

Nalawade

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4685 OF 2015

Santosh Kalokhe

...Petitioner.

vs.

Mr. Ayaram Konar and ors.

...Respondents.

Mr. D.S. Pagare for the Petitioner.

Mr. Arun Rajput i/by Ms. Anjali Patil for Respondent Nos.1 to 3.

Mr. Amit Palkar, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 18th September, 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India the petitioner has impugned the Order dated 13.10.2014 passed below Exhibit 3 in CC No.811/PW/2011 by the Metropolitan Magistrate, 61st Court, Kurla, Mumbai rejecting the application of the petitioner/first informant for framing of Charge under Section 307 read with 34 of the Indian Penal Code against Respondent Nos. 1 to 3 and the Order dated 29.7.2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision

Application No.1568 of 2014 dismissing the said revision and confirming the Order dated 13.10.2014 passed by the learned Metropolitan Magistrate below Exhibit 3 in C.C. No.811/PW/2011.

2. Heard the learned counsel for the petitioner, the learned counsel for respondent Nos. 1 to 3 and the learned APP. Perused the record.

3. The petitioner is the first informant in CR No. 123/2011 dated 27.4.2011 registered with Antop Hill Police Station, Mumbai under Section 326 read with 34 of the Indian penal Code. It is the case of the prosecution that, due to earlier enmity, respondent Nos. 1 to 3 assaulted the first informant with a sharp edged weapon namely "Cutter" on his left hand, face and head. Another witness namely Arun Pannikar was also assaulted by respondent Nos. 1 to 3. The police after completion of investigation submitted charge sheet under Section 326 read with 34 of the Indian Penal Code against respondent Nos. 1 to 3 which is numbered as CC No.811/PW/2011.

4. The record indicates that, the petitioner being the first informant/original complainant filed an application dated 26.4.2013 below Exhibit-3 in the said case for framing charge under Section 307 of the Indian penal Code against respondent Nos. 1 to 3. The learned Metropolitan

Magistrate by the impugned Order dated 13.10.2014 was pleased to hold that, not only Section 307 but even Section 326 of the Indian Penal Code cannot be applied to the present crime and charge under Section 324 read with 34 of the Indian Penal Code can be framed against the accused persons. The learned Additional Sessions Judge, Greater Mumbai has turned down the Criminal Revision Application No.1568 of 2014 preferred by the petitioner.

5. A minute perusal of record would indicate that, Injury Certificate dated 1.6.2011 issued by Dr. Siddhant, Medical Officer attached to the Municipal Hospital of Greater Mumbai, in favour of the petitioner mentions that, the petitioner has suffered superficial incised wounds and incised woulds on the various parts of body mentioned therein. After taking into consideration the medical record annexed to the application it is difficult to accept the contention of the petitioner that, Section 307 of the Indian Penal Code can be applied to the present crime as the ingredients of Section 307 of the Indian Penal Code are absent in the present case. It is also further difficult to accept that, Section 326 of the Indian Penal Code can be applied to the present crime. In view thereof, the contention of the petitioner for application of Section-307 to the present crime is misplaced.

6. In view of the above, this Court is of the view that, the Trial Court has rightly rejected the application of the petitioner below Exhibit 3 by the impugned Order dated 13.10.2014 and has directed to frame Charge under Section 324 read with 34 of the Indian Penal Code.

7. After perusing the entire record, this Court is of the considered view that, both the Courts below have not committed any error either in law or on facts while passing the impugned Orders dated 13.10.2014 and 29.7.2015 respectively.

8. The petition is accordingly rejected.

(A.S.GADKARI, J.)