

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

CRIMINAL WRIT PETITION NO. 2039 OF 2022

Madhukar Shridhar Moholkar

...Petitioner

Versus

Arjun Eknath Kathare & Anr.

...Respondents

Mr. Suneet Moholkar for the Petitioner.

Mr. Shrikrishna A. Suryawanshi for the Respondent No.1.

Mr. Arfan Sait, APP for the State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th JUNE, 2023.

PC. :

1. Leave to amend is granted. Amendment to be carried out forthwith.
2. Rule. Rule is made returnable forthwith with consent of both the parties.
3. The Petitioner, who is a 90 years old man, has challenged the order of framing charge against him and the order passed by the Revisional Court rejecting his Revision Application against framing of the charge.
4. Learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai vide his order dated 2nd December, 2021 directed framing of the charges against the Petitioner under Sections 325, 323 and 506 of Bhalchandra

the Indian Penal Code (for short 'IPC'). The Petitioner challenged that order by way of Criminal Revision Application No.61 of 2022 before the Court of Sessions, Greater Mumbai. Learned Additional Sessions Judge vide his Judgment and order dated 9th May, 2022 allowed the Revision Application partly and the charge framed under Section 506 of IPC was set aside, meaning thereby the charge under Sections 325 and 323 of IPC was maintained. That order is under challenge before this Court in this Writ Petition.

5. Learned counsel for the Petitioner submitted that the case is false. It arises out of old rivalry between the first informant and the Applicant, who were residents of the same society. He submitted that in any case the offence under Section 325 of IPC is not made out because the evidence does not show that any grievous hurt is caused to the first informant.

6. Learned counsel appearing for the Respondent No.1 i.e. the first informant, who is about 83 years of age, submitted that the offence under Section 325 of IPC is made out because the first informant has lost his vision and hearing.

7. I have considered these submissions and I have perused the evidence annexed to the Petition. The evidence before charge was recorded and the prosecution examined the first informant as PW-1, Dr. Umang Ashwin Trivedi attached to Sion Hospital as PW-2 and Dr. Deepshree Mutalip as PW-3.

8. The first informant has narrated the incident which had taken place on 25th May, 2008. At that time there was Annual General Meeting of their co-operative housing society. There was some exchange of words which resulted in the Applicant giving a blow with a racket on the head of PW-1. According to PW-1 the Applicant was playing lawn tennis and he gave a blow with that racket. Because of the blow, he suffered bleeding injury over his right eyebrow. PW-1 went to Sion Hospital. He was feeling giddiness because of the blow. His vision and hearing was affected. Then he went to the police station and lodged the F.I.R. According to him, because of the blow he was suffering from giddiness and his vision was affected; and therefore, he had to go to Sion hospital regularly. He had taken private treatment as well.

9. PW-1 was cross-examined before charge. At that time PW-1 could not distinguish between badminton and lawn tennis; and therefore, he could not state as to whether the racket was used for playing badminton or lawn tennis.

10. PW-2 was the Medical Officer attached to Sion Hospital. His evidence is important. He has deposed that on 25th May, 2008, PW-1 was examined. The case papers show that he had suffered 1x1 c.m. and 1x2 c.m. injuries on right side of his forehead. The complaint of the patient was that he was having blurred vision and his hearing was affected. Thereafter he was sent for Surgery Department.

11. PW-3 deposed that PW-1 had taken medical aid under the OPD from their hospital. The patient had right eye blunt injury. Beyond that she has not deposed anything. Hence, there is no medical evidence on record to show that PW-1 had suffered permanent privation of his sight or permanent privation of hearing. The evidence shows that his vision and hearing was affected at the time of the incident. However, there was no further evidence that he had permanently lost his sight or had permanently lost hearing. The grievous hurt, as defined under Section 320 of IPC, is as under :

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

12. The evidence on record falls short of the requirements of Section 320 of IPC. There is nothing to show that grievous hurt was

caused to him. Therefore, framing of the charge under Section 325 of IPC is not justified.

13. The Applicant is 90 years of age and PW-1 is 83 years of age. It is rather unfortunate that both of them are engaged in this litigation. However, on merits of the matter the trial can go on for commission of offence punishable under Section 323 of IPC only. The Sessions Court has rightly set aside the charge under Section 506 of IPC. As mentioned earlier, the charge under Section 325 of IPC also cannot be sustained. Hence, the following order :

ORDER

- i. The charge framed against the Petitioner for commission of offence punishable under Section 325 of IPC in CC No.02/SW/2010 before the Court of Metropolitan Magistrate, 30th Court, Kurla is set aside.
- ii. The trial shall now proceed against the Petitioner only for the offence punishable under Section 323 of IPC.
- iii. With these observations, the Rule is made absolute in the aforesaid terms.

(SARANG V. KOTWAL, J.)