Present application is apparently preferred invoking provisions under Section 227 of the Cr.P.C. Before analyzing above material, it would be fruitful to give a brief account of the settled legal position and land mark judgments in which guidelines and principles are enunciated regarding objects and scope of Section 227 of the Cr.P.C.

In the case of ***Sajjan Kumar v. CBI*** MANU/SC/0741/2010 : (2010) 9 SCC 368, on the scope of Section 227 of Cr.P.C., the Hon'ble Apex Court observed in para 21 as under :

"21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

The Hon'ble Apex Court, on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** MANU/SC/0595/2019 : (2019) 16 SCC 547, observed as under :

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with

the materials available, a case is made out for the accused to stand trial..."

In ***Asim Shariff v. National Investigation Agency*** MANU/SC/0863/2019 : (2019) 7 SCC 148 the Hon'ble Apex Court has observed that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

Some other rulings on this aspect can be named as *State of Maharashtra and others v. Som Nath Thapa and others* (1996) 4 SCC 659; *State of M.P v. Mohanlal Soni* (2000) 6 SCC 338; *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148.

6. Bearing the above guidelines and principles in mind and on going through the nature of allegations as well as documents gathered during the investigation, there is sufficient material against present applicants to make them face trial.

As to whether offence under Section 307 of the IPC is attracted or not, cannot be gone into at this stage because for invoking said charge, even law is fairly settled that there may not be any injury and mere attempt to kill is sufficient to gravitate said offence. Here, as stated above, apart from pelting stone, there are allegations of attempt to run over by using vehicle. For such reason also, it is not open for applicants to seek discharge stating that essential ingredients for attracting Section 307 of the IPC are not available. Both applicants were together at the time of incident.

In the present case, charges are levelled by applying Section 34 and as to whether there was common intention or not, cannot be

gone into at this stage and it is domain of learned trial Judge. Finding sufficient material in chargesheet, no infirmity can be found in the impugned order so as to interfere. Accordingly, following order is passed :

ORDER

Criminal Revision Application No.280 of 2024 is rejected.

(ABHAY S. WAGHWASE)
JUDGE

SPT