

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1086 OF 2021

Mohammed Tezabwala

...Petitioner

Versus

The State of Maharashtra and Others

...Respondents

Ms. Misbah Solkar a/w. Ms. Faiza Gawandi for the Petitioner.

Ms. S. S. Kaushik, APP for the State.

Mr. Harekrishna Mishra for Respondent nos. 3 and 4.

Ms. Harshita Bhansali for Respondent no. 5 in person.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 12th JULY 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner seeks the following substantive reliefs :

(a) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing the transfer of the investigation to CBI or any other independent investigating agency and further direction to take into

custody Respondent Nos. 4 & 5 along with cousins Rahul and Rohit pertaining to C.R. No. 378 of 2020 registered with Byculla Police Station because of the involvement of police officers being Respondent No. 2 and to submit a report before this Hon'ble Court for action as per law.

b) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing to hold an inquiry into the role played by Respondent Nos. 1 and 2, for not recording the statement of the Petitioner, for not arresting Respondent Nos. 4 & 5 and cousins Rahul and rohit, and for not following the due process of law as per the guidelines issued from time to time by the Hon'ble Apex Court and to take action as per law.

c) To issue a Writ of Mandamus, or any other appropriate Writ, order or direction, directing Respondent No. 1 to initiate departmental proceeding immediately by suspending Respondent No. 2 and to submit an action taken report before this Hon'ble Court.

3. Petitioner is the sister of the complainant. Learned counsel for the petitioner submits that although specific allegations have been made against several persons, the police have not filed chargesheet against all the said persons named by the petitioner in

the complaint. She further submits that even section 326 of the IPC has not been invoked and what has been invoked is section 324. She submits that having regard to the nature of injuries sustained by the petitioner, section 326 ought to have been invoked.

4. Learned APP opposed the petition. She submits that the police after proper investigation have filed chargesheet as against four persons Dhaval Bhanushali, Rahul Pagare, Sunil Fatardo and Kirit Bhanushali.

5. Learned APP submits that the police during the course of their inquiry, have come to a conclusion that no case was made out against respondent no. 5 and one Rohit and as such chargesheet has not been filed against the said persons. She further submits that even the sections applied, have been rightly invoked on the basis of material collected during the course of investigation.

6. Perused the papers. No doubt, petitioner's sister Jumuna Abbas Pardawala has made allegations, not only as against the four chargesheeted persons but even against others, however it appears that the police after investigation, have not found the complicity of the respondent no. 5-Harshita Kirti Bhanushali and Rohit in the crime. It appears that there are disputes between the parties.

7. As far as application under section 326 is concerned, we have perused the 'Injury Certificate'. Although, the doctor has stated that a glass bottle was broken on Mohammad Tezabwala's shoulder and has stated the injury to be grievous, admittedly, the petitioner has not sustained any fracture, warranting application under section 326 of the Indian Penal Code. An injury does not become 'grievous' only because it is so certified as 'grievous' by the doctor, but it has to fall within the definition of Section 320 of the IPC which defines 'Grievous hurt'.

8. Considering the aforesaid, no interference as sought, is warranted.

9. Petition is accordingly dismissed.

GAURI GODSE, J.

REVATI MOHITE DERE, J.