

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1338 OF 2020

Dipak Yuvraj Patil .. Petitioner

Versus

The State of Maharashtra and another .. Respondent

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WITH
CRIMINAL WRIT PETITION NO. 1339 OF 2020

Yuvraj Bhaurao Patil .. Petitioner

Versus

The State of Maharashtra and another .. Respondent

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Mr. Indraneel S. Godsay, Advocate h/f Mr. Chaitanya C. Deshpande,
Advocate for petitioner in both the proceedings.
Mr. K.D. Munde, APP for respondents in both the proceedings.

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**CORAM : T. V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATE : 11th DECEMBER, 2020

ORDER :-

First proceeding is filed for giving directions to respondent No.2 - Police to add Section 326 of Indian Penal Code (IPC) in Crime No. 08 of 2020 registered with Kannad Rural Police Station, District Aurangabad. Second proceeding is filed for giving directions to the respondent No.2 - Police to add section 307 of IPC in Crime No. 192 of 2019 registered in the same Police Station. Both the sides are heard.

2. Relevant papers like, copies of FIRs, Police statements and Injury Certificates were made available.

3. In the first proceeding, crime is registered on the basis of report given by petitioner- Dipak Yuvraj Patil. He has described incident dated 20-01-2020. There quarrel had taken place. During quarrel, according to him, persons like, Sambhaji Patil, Mukesh Patil and Nagraj Patil gave beating to him by using iron bar and when his father tried to intervene, somebody assaulted him on his back. Others, who rushed to the spot, intervened and separated the informant from the accused. It is contended that threats of life were given by these persons while leaving the field. In respect of the said incident dated 20-01-2020, on the report of Dipak, on 21-01-2020 crime came to be registered under Sections 324, 323, 504 and 506 read with Section 34 of IPC. The injury certificate in respect of Dipak shows that he sustained injury to his right foot like swelling. X-ray shows fracture on MT 5th base. There are two other injuries and they were at left foot and right elbow. The injuries were caused by hard and blunt object. Grievous injury was caused and as per medical record hard and blunt weapon was used. Causing fracture injury by using weapon, which is not dangerous, is punishable under Section 325 of IPC, and therefore, it can be said that in respect of injury caused to Dipak, this Section is used. As his father is also assaulted, the provisions of Sections 324 and 323 of IPC are used. The record does not show that dangerous weapon was used. The submissions made show that iron bar was used and it cannot be said that the injuries were caused by dangerous weapon in view of injury sustained by Dipak also and place of the injuries. The

charge-sheet is filed for offences punishable under Sections 325, 324 and 34 of IPC.

4. Second proceeding is filed by Yuvraj, who is father of Dipak, petitioner of other proceeding. He has described the incident dated 28-12-2019. He has made allegations against aforesaid three persons that they picked-up quarrel on the count of dispute over common bandh and during quarrel, Sambhaji gave blow of hollow iron pipe on his head and he was also assaulted on right leg. He has made allegation that Dipak was assaulted by Sambjai Patil with the help of hollow iron pipe. Nilesh, another son, was assaulted by Nagraj Patil by using stick. There is injury certificate of Yuvraj Patil and he sustained contused lacerated wound (CLW) over left parietal region and injury was caused by hard and blunt object. In view of nature of injury, charge-sheet came to be filed for the offences punishable under Sections 324, 504 and 506 read with Section 34 of IPC. The submissions made by learned counsel for the petitioners that as the blow was given on parietal region, inference can be drawn that there was an intention of murder. This submission cannot be accepted. Only one injury was found on the person of Yuvraj, that too, was CLW and allegation is made that the hollow iron pipe was used.

5. There is dispute between two family over common bandh. Both the incidents took place due to that dispute. Now, the charge-sheets are filed and they are on the basis of papers collected during the investigation. Learned counsel for the petitioners placed reliance on some observations made by this Court in the case reported in **2013 All MR Crime, 1009** (*Rajesh Mahadeo Pakhare Versus State of Maharashtra*) and *Criminal Writ Petition No. 355 of 2019* (*Tukaram Waliba Kadlag and*

another Versus the State of Maharashtra and others) decided by this Court, on 04-07-2019. In the order made in case of - Tukaram (*supra*), this Court has observed that it is up to trial Court to ascertain as to whether the offence for which charge-sheet is filed is proper or for some other offence also charge needs to be framed. There is no dispute over this proposition. It is always open to the trial Court to take decision on the basis of record available and evidence given. However, in the present proceeding, in view of reasons mentioned above, it is not possible to give directions as prayed. So, both the Criminal Writ Petitions stand dismissed.

Sd/-

[M. G. SEWLIKAR]
JUDGE

Sd/-

[T. V. NALAWADE]
JUDGE

MTK