

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. OF 2016

DISTRICT : THANE

IN THE MATTER OF Section 397 r/w. 401 of Code of
Criminal Procedure, 1973;

AND

IN THE MATTER OF Tala Police Station C. R. No. I
999 of 2007 registered under section 143, 146, 147,
148, 307, 326, 324, 341 of I.P.C. and Section 37(1) and
137 of Bombay Police Act;

AND

IN THE MATTER OF Order dated 1.1.2016 passed by
the Ld. Addl. Sessions Judge- I, Thane below Exhibit
239 in Sessions Case No. 888/2010.

- | | | |
|----|--------------------------|------------------|
| 1. | RI PATIL |) |
| | Age 34 yrs. |) |
| 2. | MF Patil |) |
| | Age 44 yrs. |) |
| 3. | AA Patil |) |
| | Age 34 yrs., |) |
| | All residing at Talagaon |) |
| | Tal. Tala, |) |
| | Dist. Thane |).....Applicants |

Vs.

1. The State of Maharashtra)
(Through Tala Police Station))Respondent

**TO,
THE HONORABLE CHIEF JUSTICE AND THE
OTHER HONOURABLE COMPANION JUDGES OF
THE HONORABLE HIGH COURT OF JUDICATURE
AT BOMBAY.**

**HUMBLE APPLICATION OF THE
APPLICANTS ABOVE NAMED.**

MOST RESPECTFULLY SHEWETH:

1) The Applicants are original Accused Nos. 12, 14 and 33 in Session Case No. 888/2010 pending on the file of Addl. Sessions Judge, Thane. The Applicants are approaching this Hon'ble Court challenging the order passed by the Court below Exh. 239 in Sessions Case No. 888/2010 whereby the Ld. Sessions Judge was pleased to reject the Application filed by the Applicants for discharge u/s. 227 from Sessions Case No. 888/2010.

2) For adjudication of the present application it is necessary to place certain relevant facts before this Hon'ble Court to adjudicate the present application which are as follows:-

- I. On 29/12/2008 at about 5:30 p.m. one Mr. F Patil gave dash of his motorcycle to one Mr. N Patil and on account of earlier dispute said F Patil quarreled with him. There was some hot exchange of words between them

and arising out of that incident, one M N Patil lodged complaint (N.C.) against the said F Patil at Tala Police Station. Similarly one Mr. A. Patil lodged a cross complaint (N.C.) against M Patil and 2 others that they on account of previous dispute alleging that they were abused and threatened.

- II. It is a case of the prosecution that one K Y Patil, A Patil and his family members were returning back to their village after lodging the complaint in their 3 Scorpio Jeeps. At about 11:15 p.m. they reached near a bridge located near village Tala Gaon. One truck was standing beside the road to which their Jeeps over took. At the same time one other truck was standing in between the road. As there was no chance to move further they stopped their vehicle behind the truck which was standing on the road. It is alleged that at that time the Truck to which they had over taken came from behind and both the truck moved towards the vehicle and two Scorpio Jeeps were severally damaged due to collision. At that time some persons came from the said truck holding swords, sticks, iron rods, hockey sticks in their hands and broke the glasses of the jeeps and started assaulting them. At that time other accused came from two Scorpio Jeeps and one Innova. They were also armed with swords, sticks, iron rods, hockey sticks. They also started assaulting the persons belonging to complainant side. The assailants were shouting that if any complaint is lodged against them, they will not spare anybody's life. The assailants assaulted the Complainant and seven others and they sustained injuries. The injured were admitted to Government hospital. It is further mentioned in FIR that in all 45 accused attacked and assaulted the persons belonging to complainant side. The complaint was recorded in Government Hospital and on the basis of the said complaint the

offence was registered by Tala Police Station vide C. R. No. I 246 /07, under Sections 143, 146, 147, 148, 307, 326, 324, 341 of I.P.C. and Section 37(1) and 137 of Bombay Police Act at about 4:00 a.m. on 30/12/2007 against in all 45 persons. The Applicants are three of those 45 accused.

III. After registration of offence, the investigation was set in motion. The present Applicant/Accused RI PATIL came to be arrested on 09/01/2008, Applicant/Accused MFP came to be arrested on 09/01/2008, Applicant/Accused AAP came to be arrested on 09/04/2008 and were granted police custody and there after they are in Magisterial Custody and at present all Applicants/Accused were released on bail.

