

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 269 of 2015**

- Kartikey Dubey S/o Prabhat Kumar Dubey, Aged About 25 Years R/o Qtr. No. D 16, Vinoba Nagar, Police Station Tarbahar, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Department Of Home, Mahandi Bhavan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Akhilesh Pathak, S/o Late Suraj Prasad Pathak, Aged About 52 Years R/o Near Gandhi Chowk, Police Station City Kotwali, Bilaspur, District Bilaspur Chhattisgarh
3. State Of Chhattisgarh, Through Station House Officer, Police Station Sarkanda, District Bilaspur Chhattisgarh
4. Superintendent Of Police, Bilaspur, District Bilaspur Chhattisgarh

---- Respondent

For Petitioner : Shri HB Agrawal, Sr. Adv. with Smt. Priti Yadav, Advocate
 For Respondent/State : Shri S. Majid Ali, Panel lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****30/11/2015**

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India seeking direction to respondent No.3, State of Chhattisgarh, through SHO, Police Station Sarkanda, District Bilaspur and respondent No.4 SP, Bilaspur to amend the charge sheet by adding Section 307 of the IPC pertains to Crime No.29/2015, Police Station Sarkanda.

2. It is argued by Shri Agrawal, learned Senior Counsel for the petitioner that the crime was earlier registered for offence under Section 307 of the IPC, which was subsequently deleted, therefore, a direction should be issued to the concerned SHO to correct the charge sheet.
3. In the medical report and query pertaining to the injuries sustained by Sanjay Dubey, uncle of the petitioner, it is revealed that he sustained swelling on right forehead, contusion on left eye and lacerated wound over Occipital region. The doctor opined that the patient was unconscious for 10-15 minutes, therefore, the injury may come under grievous condition but exact opinion will be given by the Radiologist. In the report available at page-24 of the writ petition issued by the Apollo Hospitals, Bilaspur, the nature of injury was simple.
4. In view of the above-stated medical report available on record of the writ petition filed by the petitioner himself, it cannot be concluded as to what offence would ultimately be made out against the accused. While exercising the jurisdiction under Article 226 of the Constitution, it is not the job of the writ Court to alter charges at the stage where the police has only filed the charge sheet and the Magistrate has not yet applied its mind as to what offence would be made out against the accused. If the Magistrate finds that material available in the charge sheet makes out some other offence than for what charge sheet has been submitted, it always remains open for the Court to proceed in accordance with law. Therefore, instead of

preferring the writ petition, the petitioner should appear before the Magistrate on the date charges will be framed so as to convince the Court that charge under Section 307 of the IPC should also be added.

5. In view of the above, the writ petition stands dismissed, subject however to the above observations.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve