

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 988 OF 2015

Champaklal Nathuji Sonar. ... Petitioner.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. S.S. Redekar, advocate for Petitioner.

Mrs. G.P. Mulekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 7, 2015

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State.

2 Rule. Rule returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the original complainant in
Crime No. 229 of 2003 registered at Manikpur Police Station. On the
basis of the report filed by the present Petitioner, the accused are

being prosecuted for offence punishable under Section 325, 323, 504, read with Section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 12/11/2003 wherein accused were also charge-sheeted for offence punishable under Section 326 of the Indian Penal Code.

4 The complainant filed an application before the learned Magistrate requesting the Court to frame charge under section 326 of the Indian Penal Code. The Petitioner had placed implicit reliance upon the injury certificate, which forms the part of the charge-sheet. The learned Magistrate by an order dated 28/1/2015 has been pleased to reject the application. The learned Magistrate has rightly observed that section 325 covers grievous injury. What remains to be seen is whether any dangerous weapon is involved. In the course of investigation, the police had recovered a log which was 1 x 4 inches and which according to the learned Magistrate cannot be called as an instrument which can be used for offence of shooting, stabbing or

cutting or that it would cause death and therefore, the learned Magistrate has refused to consider the said application.

5 Upon perusal of the injury certificate, it appears that the Petitioner herein was examined on 5/11/2003 at Primary Health Centre, Navghar. The injuries mentioned in the said certificate are CLW over right parietal region. The applicant was sent for C.T. Scan. It was noticed that the Petitioner had sustained a hairline fracture on left occipital bone. The Medical Officer Dr. Anup G. D'Souza had described the nature of injury as simple injury. The learned Magistrate has rightly considered the opinion given by the doctor and has refused to add Section 326 of the Indian Penal Code.

6 It is true that the Petitioner had sustained hairline fracture, however, the nature of injury was simple. The Court cannot substitute its opinion for the expert opinion and therefore, it could not have been said that the Respondents have committed offence punishable under Section 326 of the Indian Penal Code.

7 Section 325 of the Indian Penal Code reads thus :

“325. Punishment for voluntarily causing grievous hurt.— Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 326 of the Indian Penal Code reads thus :

“326. Voluntarily causing grievous hurt by dangerous weapons or means— Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

8 In the present case also hairline fracture (although described as simple injury) can be considered as grievous injury. The question is whether the applicant had used a dangerous weapon for causing the said injury. The words “or any instrument which, used as a weapon of offence” incorporated in Section 326 of Indian Penal Code need not be necessarily construed that the weapon used by the applicant was a dangerous weapon. In any case, in the course of recording the substantive evidence, in the eventuality that the Magistrate comes to a conclusion that the offence under Section 326 of the Indian Penal Code is made out, the learned Magistrate would be empowered to frame charge accordingly.

9 In view of this, no fault can be found with the order passed by the learned Magistrate. The impugned order does not call for interference. Hence, Writ Petition stands rejected. However, it is made clear that in the course of recording of evidence, if it is disclosed that an offence under Section 326 is made out, the learned

Magistrate would be at liberty to frame charge in accordance with law.

10 Rule is discharged. Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)