

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-42223 of 2016 (O&M).
Decided on:- November 22, 2018.

Karam Singh.

.....Petitioner.

Versus

Naresh and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Raj Kapoor Malik, Advocate
 for the petitioner.

Mr. S.S. Gill, Advocate
 for the respondents.

HARI PAL VERMA, J.

CRM-41278-2018

Exemption application is allowed as prayed for.

CRM-41279-2018

Prayer in this application filed under Section 482 Cr.PC is for placing on record the copy of charge sheet dated 18.05.2010, statement of CW2 Dr. Sanjeev Bhagat and his affidavit as Annexures R-1 to R-3 respectively.

Documents Annexures R-1 to R-3 are taken on record subject to all just exceptions.

CRM stands disposed of.

CRM-M-42223 of 2016

The petitioner has filed present petition under Section 482 Cr.P.C. for setting aside the judgment dated 07.10.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Kaithal, whereby the revision petition filed by the petitioner-complainant against the order dated 12.08.2016 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Kaithal vide which the respondents-accused were charge-sheeted under Sections 323, 325, 148 and 506 read with Section 149 IPC, was dismissed.

Briefly stated, the petitioner has filed a complaint under Sections 323, 324, 325, 326, 148, 149 and 506 IPC against the respondents-accused with the allegations that on 01.03.2010 on the day of Holi, an altercation took place between Bubble son of Kapoora Gujar with some boys of Brahmin community for throwing colours on each other. The complainant along with Nafe Singh son of Dalipa Gujar, Godhu son of Lila Gujar resident of village Geong were returning to their houses from their fields and at about 09.00 P.M., when they reached near the Brahmin Chopal, accused Naresh, Happy and Pardeep were abusing the whole Gujar community. When the complainant asked them as to why they were abusing the whole Gujar community, all the three accused assaulted him with fist and leg blows. The complainant was saved by Nafe Singh and Godhu. Thereafter, the complainant went to his house. However, the complainant shared this incident of assault with his son Som Nath as well as Dheera and Teka sons of Soran. They accompanied the complainant to lodge their protest. When they reached near Mandir Laxmi Narain, accused Nos.1 and 3, namely, Naresh and

Pardeep armed with Gandasis and accused Nos.4 to 7, namely, Gaurav, Happy, Anand @ Nindi and Ajay armed with Lathis, whereas accused No.2 Pawan armed with iron rod with a common intention and object attacked them after giving a Lalkara that these Gujjars should be taught a lesson. Accused No.3 Pardeep gave a Gandasi blow on the right elbow of the complainant, accused No.2 Pawan gave an iron rod blow on the right leg of the complainant, accused No.1 Naresh gave a Gandasi blow from its blunt side on the left hand of the complainant and accused No.7 Ajay gave a Lathi blow on the chest of the complainant. Besides this, accused No.1 Naresh gave a Gandasi blow on the nose of Dheera, whereas accused No.6 Anand and accused No.4 Gaurav gave Lathi blows to Dheera. On hearing the noise, Teka son of Soran and Subash son of Gaje Singh Gujjar reached the spot and saved them from the clutches of accused. All the injured were admitted to Government Hospital, Kaithal. Injured Dheera was referred to PGIMER, Chandigarh by the doctor on duty as his condition was serious.

The matter was reported to the police and an FIR No.40 dated 02.03.2010 under Sections 323, 506, 148 and 149 IPC was registered at Police Station Kaithal, wherein the police had challaned only four accused, namely, Naresh, Happy, Pardeep and Gaurav. The remaining accused were declared innocent and their names were mentioned in Column No.2 in the Challan.

Not happy with the police action, the complainant-injured filed the aforementioned complaint in the Court of learned Area Magistrate. On the basis of evidence placed on record including the medico-legal reports of the

complainant and injured Dheera, learned trial Court vide order dated 28.05.2013 summoned the accused to face trial under Sections 323, 324, 325, 326, 148, 149 and 506 IPC except accused No.4 Gaurav son of Satbir, who being a juvenile is facing a separate trial before the Juvenile Justice Board.

Vide impugned order dated 12.08.2016, learned trial Court charge sheeted the respondents-accused under Sections 323, 325, 148 and 506 read with Section 149 IPC.

Against the aforesaid order dated 12.08.2016, the petitioner-complainant filed a revision petition before the Court of Session seeking framing of charge against the accused under Section 326 IPC as well. However, vide impugned judgment dated 07.10.2016 passed by learned Additional Sessions Judge, Kaithal, the said revision petition was dismissed.

It is in these circumstances, the petitioner-complainant has filed the present petition.

Learned counsel for the petitioner-complainant has argued that in the complaint case, the trial Court vide order dated 28.05.2013 summoned the accused to face trial under Sections 323, 324, 325, 326, 148, 149 and 506 IPC and the accused should have been charge sheeted accordingly. However, vide impugned order dated 12.08.2016, the trial Court has framed charges against the respondents-accused under Sections 323, 325, 148 and 506 read with Section 149 IPC, whereas on the basis of entire evidence on record including the complaint, the respondents-accused are required to be charge sheeted under Section 326 IPC as well.

He has further contended that vide impugned order dated 12.08.2016, the trial Court has not framed charge under Section 326 IPC on the ground that the complainant in his examination-in-chief had stated that accused Naresh hit Dheera with the Gandasi blow on his nose and the MLR of Dheera placed on file as Ex.CW2/B revealed that the kind of weapon used for causing injury was blunt and, therefore, it is not the case of the complainant that reverse side of Gandasi was not used to hit Dheera. Further, injured Dheera could not be examined in the case as he unfortunately died and he was the best person to corroborate the injury. Similarly, the revision petition filed by the complainant was also dismissed by learned Additional Sessions Judge, Kaithal vide impugned order dated 07.10.2016 on the ground that the injury has been caused with a Gandasi, but it has not been used from the side of blade and the doctor has shown this injury in the MLR to be caused by blunt weapon and he described it as a lacerated wound. In these circumstances, if Gandasi is used from the side of its handle or wooden portion, it does not fall within the meaning of weapon of offence used for shooting, stabbing or cutting.

He has further contended that the injury and fracture on the nose of injured Dheera is not in dispute. In order to frame charge against the accused, it is not the nature of weapon which has to be seen, rather, it is the nature of injury, which has to be the basis for the purposes of framing of charge. In support of his contentions, he has placed reliance upon ***Prabhu Versus State of Madhya Pradesh 2009(1) RCR (Criminal) 284.***

On the other hand, learned counsel for the respondents-accused has argued that for the same set of allegations, there is already an FIR registered against four accused, namely, Naresh, Naveen Pardeep and Gaurav and in the said case, charges have already been framed considering the nature of injuries caused on the person of Dheera. In the complaint case, the charge has already been framed against the accused and for the alleged injury, no case under Section 326 IPC is made out against the respondents-accused. Even otherwise, it would tantamount to double jeopardy as provided under Section 300 Cr.P.C. as for the same incident, accused are already facing trial in the FIR case.

He has further relied upon *Mathai Versus State of Kerala 2005(1) RCR (Criminal) 694* and argued that the essential ingredients to attract Section 326 IPC are (i) voluntarily causing a hurt, (ii) hurt caused must be a grievous hurt and (iii) the grievous hurt must have been caused by dangerous weapon or means. A Gandasi if not used from the side of its blade cannot be termed to be a dangerous weapon.

I have heard learned counsel for the parties.

It is not disputed that vide order dated 28.05.2013 passed by learned trial Court, the respondents-accused were summoned to face trial under Sections 148, 323, 324, 326 and 506 read with Section 149 IPC. Against the order of framing of charge dated 28.05.2013 passed by the trial Court, respondents-accused, namely, Naresh, Naveen alias Happy, Pardeep and Gaurav had filed a revision petition before the Court of Session. However, the said revision petition was dismissed by learned Additional

Sessions Judge, Kaithal vide judgment dated 15.07.2014 observing therein that if the injury is caused by dangerous weapon, the provisions of Section 326 IPC are attracted.

However, vide impugned order dated 12.08.2016, learned trial Court has framed the charge against the respondents-accused under Sections 323, 325, 148 and 506 read with Section 149 IPC by observing that complainant Karambir Singh has stated in his examination in chief that accused Naresh gave Dheera a Gandasi blow on his nose. The medico-legal report of Dheera placed on the file as Ex.CW2/B reveals that kind of weapon used for causing injury was blunt.

The revision petition filed by the petitioner-complainant against the aforesaid order dated 12.08.2016 passed by the trial Court has also been dismissed by learned Additional Sessions Judge, Kaithal vide impugned judgment dated 07.10.2016 by observing that if an injury is caused by reverse side of Gandasi, it would not attract the offence under Section 326 IPC.

In the case in hand, the allegation against respondent-accused Naresh is that he caused a Gandasi blow on the nose of injured Dheera, who was admitted in General Hospital, Kaithal. Dr. Sanjeev Bhagat, SMO, General Hospital, Kaithal while appearing in the witness box as CW2 tendered his affidavit Ex.CW2/A in his evidence, wherein he found the following injuries on the person of injured Dheera:

“Multiple lacerated wound with bleeding of size 9 x 1 cm bone deep in spiral, triangular shape on the nose extending from right to left margin of the nose. Margin irregular with bone deep to the internal dimension of nasal cavity with both maxillary

area swelling with redness. Tenderness present, bleeding present. Advised ENT surgeon opinion.”

Thus, the kind of weapon used in the offence was blunt, but at the same time, the doctor has opined multiple lacerated wound with bleeding of size 9 x 1 cm bone deep in spiral, triangular shape on the nose extending from right to left margin of the nose of injured Dheera. Thus, having considered the nature of injury caused on the person of injured Dheera as well as the law laid down in ***Prabhu’s case (supra)***, this Court finds that it is not the nature of weapon, rather, it is the nature of injury which has to be looked into. The relevant paragraph No.13 of the said judgment reads as under:

“13. The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in State of U.P. v. Indrajeet Alias Sukhatha (2000(7) SCC 249) there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable.”

So far as the judgment cited by learned counsel for the respondents-accused in *Mathai's case (supra)* is concerned, the same is not applicable to the facts and circumstances of the case in hand. In that case, no weapon was used in the crime, rather, it was the size of stone, which was relevant for consideration. The use of stone in the given circumstances may not be termed as a dangerous weapon used in the crime.

Accordingly, the present petition is allowed and the impugned order dated 12.08.2016 passed by learned trial Court as well as the judgment dated 07.10.2016 passed by learned Additional Sessions Judge, Kaithal are set aside. The trial Court is directed to frame charge against the respondents-accused under Section 326 IPC as well.

However, it is made clear that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

November 22, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No