



RCC No.64 of 2018
CNRNo.MHLA130006492018
State Vs Indrajit+9

Order Below Exh.60
(Dt.20-11-2023)

1] Perused application and say. Heard, Shri. D. B. Sarule, learned APP for the state and Shri. R. B. Holkar, learned advocate for the accused.

2] The application is filed by the informant. It is contended that the accused have used deadly weapons to assault the informant and the witnesses. The weapons used were scythes and sticks. The accused intentionally dealt blow on the vital parts of the body. The motive and intention of the accused was to kill the informant and witnesses. The injuries sustained by the informant and witnesses are serious in nature. As such, in these circumstances the offence under Section 307 of the Indian Penal Code is made out. However, the investigation officer did not investigate the matter in right direction and filed charge sheet under Sections 143, 147, 148, 149, 325, 324, 323, 504, 506 and 427 of the Indian Penal Code.

3] It is further contended that the informant and witnesses took initial treatment in the Government hospital. However, later on they were treated in the private hospital. The injury certificate issued by the private hospital clearly shows that the injuries sustained by the informant and witnesses are serious in nature.

4] The charge is framed against the accused at Exh.50 for the offence punishable under Section 143, 147, 148, 325, 324, 504, 506 and 427 read with Section 34 of the Indian Penal Code. It is further submitted that as the offence under Section 307 is made out, charge under said Section is necessary to be framed.

5] Accused filed say over leaf the application and objected the application. it is the contention of the accused that the medical certificate issued by the Government Hospital clearly shows that the injuries sustained by the informant and witnesses are simple in nature. However, the private hospital issued medical certificate, in which the said injuries are shown to be serious in nature. There is discrepancy in the injury certificate issued by Government Hospital and the Private Hospital. Unless the evidence in that regard is led, no conclusion can be drawn about the genuineness of those injuries.

6] The accused have not accepted the injury certificate issued by the private hospital. As such, the genuineness of the said certificate is under challenge. In the circumstances, said injury certificate cannot be the basis for framing charge against the accused. Hence, prayed to reject the application.

7] Having regard to the rival submission of the prosecution and the accused's side, following points arise for my consideration. I have recorded my findings against them for the reasons stated hereunder.

| Sr. | Point | Finding |
|------------|---|--|
| 1. | Whether there is sufficient material available on record at this stage of the trial to alter charge and frame charge against the accused for the offence punishable under Section 307 of the Indian Penal Code? | ... No. |
| 2. | What order? | ... Applicati on is rejected. |

Reasons

As to point No.1

7] First information triggers the investigation and the investigation culminates into filing of final report. In this case the FIR is registered for the offence punishable under Sections 143, 147, 148, 149, 325, 324, 323, 504, 506 and 427 of the Indian Penal Code. The investigation officer, after investigation, came to the conclusion that there is sufficient evidence against the accused. He came to the conclusion that the accused have committed an offence punishable under

Section 143, 147, 148, 149, 325, 324, 323, 504, 506 and 427 of the Indian Penal Code. Therefore, he filed charge sheet against the accused for the said offences.

8] On 26-10-2018, my learned predecessor framed charge against the accused for the offence punishable under Sections 143, 147, 148, 325, 324, 504, 506 and 427 read with Section 149 of the Indian Penal Code. The charge is at Exh.50. The accused plead not guilty and claimed to be tried. So, the matter is posted for evidence of the prosecution.

9] This application is filed by the informant on 23-09-2019. That is after near about one year after framing charge. It is necessary to mention here that at the time of framing of charge the material filed on record by the prosecution is taken into consideration. This includes, the First Information Report, the statement of the witnesses, the weapons or articles collected by the investigation officer during the course of investigation, the medical certificates, etc.

10] My learned predecessor has framed charge against the accused on 26-10-2018 for the offence punishable under Sections 143, 147, 148, 325, 324, 504, 506 and 427 read with Section 149 of the Indian Penal Code, only. As such, it is clear that at the time when the charge is framed there was no sufficient material against the accused to frame charge under

Section 307 of Indian Penal Code. So, charge under Section 307 of the IPC is not framed.

11] It is clear that since the date of framing of charge the matter is posted for evidence. Till date no witness is examined by the prosecution. As such, the material available on record as of today is the same which was available on the date of framing charge against the accused. There is no change in the said situation. As such, there is no material available on record to come to the conclusion that the charge against the accused under Section 307 is necessary to be framed and charge is necessary to be altered. Hence, point No.1 is answered in the negative.

As to Point No.2

9] Having regard to the findings against point No.1 and the reasons given for arriving at such findings, in answer to point No.2 following order is passed.

ORDER

(1) Application is rejected.

(Pronounced in Open Court)

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Dt.20-11-2023

(Ramakant B. Hanwate)

J.M.F.C., Renapur. Tq. Renapur, Dist.

Latur.

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