

**Order below Exh. 17 in R.C.C. No. 1385/2019**  
**State( Ambarnath Pol.stn.) V/s.Shabana & Ors**

1] The accused no.2 filed the present application U/sec. 239 of Code of Criminal Procedure, to discharge her from the offences punishable U/sec. 341, 344, 385, 447, 143, 145, 149, 504, 506 & 109 of the I.P.C.

2] It is the contention of accused no.2 that she was falsely implicated in the crime. On 20/04/2019 she was on tour with his family and returned from the tour on 03/05/2019 at 2-00 p.m. She was taking rest in her home and as her children's are hungry due to which she came down to purchase bread. At that time the police came near the gate and they were breaking/cutting the gate with the help of gas cutter. At that place another women's from the society are also standing and watching the said incident and accused no.2 asked the police whether they have any permission to cut the said gate. Thereafter, police inspector namely Sunil Ghuge came there and with the help of women constable they taken the accused no.2 and other women to the police station. She further submits she has not demanded any amount from the informant and she was unaware who has put the stone near the gate. She has filed various document on record and prays to discharge her from the above mentioned offences.

3] Per contra the Ld. APP file his say below Exh. 18 and submits that, accused no.2 with the help of another accused has obstructed, restrained the informant by standing before the JCB. Further he submits that accused no.2 with the help of other accused prepare the unlawful assembly and infringe the order promulgated

by Police Commissioner, Thane. He also submits that the photograph filed by accused no.2 was not supported with certificate under section 65B of evidence Act hence, to decide the said application the said photograph cannot be taken into consideration. Therefore, the present application be rejected.

4] Perused the application, say of Ld. APP and all the documents filed by accused no.2 and entire record. Heard the both Ld. Advocate at considerable length. It is the case of informant that he has to inaugurate the lodging and boarding on the occasion of Akshay Trutiya dated 07/05/2019 for that he had been to his Amber lodge on 03/05/2019 to remove the stones and open the gate which was fixed by accused Yakub Meera Sayyad at 3-00 p.m. At that time all accused came there and restrained him from removing the said stones with the help of JCB machine due to which he has filed the report against the said accused person. Moreover, accused Yakub Sayyad was demanding percentage in the profit earn by the informant from the lodging and boarding.

5] Accused no.2 to support her application has filed society registration certificate, photo copy of railway and flight tickets, document regarding right to information act and some photographs on record. I have gone through the entire documents filed by the accused no.2 on record. As per the report of informant accused Yakub Sayyad has demanded percentage in the profit which will be earn by informant from the Amber lodging and boarding. Police has filed some photograph on record alongwith chargesheet in which the accused was appearing to be standing with other people near the stones.

6] It prima facie appears from the record that accused no.2 was present on the spot at the time of incident but, as per the report of informant it was no were depicts that accused no.2 was demanding the profit in case of percentage from the informant. Therefore, at these stage I found that accused no.2 deserved to be discharge only from the offence punishable under section 385 of the IPC. Therefore, I passed following order.

**ORDER**

1] Application is partly allowed.

2] Accused No.02 Suvarna Tanaji Walunj is discharged for the offence punishable u/s 385 of the I.P.C.

Sd/-

**(B. A. Nerlikar)**

Ulhasnagar

Date :- 03/07/2023

Judicial Magistrate First Class

[Court No.5], Ulhasnagar