

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

WRIT PETITION NO.1945 OF 2022

Nimesh Harendra Sejpal Petitioner.
Vs.
The State of Maharashtra & Anr. Respondents.

.....
Mr.Sagar A. Joshi for the petitioner.
Ms MH Mhatre, APP for State.

CHITRA
SANJAY
SONAWANE
Digitally signed
by CHITRA
SANJAY
SONAWANE
Date:
2023.07.12
14:19:08
+0530

.....
**CORAM : Nitin W. Sambre &
R.N.Laddha, JJ.**

DATE : 3rd July, 2023.

....

P.C.:

1. This petition is filed by the accused in a Summons Criminal Case No.210 of 2005 for offence punishable u/s 323 of IPC.

2. Accusations against the petitioner are that while serving as a Teacher at New Era School, he beat the complainant with the aluminium pipe for not having purchased the school bags

and other required equipments from school authority.

3. Submissions of learned Counsel for the Petitioner while questioning offence under charge-sheet is, offence punishable u/s 323 of IPC is a non-cognizable offence and that being so, the petitioner ought not to have been prosecuted for the aforesaid offence.

4. We have appreciated said submissions in the light of law laid down in the matter of *Keshav Lal Thakur Vs. State of Bihar*¹ wherein bar u/s 155(2) Cr.P.C. for taking cognizance of a non-cognizable offence is prescribed. The fact remains that initially a complaint was filed against the petitioner and the police had not taken cognizance of the same.

5. As a sequel, the matter was referred to a Magistrate at the behest of the Complainant and order below Exhibit 7, based on the statement of the complainant, other witnesses and cross-examination, came to be passed thereby directing registration of the offence punishable u/s 323 of the IPC.

¹ 1996(11) SCC 552.

6. In view of the fact that after non-cognizable offence was registered by the police, upon direction of the learned Magistrate, offence u/s 323 of IPC came to be registered. Support drawn from the Judgment of the Apex Court will hardly be of any assistance as in the said judgment, the Court has dealt with the bar of section 155(2) of Cr.P.C.

7. Apart from above, we are informed that the trial has advanced and as on today 9 witnesses are already been examined. If we appreciate the evidence of PW 9, it has been subsequently mentioned that after obtaining permission from the Magistrate u/s 195-A of Cr.P.C., investigation in the present case was carried out. Thus, sufficiently in that view of the matter, no case causing interference u/s 482 Cr.P.C. is made out.

8. Petition is dismissed.

9. Needless to clarify, observations made hereinabove, are

confined to the extent of issue of law and as such, same shall not prejudice the case of the petitioner on merits.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]