

Vidya.Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3679 OF 2016

Sanjay Shivaji Kale & Ors.	...	Petitioners
	Vs.	
State of Maharashtra	...	Respondent

Mr. Kalpesh U. Patil, Advocate for the petitioners.
Mrs. P.P. Shinde, APP for the respondent/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th December, 2016**

P.C.:

Rule. By consent, rule is made returnable forthwith.

2. This Writ Petition is directed against the order dated 30th August, 2016 passed by the learned Sessions Judge, Pune at Exhibit 30 in Sessions Case No. 865 of 2012. The petitioner/accused is facing charges under sections 323, 324, 504 r/w. 34 of Indian Penal Code. Before recording of evidence, an application was made by the prosecution under section 216 of Cr. P.C. for adding charge for the offence punishable under section 307 r/w. 34 of Indian Penal Code. The said application was made on the basis of medical certificate of the victim, which was not produced along with the police report filed under section 173 of Cr. P.C. The injury certificate was produced subsequently but before victim of the prosecution stepped in the box. The injury certificate discloses that there were two fractures, one to the bone of the forehead and another to the nasal bone.

The learned Sessions Judge after hearing both the sides, amended the charge and added Section 307 of Indian Penal Code. Hence, this Writ Petition.

3. The learned counsel for the petitioner has submitted that the fracture was caused to forehead and that cannot be considered as an offence punishable under section 307 of the Indian Penal Code. At the most, the offence of grievous hurt punishable under section 326 could have been added. He submitted that the case is pending on the file of learned Sessions Judge since 2012 and 6 years after the incident, the prosecution is coming up with a case of attempt to commit murder punishable under section 307 of Indian Penal Code which has caused prejudice to the accused and the order of addition of the charge is to be set aside. He further submitted that the said certificate is not forming the part of the record and the learned Judge should not have considered it at this stage. In support of his submissions, he relied on the judgment of Hon'ble Supreme Court in the case of Anant Prakash Sinha alias Anant Sinha vs. State of Haryana & Anr., reported in (2016) 6 SCC 105.

4. Learned APP while opposing this Petition has submitted that the blow was on the frontal portion of the head and that is the vital part, therefore, the order passed by the learned Sessions Judge of adding

charge under section 307 is justified.

5. Perused the impugned order and the injury certificate. Under section 216 of Cr. P.C., the Court is empowered to alter or add the charge at any stage before the judgment. The ratio laid down in **Anant Prakash Sinha** (*supra*) in fact is favourable to the prosecution, as the Supreme court while discussing the scope of section 216 of Cr. P.C. has held that the test of addition or alteration must be founded on the material available on record. It can be on the basis of the complaint or FIR or accompanying documents or material brought on record during the course of trial. In the present case, the injury certificate was admittedly not a part of the report filed by the police officer under section 173 of Cr. P.C. In fact it was the duty of said police officer to collect this document, produce and should have been made a part of the report. The said certificate was produced before the evidence commenced before the trial Court. Hence, the order of addition of the charge by the learned Sessions Judge cannot be faulted with. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)