IV. The investigating agency, recorded the statements of witnesses and carried out several panchanamas. There are in all 7 persons injured in the alleged incident. All injured were treated in Government Hospital. The medico legal certificates issued by the Hospital are the part of the charge sheet. The investigation was completed and the investigating officer filed Charge Sheet in the Court of JMFC and then case was committed to the Sessions Court for Trial. Hereto annexed and marked as **Exhibit-'A'** is the copy of the Chargesheet.

3) The Applicants humbly submits that even on the plain perusal of the charge sheet, assuming it to be true without admitting the same, no case is made out against the Applicants and the Applicants will be subjected to unnecessary harassment of undergoing the agony of criminal trial for no fault on their part. The Complainant has lodged the Complaint at a later stage and as an afterthought. There is no eyewitness to link the Applicants in the alleged offence, there is no cogent of positive evidence against the Applicants. The Complaint lodged by the Complainant

due to previous personal score. The Applicants/Accused has been falsely implicated in the present crime without any iota of material or witness against them. The Complaint itself does not disclose any offence.

4) The applicants therefore made an application under Section 227 of the Code of Criminal Procedure for their discharge from the Sessions Case No. 888 of 2010. The principle grounds which were raised in the said application where that even if it assumed for the sake of argument that the allegations made in the chargesheet are true and correct. The applicants cannot be charge for having committed offences as alleged against them. It was pointed out that there was no iota of evidence them in chargesheet and absolutely no role attributed towards them in the alleged incident. Hereto annexed and marked as **Exhibit-‘C’** is the copy of application made by the applicants for discharge before the trial court. The prosecution filed a reply and oppose the said application principally the application was opposed by the prosecution on ground that the applicants were charged under Section 149 and 120 (B) of the Indian Penal Code alongwith the other principle section and therefore their application should be rejected. The applicants crave leave to rely upon the copy of the said reply filed by the said prosecution as and when produce before the trial court.

5) The Ld. Judge heard the said application for discharge of length, however rejected the application by his order dated 1.1.2016. Hereto annexed and marked as **Exhibit-‘D’** is a copy of order dated 1.1.2016.

6) It is most respectfully submitted that perusal of the order passed by Ld. Judge on the ground that there are sufficient grounds to proceed against the present applicants. Save and accept the sentence, the Ld. Judge has absolutely not referred

to as to on what basis and as to on what material he has recorded this finding against the applicants.

7) The applicants therefore approach this Hon'ble Court with the prayer that this Hon'ble Court may be pleased to quash and set aside the order dated 1.1.2016 passed by the Ld. Addl. Sessions Judge, Thane below Exhibit- 239 in Sessions Case No. 888/2010 and discharge the applicants from Sessions Case No. 888 of 2010, on the following amongst other grounds which are taken without prejudice to each another ;

GROUND

1. The Complaint is lodged by one K Y Patil who claims to be an eye-witness to the incident. The perusal of the statement of the eye-witness shows that the alleged incident has taken place at about 11.15 pm on 29.12.2007. It further shows that the CR was registered at about 4.00 am on 30.12.2007. That itself shows that the first information report was registered after about 5 hrs. The perusal of the FIR clearly shows that the Complainant has not narrated any specific allegations against the accused and not narrated the incident which actually took place. On perusal of the FIR one will not be able to know or understand as to how the incident of assault has taken place. However, the careful perusal of the FIR it can be safely inferred that the attempt is made by the Complainant to involve maximum persons.

2. Admittedly in the alleged incident in all seven persons are injured. The number of injured person and the injuries sustained by if considered in the light of the incident made by other witnesses it can be safely inferred that the

allegations made in the Complaint as well as the allegations made by the statement of the witnesses are exaggerated.

3. It is most respectfully submitted that the perusal of the FIR would clearly show that there is no specific allegations of holding of any weapon is made against the present applicants. No doubt, their names are mentioned as they were present at the time of incident. Their names are mentioned in the bunch of accused persons by the Complainant.
4. It is also submitted that statements of around 35 witnesses were recorded by the investigating officer. The perusal of the statement of the witness N. H. Patil recorded on 30.12.2007 shows that he has made a general allegations that the applicant No. 1 R. I. Patil along with two other accused assaulted him by iron rod while he was in the car.
5. This witness also states the presence of Applicant no. 2 M. I. Patil. There is general allegations made against M. I. Patil alongwith other accused that they were holding weapons like iron rods, iron pipes and hockey sticks. However, it is further alleged that this witness was dragged out of the car and thereafter he was assaulted by Applicant no. 2 and other accused. The perusal of the medico legal certificate of N. Patil shows that he has suffered only one injury i.e. namely CLW on the right thumb which is described as a simple injury. Thus, the allegations made by this witness does not corroborate with the medico legal certificate issued by the doctor and therefore it can be safely inferred that the statement of this witness is not trustworthy to be relied upon.

