

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.649 OF 2015

Jagannath Shrihari Kadam

...Petitioner

Versus

State of Maharashtra

.... Respondent

Mr. Rupesh A. Zade for the Petitioner.

Mr. V.B.K. Deshmukh, APP for the Respondent -State.

CORAM:-M.L. TAHALIYANI, J.

DATED : 18th MARCH, 2015.

PC.

Heard learned advocate for the Petitioner and learned APP
for the Respondent -State.

2. Admit. By consent of the parties taken up forthwith for
final hearing.

3. Petitioner is aggrieved by the judgment and order passed
by the learned Magistrate and confirmed by the Additional Sessions
Judge, Baramati. The Petitioner is facing trial for the offence
punishable under section 326 of the IPC. Evidence of the witnesses

has been recorded. After completion of evidence, the Petitioner had made an application for alteration of charge. It was his contention that there was no material in the evidence to establish a charge under section 326 of the IPC. The learned Magistrate turned down the prayer. It was observed by the learned Magistrate that the arguments can be advanced at the time of final arguments and Court might consider the same.

4. In my opinion the view expressed by the learned Magistrate is correct. Since the evidence is concluded and the case is kept for recording of evidence under section 313 of Criminal Procedure Code, it is not just and proper to amend the charge at this stage though the Code empowers the trial Magistrate to amend and alter charge at any stage. The discretion is to be exercised keeping in mind stage of the case. In the present case the stage of argument is about to reach within a few days. Learned advocate for the Petitioner will be at liberty to advance arguments before the Magistrate that the evidence does not prove the offence punishable under section 326 of the IPC. It need not be stated here that if the evidence is not sufficient to establish the grievous hurt as defined under section 320 of the IPC the learned Magistrate will definitely consider the prayer for diluting

the major charge to minor charge if at all any minor charge is proved at the conclusion of the trial.

5. I do not find any merit in the petition. Hence, petition is dismissed.

(JUDGE)