

RCC No. 85/2019  
State Vs. Hasan

**Order below Exh.30**

This is an application moved by accused No. 2, 3 and 5 to 11 for seeking discharge. This is a state case instituted against accused on police report alleging that accused have committed the offence under section 143, 147, 148, 452, 324, 427, 504 and 505 r/w sec. 49 of Indian Penal Code.

2] It is the contention of the accused that they are young and having good respect and reputation in the society. There are no antecedent against accused. The prosecution failed to establish the essential ingredients of the offence leveled. The complainant and accused persons are having strain relationship with each other since last many years. The complainant filed bogus report against accused. From the perusal of complaint it clearly reveals that the complainant had not made any clear allegations of assault and any other criminal act against accused No. 2, 3 and 5 to 11. At the time of incident these accused were not present at the spot of incident. Therefore, they have filed present application.

3] APP opposed the application on the ground that after verifying the report and statements of witnesses the order may be passed.

4] Having considered rival contentions, limited issue arises for adjudication whether accused can be discharged on the basis of material produced on record by the investigation agency vide report under section 173 of the Cr.P.C.

5] The test to determine a prima-facie case could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however if two views are equally possible and the judge is satisfied that evidence produced before him while giving rise to some suspicion but not grave suspicion against accused, he will be fully within his right to discharge accused. At the stage of section 239 of Code of Criminal Procedure, the judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclosed that there are suspicious circumstances against accused so as to frame a charge against them.

6] Keeping in mind this legal position I shall now apply the principles enunciated above in order to find out whether there is sufficient material to proceed against accused. Mr. Suhas Chavan, PSI has submitted his report stating the facts revealed in the investigation. He has categorically mentioned in his report that accused entered in the house of complainant and beaten the complainant and other persons. They damaged the glass of door

and window of the complainant. All witnesses have stated the same facts.

7] What emerges from aforesaid material placed on record by the investigation agency that same is sufficient to proceed against accused for the offence he has been charged. To my mind after applying aforesaid principle which Court needs to be take into consideration to decide discharge application, present application deserves to be rejected. Hence, I do not find any substance in the application. The prosecution has right to file charge-sheet against accused. Therefore, I pass following order-

**Order**

The application is rejected.

Kamptee  
Dated 26/11/2021.

(S. S. Gadve)  
J.M.F.C., Kamptee  
Court No. 2