6. The investigating officer has also recorded the statement of witness S. M. Patil. He has also named the applicant nos. 1 and 2 and has alleged that he was assaulted by in all 16 accused persons armed with hockey sticks, iron pipes and iron rods. He has further alleged that he was dragged out of the car by these accused persons and he was assaulted by the Accused persons by the weapons in their hands. The perusal of the medico legal certificate of S. M. Patil shows that he has suffered only one injury. Thus, the allegations made by this witness does not corroborate with the medico legal certificate issued by the doctor and therefore it can be safely inferred that the statement of this witness is not trustworthy to be relied upon.

7. The statement of the witness A H Patil was recorded by Investigating Officer on 01.05.2008. The perusal of the statement of the witness shows that 13 accused persons including Applicant no. 3 AA Patil assaulted this witness and also two persons sitting alongwith him in his vehicle. The perusal of the medico legal certificate shows that this witness has suffered multiple injuries. It also shows that initially this witness was treated at Govt. Hospital and thereafter he was transferred to other hospital. It further reveals that this witness was further treated at New Town Hospital Mumbai and he was operated there. The statement of witnesses further shows that he has attributed a specific role of assault to the other co-accused and not to the present applicants. There is no specific role assigned to any Applicants in respect of actual assault. There is a general allegations made against the Applicants no. 3. The Applicant Nos. 1 and 2 are not even named in his statement.

8. The Investigating officer has also recorded statement of A W Patil. This witness has made allegations against in all 14 accused including applicant no. 3. There is specific allegations against applicant no. 3 that the witness was assaulted by applicant no. 3 and MHF co-accused by iron pipe while he was in the car on his ribs. The medico legal certificate of the witness shows that he has sustained a few injuries and multiple bruises and abrasions. Both are described as simple injuries. Besides these allegations, none of the witness have named any of these applicants.
9. It appears that common discovery panchnama of weapons of hockey sticks, iron rods and iron pipes has been recorded on 11.01.2008. Admittedly, the discoveries are made from open and accessible place, moreover the discovery is a common discovery by 10 accused shall not have any legal sanctity in the evidence.
10. The perusal of the order passed by the Ld. Judge shows that the Ld. Judge did not refer to any of these arguments made before him. The Ld. Judge has not recorded any reason as to on what basis he has come to the conclusion that there are sufficient grounds to proceed against the applicants in trial. The impugned order is therefore liable to be quashed and set aside.
11. It is therefore most respectfully submitted that even if it is assumed that that ever stated by the witness and whatever material collected by the investigating agency is true and correct, no offence as alleged in the charge sheet can be made out against the applicants. There is no material in the

charge sheet to try the Applicant in the Sessions case. The applicants therefore entitled for discharge from Sessions Case No. 888/2010.

8) No other Application is filed by the present Applicants save and except the present Criminal Revision Application regarding the subject matter, either in this Hon'ble Court or in the Hon'ble Supreme Court of India.

9) The Applicants crave leave to add, alter or amend any of the ground aforesaid.

10) **The Applicants, therefore pray that:-**

a) this Hon'ble Court in exercise of its powers u/s. 397 r/w. 401 of Cr. P.C, be pleased to call for entire record and proceedings of the Sessions Case No. 888/2010 pending in the Court of Ld. Addl. Sessions Judge, Thane and after perusing the aforesaid record and proceedings be pleased to quash and set aside the impugned order dated 1.1.2016 passed by the Ld. Addl. Sessions Judge, Thane below Exhibit- 239 in Sessions Case No. 888/2010 and the applicants may pleased be discharged from Sessions Case No. 74 of 2010

b) pending the hearing and final disposal of the present Application, this Hon'ble Court may be pleased to stay the Sessions Case No. 888/2010 pending in the Court of Ld. Addl. Sessions Judge, Thane;

c) For ad-interim relief prayer clause (b);

d) Any other order in the interest of justice may kindly be passed.

**AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPLICANT SHALL, AS
IN DUTY BOUND, EVER PRAY.**

Mumbai,
Dated this day of August, 2016

Advocate for the Applicants

VERIFICATION

I, Mr. AAP, Age 34 yrs., residing at Talagaon, Tal. Tala, Dist. Thane, the Applicant No. 3 above named, residing at the address mentioned in the title clause, do hereby state on solemn affirmation that the particulars given in above-mentioned paragraphs are true & correct to the best of my knowledge & belief and I believe the same to be true.

Solemnly affirmed at Mumbai)

On this day of February, 2016)

Deponent

Advocate for Applicants