

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1696 OF 2022

Baliram Laxman Gaikwad

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Angad L. Kanade, Advocate for the Petitioner.

Mr. P. M. Kulkarni, APP for Respondent No. 1.

Mr. Shashikant E. Shekade, Advocate for Respondent Nos. 2 to 8.

CORAM : KISHORE C. SANT, J.

DATED : 26th APRIL, 2023.

P C. :-

. Heard learned advocate for the petitioner.

2. The original informant is aggrieved by the order dated 26.09.2022 whereby the learned Additional Sessions Judge, Beed was pleased to reject the revision application preferred by the State bearing Criminal Revision Application No. 7/2021. The State had moved the revision application challenging an order passed by the learned C.J.M., Beed dated 05.01.2021 in R.C.C. No. 76/2017 whereby the application of the State came to be partly allowed by framing charge under Section 326 of the Indian Penal Code (hereinafter referred to as "I.P.C."). However, the charge under Section 307 of the I.P.C. as prayed by the

prosecution was not framed.

3. The facts giving rise to the petition in short are that, the petitioner-informant lodged the FIR in Peth Beed Police Station on 22.09.2016 in respect of incident that took place on 21.09.2016 in the evening at around 7.30 p.m. It is alleged that, when the informant was in the house, his nephew namely Nilesh came to the house. The accused persons were following said Nilesh. Nilesh told that the persons following him had assaulted him and requested to pacify the said persons. When the informant went outside and started talking to the accused persons, the accused Balu started pick up a quarrel with the informant saying that as to why he has filed appeal in his case. It is alleged that, Prashant Shivaji Jadhav also gave blows with iron rod on the head of the informant. While trying to avoid said blow the informant received injury to his left hand and got fractured injury. Against Sushil Shivaji Jadhav it is alleged that, he has also assaulted with the knife and the informant received injury due to knife and there started a bleeding. Thereafter, it is alleged that, all the accused persons started beating the informant. On this basis, the police carried investigation and recorded the statements of various persons including eye witnesses. The police filed charge-sheet for the offences punishable under Sections 143, 147, 148, 149, 452, 323, 324, 325, 504 and 506 of

the I.P.C. Thus, the trial started.

4. The prosecution filed application in the learned Trial Court praying for adding Section 307 of the I.P.C. on the ground that, the accused persons had used deadly weapon and there was clear intention to commit murder of the informant and also that they have caused grievous injury. The learned Trial Judge considering the arguments and material on record came to the conclusion that, no case is made out to add Section 307 of the I.P.C., however, added Section 326 of the I.P.C. This order came to be challenged by the State by filing Criminal Revision Application No. 7/2021 to the extent of not adding Section 307 of the I.P.C. The accused Prashant also filed Criminal Revision Application No. 13/2021 to the extent of adding Section 326 of the I.P.C. The learned Sessions Judge also found that, no case is made out to add Section 307 of the I.P.C. and rejected the application filed by the State. The learned Sessions Judge came to the conclusion that, Section 326 of the I.P.C. is rightly added and maintained the order to that extent.

5. The petitioner has therefore challenged the order to the extent of not adding Section 307 of the I.P.C. Learned advocate for the petitioner invited attention to the statements recorded of the informant, Shweta Baliram Gaikwad and Aniket Baliram Gaikwad - daughter and son of

the informant, his wife Sangitabai, his nephew Nilesh Gaikwad, another son Avinash Gaikwad to show that all the witnesses have stated about the assault on the informant. He further invited attention to the discharge card showing that the informant was admitted for four days in the hospital. There is also injury certificate issued by the Medical Officer, District Hospital, Beed showing that the petitioner received one abrasion injury and one CLW. He submits that, the injury CLW is a grievous injury and shows the gravity of the offence and the force used while assaulting the petitioner. He thus submits that, clearly a case is made out of adding Section 307 of the I.P.C. and he assails the order to that extent.

6. Learned advocate for respondent No. 2 submits that, in fact, the petitioner is only informant and does not have locus to file this petition as the application was filed by the State in the learned Sessions Court and that is rejected. The State has not filed any proceeding thereafter. The prosecution is being conducted by the State and therefore, the informant does not have any right to file such petition and he prays for dismissal on the sole ground. On merits, he submits that, the nature of the weapon is hard and blunt object and it cannot be said to be a dangerous weapon which would cause such an injury which would result into death of a person. He further submits that, as a matter of

fact, even accepted the FIR as it is, it is clearly seen that, it was Nilesh Gaikwad who was followed by the accused persons and that Nilesh Gaikwad rushed towards the house of the informant. There was no intention on the part of the accused even to cause injury to the petitioner. There is no reason to have intention to cause death of the petitioner and he prays for rejection.

7. Learned A.P.P. supported the case of the petitioner stating that, since the offence under Section 307 of the I.P.C. is made out, the prosecution had filed an application. He submits that, though the order of the revisional Court is not assailed by the State, the Court can scrutinize the material on record and can set aside the order. He prays that, the order of the learned Sessions Court be set aside.

8. So as to maintainability of the petition is concerned, learned advocate relied upon the judgment of the Hon'ble Apex Court in the case of Jagjeet Singh & ors. Vs. Ashish Mishra @ Monu & Anr. in Criminal Appeal No. 632/2022. It was a case wherein the question of grant of bail was concerned and in that view of the matter the Hon'ble Apex Court had observed that, the victim certainly has a right to participate in the proceeding and the informant has a legally vested right to be heard at every step post the occurrence of an offence. This

judgment, however, is not in respect of locus standi of the informant to file a writ petition when the State's revision is dismissed. However, without going into the said aspect this Court considered the material on record. Looking to the FIR itself, it is clearly seen that the accused persons had come to the house of the informant following his nephew namely Nilesh. There is no case in the FIR that the accused persons had any intention to commit murder of the informant. There is nothing to suggest that the accused persons had any intention even to assault the informant since beginning. It is only that while following Nilesh they came to the house of the informant. It is the informant who came out of the house and started pacifying the accused persons and in that scuffle took place. Second aspect that needs to be seen is that the weapon used is not sharp and cutting weapon. The weapon alleged is iron rod. Though it is alleged that, the blow was given on the left hand of the informant still that by itself cannot lead to conclusion that there was intention to commit murder of the informant.

9. Considering the order passed by the learned Sessions Court, this Court finds that the learned Sessions Judge has rightly observed that the weapon used is hard and blunt. It is also observed that, as per the story of the informant he suffered 11 injuries, however, from the injury certificate it is seen that there are only three injuries. The Court has

further observed that there is no case of premeditation and held that offence under Section 307 of the I.P.C. is not made out. The learned Court below has rightly considered that the case is made out under Section 326 of the I.P.C.

10. In view of the above, this Court finds that, there is no perversity pointed out in the impugned order. There is no merit in the criminal writ petition and the same is therefore dismissed.

(KISHORE C. SANT, J.)

PS.B.