

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

CRIMINAL APPLICATION (APL) NO. 445 OF 2024

1. Sangeeta Dilip Vede,
Age:40 years, Occu: Housewife
R/at Patil Palace, Block No.1,
Babdhan (Khurd), Taluka Mulshi,
Pune.

2. Ranjana Chandrakant Vede,
Age:43 years, Occu: Housewife
R/at Flat No.1, Patil Palace,
Babdhan (Khurd), Taluka Mulshi,
Pune.

...Applicants

Vs.

The State Of Maharashtra
Through Hinjewadi Police Station
In C.R. No.386 of 2010

...Respondent

Mr. Harshad Nimbalkar, Sr. Advocate a/w Mr. Shailesh Kharat,
Mr.Satyam Nimbalkar & Mr. Tanmay T. Kate for the Applicants.
Mr. N.B. Patil, APP for the State.
Mr.Taktole-PSI, Hinjewadi Police Station, Pimpri Chinchwad, Pune,
present.

CORAM : SHYAM C. CHANDAK, J.

**RESERVED ON : 29th NOVEMBER, 2024.
PRONOUNCED ON : 10th JANUARY, 2025**

JUDGMENT :-

. Present Application filed under Section 482 of the Code of
Criminal Procedure seeks quashing and setting aside of the impugned
Order dated 4th January 2024, passed by the learned Additional

Sessions Judge, Pune thereby the Application at Exhibit-30 seeking for discharge of the Applicants (Accused Nos.12 and 13) in Sessions Case No.1003/2013 has been rejected.

1.1) The Application is opposed by the Respondent-State with the Affidavit affirmed Mr. Ghadge, Police Inspector (Crimes), *Hinjewadi* Police Station, Pune.

2) Heard Mr. Nimbalkar, the learned Senior Counsel for the Applicants and Mr. N.B. Patil, the learned A.P.P. for the Respondent State. Perused the record.

3) **Rule.** Rule is made returnable forthwith. Heard finally with consent of the parties.

4) That, first informant-Nikhil Rajaram Vede, residing at Rajvilas Hights, *Bavdhan (Khurd)*, Pashan Road, Pune. On dated 24th November 2010, the informant lodged an oral report with the *Hinjewadi* Police Station wherein he has narrated that *Rashtravadi* Congress Party had two groups in his village. One group was headed by Kunal Vilasrao Vede, who is cousin of the informant and the another group was headed by Dilip Tukaram Vede, who is *Sarchitnis* of the party, for Pune city. At the relevant time, the party workers' support to Kunal Vede was increasing, therefore, Dilip Vede was annoyed. During Diwali time of 2010, Kunal Vede had displayed a banner of Diwali greetings to the locals. Said banner was torn by

Shailesh s/o. Dilip Vede. However, Kunal Vede did not file a complaint thereof. Thereafter, Mr. Ajit Pawar became the Deputy Chief Minister. Therefore, Kunal Vede had displayed a board of "Congratulation" on his hotel *Vardayani*. This caused annoyance to Dilip Vede and his associates.

4.1) On dated 23rd November 2010, at about 21:00 hours, near new Vitthal temple at *Bavdhan (Khurd)*, boys namely Nikhil Ramchandra Vede, Vishal Dahibhate, Nikhil Pawar, Umesh Shelar and Amit Karanje were gossiping. At that time, an accident occurred there between two wheelers of Sharad Dagade (A-10) and one Indica car and Sharad Dagade was loudly abusing to the said car driver. Hence, Nikhil Vede persuaded Sharad Dagade not to abuse so loudly, as there were women around. However, Sharad Dagade got offended and he called on phone to accused Ajinkya Vede (A-1), Avinash Vede (A-2) and Pintu Tapkir. At that time Ajinkya Vede was armed with a chopper and Avinash Vede was having a *Koyta* and the said three were abusing Kunal Vede and Prafulla Karanje, by asking their whereabouts; threatening to kill them and then they went away. Later on, Kunal Vede and Prafulla Karanje learnt about the aforesaid incident and hence, they came at the *Vitthal* temple and inquired with the boys seated there. At that time, accused Shailesh Dilip Vede (A-4), Ajinkya Vede (A-1), Avinash Vede (A-2), Prasad Vede (A-5), Chetan

Vede (A-9), Chandrakant Devram Vede (A-11), Swapnil Balasaheb Vede (A-6), Pintu Tapkir, Vikram Bharat Vede (A-3) and Sultan Sheikh (A-7) came there. The Applicants were present with the said accused. As soon as Dilip Vede (A-14) arrived there, he caused Vishal Dahibhate to fell down and then gave him kicks and fist blows. Shailesh Vede, Ajinkya Vede and Avinash Vede gave sword, chopper and *koyata* blows to Vishal Dahibhate on his left shoulder and back. The said three also assaulted the Nikhil Ramchandra Vede over his right hand. Avinash Vede inflicted a blow on the stomach of Swapnil Vede. Dilip Vede rushed on the person of Kunal Vede and threatening to kill, gave sword blows on Kunal's head. Seeing that, Shailesh Vede and Ajinkya Vede also inflicted blows on Kunal Vede. At that time, Prasad Vede, Chandrakant Vede, Sultan Sheikh, Pintu Tukaram Tapkir, Vikram Vede, Chetan Vede gave stick blows to the people who had gathered there. It is alleged that, Applicants abused the members of victim side and thus, abetted the other accused persons.

