

ORDER BELOW EXH. 10 IN SESSIONS CASE NO. 52/2016

State of Maharashtra

Vs.

Balaji & others.

Present application filed for discharge of accused no. 3 and 4 for discharge on the ground medical evidence not supported prosecution's case and there is no direct or indirect evidence against applicant accused.

02] The prosecution objected application on the ground that presence of accused on the spot is not disputed and prima-facie case is made out by prosecution.

03] Heard Adv. Choudhary for applicant accused and A.P.P. Phad for prosecution at length.

04] On perusal of application, case laws relied by applicant accused, say of prosecution alongwith oral submissions of both side advocate following points arise for my consideration on which the Court answer thereon with reasons as follows.

	POINTS	FINDINGS
01]	Whether applicant i.e. accused No.3 and 4 prove case for discharge from the charges of offence punishable u/s. 307 ,504, 506 r.w. 34 of I.P.C.?	..In negative.
02]	What order?	..As per final order.

REASONING

05] **Point No.1:-** The applicant came with case that though it is case of prosecution that on 15.12.2015 at about 10.00 a.m. accused assaulted injured Ankush by iron rod, stick and belt on his head, chest and back, medical evidence not supported story of attack on chest and back so also belt and stick not recovered. Therefore, allegations of attack on Ankush by Dilip and Shankar are baseless and therefore accused required to be discharged.

06] On perusal of FIR it is observed that there are direct allegations against present applicant Dilip and Shankar that they assaulted Ankush by stick and belt on his chest and back. The applicant claimed as medical evidence on record not reflect **injury** on chest and back of injured, allegations against applicant is not tenable.

07] The learned defence counsel relied on observation of Hon'ble Lordship held in Cri. Application No. 350/2016 filed by applicant Shankar wherein it was held by Lordship that-

“In the background of above referred submissions, I have perused the investigation papers. The applicant, a 60 years old male, is claimed to have assaulted the victim by means of belt, thereby causing injuries on the chest and back of the victim. There are no corresponding injuries noticed in the medical papers.”

08] In the background of above referred submission the said observation of Hon'ble Lordship not helpful to applicant to prove case for discharge because the applicant not disputed his presence on the spot.

09] The applicant also relied on the ground of non-recovery of stick and belt by police but the said fact not falsifies allegations of injured made against the applicant, because lacuna in investigation not make case of injured as false case. It is well settled principle of law that injured required to be believed at par. In the present case injured made allegations of attack by applicant by stick and belt. No doubt medical evidence not reflecting injuries on chest and back of injured but it doesn't wash out case of prosecution in toto because presence of applicant not disputed even by applicant in present application.

10] The applicant relied on ratio held in case of **Noor Huda Maqbool Ahmed Vs. State of Maharashtra and others [2009(4) B Cr C 345]** wherein Hon'ble Lordship held that.

“Court could not confine to charges mentioned in police report but to apply mind and consider independently whether offences mentioned in charge sheet are committed or not.”

11] On applying said ratio to the present case, the applicant not position to prove the case for discharge because in order to frame charge the prosecution is required to show prima-facie case to frame charge and in the present case direct allegations against applicant in FIR filed by injured reflect prima-facie case to frame charge against applicant accused

because injured not ready to escape real culprit by implicating innocent persons as culprit.

12] In the present case the points raised by applicant such as lack of medical evidence about injury on chest and back of injured may helpful to applicant at the time of final hearing of case on merit but not falsify prima-facie case of prosecution of assault on injured Ankush at the hands of applicant accused alongwith other co-accused.

13] At the outset of these circumstances the Court hereby conclude that applicant failed to prove that prosecution has no prima-facie case to frame charge against applicant accused for offences punishable under Sections 307, 504, 506 r.w. 34 of I.P.C. and answer point no.1 in negative.

14] **Point No.2:-** As applicant fail to prove that prosecution has no prima-facie case to frame charge, the discharge application deserves to be dismissed. Hence order.

ORDER

- 1] The discharge application of applicant accused is hereby rejected.
- 2] Accordingly application disposed of.
- 3] The next date is fixed for charge on 31.07.2017.

Dt:29.06.2017
Ambajogai

Sd/- 29.06.2017
(S.V.Hande)
Addl. Sessions Judge,
Ambajogai.