

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2346 OF 2016

Stephen Mojes Martin

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Harshad Sathe a/w Mr. Sourabh Butala Advocate for Applicant.
Mr. Ajay Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 31st JANUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 06/05/2016 in crime no. 186 of 2016 registered at Kurla Police Station. Investigation is completed and charge-sheet is filed against the present applicant for offence punishable under sections 326 (A), 324 and 504 of the Indian Penal Code.

2) It is once again noticed that an incomplete charge-sheet is filed in utter violation of of section 207 of Code of Criminal Procedure, 1973. In fact, this Court in Criminal Bail Application No. 2213 of 2016 had observed that “It is seen that investigating agency is not including all relevant papers in the

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compilation of the charge-sheet as contemplated under section 207 of the Code of Criminal Procedure, 1973. Investigating agency does not place on record the entire material upon which the prosecution desires to rely at the time of trial. On several occasions this observation was made by this Court and pursuant to the observation in Criminal Bail Application 2213 of 2016, Law and Judiciary Department of Government of Maharashtra has issued a circular on 10/01/2017 wherein it is stated that:

“3. The Investigation officers and the supervisory police officers are hereby directed to ensure that the report under section 173 of the Code of Criminal Procedure is a complete set of material upon which the prosecution desires to rely. Particular care shall be taken to ensure that important evidentiary material, like post mortem reports, reports of medical examinations, reports of other experts, memorandum of disclosure statement, panchnama evidencing arrest, seizure, place of occurrence and test identification parade etc. (illustrative) forms part of the Charge-sheet

4. The aforesaid directions be followed scrupulously. Non-compliance would be viewed seriously by the appropriate authorities”.

3) In the present case, lapses on the part of the investigation are writ large on the face of the record.

4) It is the case of the prosecution that on 05/05/2016 Smt. Ranjini Arunkumar who happens to be sister of present applicant lodged a report at the police station alleging therein that on 05/05/2016, Mr. Shaikh had visited her house. Present applicant was annoyed with the visitation of Mr. Shaikh and therefore, had asked him to leave the house immediately. In retaliation, the first informant had told her brother i.e. present applicant that Mr. Shaikh visited her for some work and that he cannot be humiliated. There was verbal altercation between brother and sister. It is alleged that in the meanwhile, present applicant had rushed to the kitchen room, brought a knife and attempted to assault the complainant. Mr. Shaikh had intervened and snatched the knife. It is alleged that thereafter, present applicant had brought a plastic bottle containing acid and had thrown it on the face of the complainant. She has dodged the said act. According to her, the acid had fallen on her hand. It is alleged that applicant had thereafter thrown the same substance on the face of the son of the complainant. According to her, the acid had fallen on the left eye and shoulders. The neighbours had rushed to the scene upon hearing the hue and cry and she was immediately taken to K. B. Bhabha Hospital at Kurla along with her son.

5) Investigation is completed and charge-sheet is filed against the applicant under section 326 (A) of Indian Penal Code. It is pertinent to note that medical case papers of K. B. Bhabha Hospital or Hiranandani Hospital where Prithvi was admitted does not find place in the compilation of the charge-sheet.

6) The learned counsel for the applicant rightly submits that an inference can be drawn that the prosecution does not wish to rely upon the same at the time of trial as the accused has no knowledge about the material on which they wish to place implicit reliance in framing charge under section 326 (A) of the Indian Penal Code.

7) Perused papers of investigation. Complainant and her son were examined at K.B.B. Municipal General Hospital on 05/05/2016 at 6.30 p.m. The injuries sustained by the first informant are as follows.

- (i) *Superficial injury over right ring finger.*
- (ii) *Burning sensation over thighs, inner aspect. The nature of injuries is simple.*

Medical certificate of Prithvi indicate injuries as follows.

- (i) *Slight redness over left anterior chest region and arm with burning sensation.*
- (ii) *Redness with watering from left eye. Nature of injury cannot be*

commented without ophthal opinion.

8) The endorsement on medical certificate shows that:

“Patients' relative wants to take patient to private hospital (Sushrut Hospital) as hospital is on their panel list”.

9) It appears that injured Prithvi was taken to Hiranandani Hospital where he was admitted.

10) It is pertinent to note that although the charge-sheet is filed, investigating agency had not obtained the said certificates before filing of the charge-sheet and the same were issued on 01/08/2016 i.e. practically after more than 4 months. Papers of investigation would show that Prithvi was admitted in the hospital on 05/05/2016 and was discharged from the hospital on 12/05/2016. Investigating agency have not obtained the certificates from Hiranandani Hospital before filing of the charge-sheet. The certificate is issued on 02/07/2016 which shows that injured Prithvi had acid burns and has suffered sub normal vision, complete corneal epithelial erosion edema and severe inflammation. His right eye was normal. He was admitted and medically managed. It appears that the certificate was issued without referring to the case papers.

11) Applicant has also sustained injuries and has taken to Municipal Corporation Hospital. The history is given as accidental fall of acid (used for cleaning tile). History of being assaulted by his sisters son with punch over left eye and over face over mouth (upper lip), hit over body and superficial abraded wound (old) over front of neck.

12) Applicant had also sustained injuries on his person: Redness of left eye. Redness of left side cheek on face. Old multiple abrasion in front of neck.

13) The learned counsel for the applicant submits that the applicant had also sustained injuries in the same incident. Statement of applicant was recorded. He has also admitted that on 05/05/2016 at about 5.00 p.m. there was a quarrel between him and his sister. He had brought a knife from the kitchen only to threaten his sister. According to him he was washing wash basin in the kitchen with the cleaner and she continued to quarrel with him and at that time, the contents of the bottle had fallen on the ground and on the persons present around and at that time, all of them had sustained burn injuries.

14) Be that as it may, applicant is in custody for more than 7 months. Section 326 (A) of the Indian Penal Code reads thus:

“326-A Voluntarily causing grievous hurt by use of acid, etc. - Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.”

15) The discharge papers of Hiranandani Hospital indicate that Prithvi was fully recovered and his vision was normal at the time of discharge. It is in these circumstances that the applicant deserves to be enlarged on bail.

16) However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more local solvent sureties in the like amount.
- (iii) Applicant shall not reside at Kurla (West) till the conclusion of the trial. However, applicant shall visit his house, Building No. 3, Room No. C-62,

Taximans Colony, Lanasha Marg, Kurla (West), Mumbai only to take away his belongings. Police shall co-operate with the applicant. Applicant shall inform the police about the date on which he desires to go and take away his belongings.

- (iv) Applicant shall not leave India without prior permission of the Court.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)