4.2) Police reduced the aforesaid narration into writing and registered an F.I.R. bearing No.386 of 2010 under Sections 143, 147, 149, 307, 324, 323, 504 and 506 of the Indian Penal Code against all the accused. It was followed by recording spot panchnama, statement of witnesses, recovery of weapons used in the offence, collection of medical reports etc. The investigation resulted in filing of charge-

sheet in the 7th Court of learned Judicial Magistrate First Class, Shivajinagar, Pune who committed the case to the Court of Sessions.

5) However, according to the Applicants they were innocent and yet they have been falsely implicated in the case. Hence, both the Applicants filed the Discharge Application at Exhibit-30. The learned Judge of the trial Court heard the rival submissions and considering the same in the light of the incriminating material on record, the said learned Judge held that the Applicants were present at the spot at the time of incident. The witnesses have specifically described the role of the Applicants in the alleged offence. The offence is punishable under Sections 307 read with Sections 149, 147, 148 etc., of the I.P.C. Hence, there is no scope to say that the Court cannot even suspect the occurrence of the offence alleged against the Applicants. This finding ultimately persuaded the learned Judge to reject the Discharge Application by the impugned Order.

6) Mr. Nimbalkar, the learned Senior Counsel for the Applicants submitted that, except bald allegation that the Applicants abused and thus, abetted the other accused persons, no other role or allegation is attributed to the Applicants. He urged that, this isolated fact is not sufficient to hold that *prima facie* the Applicants were members of the unlawful assembly having its the common object to assault the informant party and further, to put the Applicants on trial.

He emphatically submitted that, even if the aforesaid evidence goes unchallenged in the cross-examination, it would not end in conviction of the Applicants for the alleged offences. Therefore, the Applicants are entitled for discharge. However, the learned Judge of the trial Court held the otherwise. As such, the impugned Order is illegal and liable to be quashed and the Applicants may be discharged.

7) In contrast, Mr. Patil, the learned APP submitted that there is evidence that, on the relevant date, at time and place the Applicants were present alongwith their co-accused. When the co-accused were assaulting the victims and others, the Applicants were instigating them by abusing the members of victim side. Thus, there is sufficient material against the Applicants showing their involvement in the crime and to put them on trial. The learned A.P.P., therefore, urged to reject the Application.

8) As held in the case of *Kuldeep Yadav and Others. vs. State of Bihar*¹, “the provision of Section 149 of I.P.C. makes it clear that before convicting accused with the aid of Section 149 of I.P.C., the Court must give clear finding regarding nature of the common object and that, the object was unlawful. In the absence of such finding as also any overt act on the part of the accused persons, mere fact that they were armed would not be sufficient to prove common object.

1. (2011) 5 SCC 324.

Section 149 creates a specific offence and deals with punishment of that offence. Whenever the Court convicts any person or persons of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under Section 149 IPC, essential ingredients of Section 141 of I.P.C. must be established. The above principles have been reiterated in the case of *Bhudeo Mandal and Others vs. State of Bihar, (1981) 2 SCC 755.*"

9) In the case of ***Rajendra Shantaram Todankar vs. State of Maharashtra and others***², the Hon'ble Supreme Court, in paragraph 14, has held as under :-

"14. Section 149 of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold

2. (2003) 2 SCC 257.

the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the Court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149—either clause—is attracted and the Court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the

commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act.”

10) As observed in the case of ***Mala Singh and Ors. vs. State of Haryana***³, it is well settled that, if several persons numbering five or more, do an act and intend to do it, both sections 34 and section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of section 34 for section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of section 34 for section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case.

11) In ***Vikramjit Kakati Vs. State of Assam***⁴, the Hon’ble Supreme Court noted the principles applicable in cases of discharge, for which a reference was made to a decision in ***P.Vijayan Vs. State of Kerala & Anr***⁵, which has been further reiterated by the Apex Court in ***M.E. Shivalingamurthy Vs. Central Bureau of Investigation, Bengaluru***⁶ and discerned the following legal principles :-

3. (2019) 5 SCC 127.

4. 2022 SCC OnLine SC 967.

5. (2010) 2 SCC 398.

6. (2020) 2 SCC 768.

“17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

12) In the case in hand what one gets from the record is that, after the incident of the accident, initially, accused Ajinkya Vede,

Avinash Vede with one Pintu Tapkir had come to the spot and inquired about Kunal Vede and Prafulla Karanje. At that time itself Ajinkya Vede and Avinash Vede were armed with the weapons. Immediately thereafter, the accused party members again came at the same spot armed with dangerous weapons and assaulted certain members of the victim side. These peculiar facts clearly indicate that, there was a common object of the unlawful assembly to assault the members of the victim side, otherwise, the accused party would not have come to the spot carrying the weapons i.e., with a preparation to assault. The record indicates that, since beginning of the assault the Applicants were associated with their co-accused and all the accused arrived at the spot together. However, at no point of time the Applicants stopped their co-accused from carrying the weapons nor from assaulting to the members of the victim side. On the contrary, when the said co-accused were assaulting, the Applicants were abetting them abusing the members of the victim side. In this background I am of the considered view that, there is a grave suspicion that the Applicants were involved in the offence registered against them. The Applicants could not explain away the material giving rise to that grave suspicion. Therefore, the Applicants are not entitled for discharge.

13) In view of the above discussion, the impugned Order is lawful and it need not be interfered with. As a result, present Application fails and it is liable to be rejected. The Application is rejected, accordingly.

(SHYAM C. CHANDAK, J.)