

Sessions Case No.40/2019
CNR No.MHWR010004352019

State Vs. Dnyaneshwar

Order below Exh.1

(1) Heard APP Smt. R.R. Ghate for the prosecution, and Adv. Shri. V. P. Vaidya for the accused on the point of framing charges.

(2) Investigating Officer filed chargesheet for the offence under Section 195(A) of I.P.C. which was registered as R.C.C. No. 769/2018. The Ld. Judicial Magistrate First Class (Court No.4), Wardha as per Section 324 of Cr.P.C. vide order dtd. 05.02.2019 committed this case to the Court of Sessions with the observations as "In the matter at hand Section 195(A) of I.P.C. is attracted, charge is already read over and explained to the accused. They pleaded not guilty of opted to face the trial, but considering nature of the dispute, it appears to me that the case out to be tried by Hon'ble Sessions Court, Wardha. Thus, I am of the view that the matter needs to be committed under Section 323 of Cr.P.C. accordingly to the Hon'ble Court of Sessions, Wardha and accused to appear before the Court of Sessions, Wardha on 14.03.2019."

(3) Thus, the Ld. Magistrate thought that present case should be tried by Sessions Court and committed it under Section 323 of Cr.P.C.

(4) Ld. APP submitted that prima facie material shows that the present accused on 02.08.2018 about 6.30 p.m. threatened the informant Poonam Mangesh Rakhunde who was a witness to murder case bearing Sessions Case No.110/2016 pending against Kawdu Kshirsagar, the brother of present accused, and had deposed against Kawdu. The threat is given that the accused would kill the informant Poonam in case his brother Kawdu is convicted. Therefore, she requested to frame the charge under Section 195(A) of I.P.C.

(5) On the other hand, Adv. Vaidya for the accused submitted that the informant Poonam had already deposed in the Court on 02.08.2018, therefore, subsequent alleged threat given by the accused on the same day at evening time to the informant Poonam would not attract offence under Section 195(A) of I.P.C. but at the most only offence under Section 506 of I.P.C. would be applicable.

(6) The informant Poonam in the report told that she was eye witness to the murder of one Sangita Parasram, and on 02.08.2018, she deposed against the accused Kawdu in the murder case. Present accused is the brother of Kawdu. She disclosed in the report that present accused on the same day about 6.30 p.m. came at her house and asked her, was she happy by deposing against her brother Kawdu, and when informant told the accused she has not done any mistake by giving evidence in the Court, present accused threatened to kill her in case his brother Kawdu is convicted in the murder case. She also told that present accused was threatening other witnesses Gnyaneshwar Wat and others who were the eye witnesses in murder case.

(7) Thus, prima facie material shows that present accused threatened to kill informant Poonam Rakhunde only because she deposed in murder case against brother of present accused. The evidence of Poonam was already recorded prior to happening present incident. As per Section 195 of Cr.P.C., if threat of injury to the person or property is given to another person with intent to cause that person to give false evidence, then such person giving threat is liable for punishment of imprisonment upto 7 years. In this case, the accused has given threat to informant Poonam only after she gave the evidence and not before that. Therefore, there was no intention on the part of the accused to pass informant Poonam to give false evidence in murder case against his brother, but his intention by threatening to kill

informant Poonam was to take her revenge. Therefore, in my view, the act of the accused in giving threat to kill informant Poonam after recording her evidence, would amount offence under Section 506 of I.P.C. but not under Section 195(A) of I.P.C.

(8) However, Ld. APP further submitted that the accused has not only given threat to kill informant Poonam but he has given similar threats to other eye witnesses Dnyaneshwar Wat. Witnesses Mangesh Rakhunde and Kishor Jivtode who are the witnesses to present incident against present accused have not proved that the accused threatened to kill eye witnesses Dnyaneshwar Wat and others. The statement of Dnyaneshwar Wat shows that he was the eye witness to the murder case against brother of the accused. Dnyaneshwar Wat was present when the accused threatened to kill informant Poonam. The threat given by the accused to Poonam is that she should not depose against his brother, and in case his brother is convicted in the murder case, he will kill her. Although this threat to Poonam does not amount offence under Section 506 of I.P.C. but since this threat was given in presence of Dnyaneshwar Wat who was eye witness to the murder case, the impact of the said threat intended to be caused by the accused was also that eye witness Dnyaneshwar Wat should not depose true facts in the murder case against brother of present accused. Therefore, in my view the offence under Section 195(A) of I.P.C. would not be applicable as the net result of the threat given by the accused to informant in presence of other eye witnesses to the murder case who were not yet examined in the Court was to desist them from deposing true facts of the murder. Therefore, in my view, the accused cannot be discharged from the offence under Section 195(A) of I.P.C.

(9) No doubt, this offence under Section 195(A) of I.P.C. is triable by Judicial Magistrate First Class as in this case, as the intention of the accused

in giving threat to the witness (Dnyaneshwar Wat) was not to give false evidence for the purpose of conviction of his brother but his intention was to threaten the witness not to depose true fact of the murder committed by his brother and thereby to get acquittal of his brother. Therefore, this offence would not cover under Section 194 of I.P.C. so as to make it triable by Court of Sessions. Therefore, the offence would be triable by the Magistrate. However, in this case, the Magistrate thought it that this case should be tried by the Court of Sessions due to the seriousness of the offence as the threat to person of the witnesses was given for not deposing true facts in the case pending before Sessions Court (which is afterwords already decided on 14.02.2020). Therefore, when the Magistrate committed the case by exercising special power under Section 323 of Cr.P.C., in my view, there is no hurdle to try present case by this Court. Therefore, the accused is not entitled for discharge. The material on record prima facie shows that the accused committed the offences under Section 195(A) of I.P.C. and also under Section 506 of I.P.C. In the result, I pass following order.

Order

- (1) As per Section 228 of Cr.P.C. the charges for the offences under Sections 195(A) and 506 of I.P.C. be framed against the accused.
- (2) The request to discharge the accused from the above offences is rejected.

Date : 14.06.2023

(N.B. Shinde)
Addl. Sessions Judge,
Wardha.