

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

CRIMINAL WRIT PETITION NO. 1122 OF 2023

Sangramsinh Bapu Arjun

..Petitioner

V/s.

The State of Maharashtra and Anr.

..Respondents

SNEHA
NITIN
CHAVAN

Mr. Sanjiv Kadam a/w Prashant Raul, Varsha Thorat and Aditi Rajput i/b Balchandra Shinde for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondent/State.

Mr. Akash Pandey for Respondent No.2.

**CORAM : SUNIL B. SHUKRE, AND
M.M.SATHAYE, JJ.**

DATE : 28th MARCH 2023

P.C.

1. Rule. Rule is made returnable forthwith. Learned APP waives service for Respondent. Heard finally by consent of parties.

2. According to learned counsel for the Petitioner, no offence is made out under Section 324 of the Indian Penal Code against the Petitioner. But, the learned counsel for the Respondent No.2/complainant disagrees. According to learned APP, there is no evidence available on record to show that there was active involvement of the Petitioner in that part of the incident in which

Subhadra was assaulted on her head by means of stone by the Petitioner.

3. We have gone through the FIR filed by the complainant Vitthal Mininath Arjun, statements of Subhadra, Meenakshi and Sharda and also injury certificates of Subhadra and Vitthal. We find that this Petitioner has been arraigned for an offence punishable under Section 324 of the Indian Penal Code only with the aid of Section 34 of IPC. Insofar as concerned the offence of voluntarily causing hurt by dangerous means punishable under Section 324 of IPC, the allegations are specifically made only against the main accused Bapu Mininath Arjun and not against the present Petitioner, although as far the remaining offences punishable under Sections 323, 504, 506 read with Section 34 of IPC are concerned, there are allegations made against this Petitioner along with other co-accused persons also.

4. The FIR and the statements of the eye witnesses clearly show that incident of quarrel which took place at about 8.00 am of 06.05.2021 was divided into two parts. The first part relating to altercation taking place between the complainant on one hand and the main accused Bapu Mininath Arjun on the other over transfer of property belonging to the father of complainant and the other part relating to the arrival of Petitioner and the other accused persons on the scene of crime after the first part was over.

In the first part, as the exchange of hot words was going on between the complainant and main accused Bapu Mininath Arjun, Subhadra, the mother of the complainant came to the spot of incident and as she tried to reason out the issue with the main accused Bapu Arjun, Bapu got annoyed and picked up a stone lying nearby and hit Subhadra on her head by means of that stone. These are the allegations which pertain to the first part of the incident. After this part was over, the second part began and at this juncture, the Petitioner and other two accused persons arrived at the spot of incident and then they also subjected the complainant, his daughter Meenakshi, his wife Sharda and his mother Subhadra to some beating. The complainant has alleged that this Petitioner and the other co-accused persons had beaten up himself, his wife, daughter and mother by means of stone and fist blows and kick blows, while Meenakshi and Sharda have alleged that this Petitioner and other co-accused subjected them to the beating only by means of fist blows and kick blows. Neither the complainant, nor the other persons i.e. Meenakshi, Sharda and Subhadra had alleged that this Petitioner had hit all of them or any of them by means of stone and it is only the complainant who has alleged that this Petitioner had also used stone for hitting it upon the complainant, Meenakshi, Sharda and Subhadra. But, Subhadra as stated earlier, alleges very specifically that she was hit on her head only by the main accused Bapu Arjun. Her injury certificate shows that she received cut injury

on her head, on the frontal bone of her head and it was simple in nature. The evidence collected by the prosecution during the course of the investigation suggests that head injury suffered by Subhadra was simple and *prima facie* attributable to only the main accused Bapu Arjun and not to any of the other accused persons including the Petitioner. This investigation also indicates that insofar as the present Petitioner is concerned, his role was confined to giving of fist blows and kick blows to the complainant and other eye witnesses who were present at the time of the incident. Out of the other eye witnesses i.e. apart from Subhadrabai, only the complainant had suffered one minor injury and therefore, injury certificate in respect of the complainant was issued by the Doctor. This injury certificate shows that he had suffered injury in the nature of back pain without there being any obvious injury mark and therefore, it has been described by Doctor to be simple injury. The injury certificates of other eye witnesses, who have alleged that they too had received beating in the nature of fist blows and kick blows from the Petitioner have not been issued because they did not suffer any such injuries as could have been clinically examined.

5. The material thus collected by the Investigating Officer is a clear pointer to the fact that the role of the Petitioner was confined only to giving of the fist blows and kick blows to the complainant and other persons involved in the incident as victims

because of which none of them suffered any such injury as was likely to cause death of any of them. If this is so, we do not think that any *prima facie* case worth its trial is made out against the Petitioner at least for an offence punishable under Section 324 of IPC and to this extent, the FIR and also to the consequential proceedings including the chargesheet that has been filed before the Trial Court needs to be interfered with by quashing and setting aside them to a limited extent.

6. In the result, the petition is partly allowed.

7. The FIR bearing Crime No. 202 of 2021 registered with Walchand Nagar Police Station and RCC No. 403 of 2021 pending on the file of Judicial Magistrate First Class, Indapur, District Pune are hereby quashed and set aside to the extent of registration of offence and filing of chargesheet for an offence punishable under Section 324 of IPC read with Section 34 of IPC against the Petitioner only.

Rule is made absolute in the above stated terms. No order as to costs.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)