

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Neutral Citation No. 2023:PHHC:099281
CRR-563-2020 (O&M)
Date of Decision: August 01, 2023

Surinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Suvir Sidhu and Mr. Gursher Singh Dhillon,
Advocates for the petitioner.

Mr. R.S. Khaira, DAG, Punjab.

Mr. P.K.S. Phoolka, Advocate for respondent Nos.2 and 3.

DEEPAK GUPTA, J.

This revision is directed against the order dated 30.01.2020 passed by learned Judicial Magistrate 1st Class, Bathinda, whereby an application under Section 216 Cr.P.C. for amendment/addition of charge under Section 326 IPC in a case arising out of FIR No.132, dated 24.09.2015, registered at Police Station Sangat, District Bathinda, under Sections 323 and 325 IPC, has been declined.

2. FIR was lodged on the complaint of Smt. Surinder Kaur (petitioner herein), as per which on 04.09.2015 at about 12.15 p.m., respondent Nos.2 and 3 had released the water from their house towards her house. She asked them to stop the water flow, in response to which respondent Nos.2 and 3 pushed her. She fell down. Respondent Ramesh Kumar (wrongly mentioned as Rakesh Kumar in the memo of parties) then hit an iron rod, which was pretty sharp on its edge at her hand; whereas Ashok Kumar gave punches to her. She shouted for help, at which her son Manjit Singh came to the spot. The assailants fled away.

3. After necessary investigation, challan was filed to prosecute respondent Nos.2 and 3 under Sections 323 and 325 read with 34 IPC. The two respondents were charge-sheeted by the Court of learned Judicial Magistrate 1st Class under the said Sections 323, 325/34 IPC.

4. It is contended by learned counsel for the petitioner-complainant that during trial, Dr. (Maj.) Sheetal Jindal appeared twice and made statements revealing the nature of injury on the person of petitioner to be grievous in nature. The said injury was caused by a sharp-edged weapon, which is clearly mentioned in the FIR. Learned counsel has drawn attention towards the photograph (Annexure P-3) revealing that phalanx of two fingers of the left hand of the petitioner were completely severed, thus attracting Section 326 IPC. Learned counsel contends that in the circumstances, the dismissal of the application for alteration of charge, so as to add Section 326 IPC, is illegal.

5. Per contra, it is contended on behalf of counsel for respondent Nos.2 and 3 that as per the medico-legal report and the statement of PW Dr. (Maj) Sheetal Jindal, the injury in question was caused by blunt weapon and therefore, learned Trial Court did not commit any error in declining to add Section 326 IPC.

6. I have considered submissions of both the sides and perused the record.

7. As per statement Annexure P-5 of Dr. (Maj.) Sheetal Jindal, the injury caused to the petitioner-complainant is as under: -

“Avulsion of distal phalanx of both fourth and fifth digits of left hand completely. Tenderness present. Fresh bleeding

present.”

8. The statement of Dr. (Maj.) Sheetal Jindal reveals further that she reserved her opinion regarding the kind of weapon pending for orthopedic opinion along with the X-ray report. However, police again approached to seek her opinion about the nature of injury and then she opined that as per her knowledge, the injury appeared to be grievous and clinically seemed to be crush injury, whose margins were not clear and so, weapon seemed to be blunt in nature.

9. It is, thus, clear that the opinion given by Dr. (Maj.) Sheetal Jindal was not based on the advice of the orthopedic surgeon as was advised by her earlier.

10. It is not in dispute that injury in question is grievous. The FIR version is quite clear that injury was caused by an iron rod, which was having pretty sharp edge.

11. In *“Karam Singh v. Naresh and others” CRM-M-42223 of 2016 (O&M)*, decided by this Court on 22.11.2018, the allegation was that accused had hit gandasi blow on the nose of the complainant. The MLR revealed the kind of weapon used for causing the injury as blunt. The Trial Court framed the charge under Section 325 IPC, as the injury was described to be a lacerated wound and gandasi was not shown to have been used from reverse side. It was held by trial court that if gandasi is used from the side of its handle or wooden portion, then it would not fall within the meaning of weapon of offence used for shooting, stabbing or cutting. Said order was upheld by learned Addl. Sessions Judge. In the petition before this court, reliance was placed upon *“Prabhu v. State of*

Madhya Pradesh 2009(1) RCR (Criminal) 284, wherein it had been held as under: -

“13. The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are: (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in *State of U.P. v. Indrajeet Alias Sukhatha* (2000(7) SCC 249) there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences, the expression used is "deadly weapon" (e.g., Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable.”

12. After observing that though the kind of weapon used in the offence was blunt, but at the same time, doctor had opined multiple lacerated wounds with bleeding of 9x1 cm., bone deep spiral, triangular shape on the nose extending from right to left margin on the nose and so by taking into account the observations made in *Prabhu's* case (*supra*), this Court directed the Trial Court to frame the charge under Section 326 IPC.

13. In the present case also, the injury in question resulted into avulsion fracture, completely severing the digital phalanx of the two fingers of the complainant. Specific allegation in the FIR is that weapon

used was iron rod having sharp edge. Injury is grievous in nature and so there was no reason for the Trial Court to decline the application for addition of Section 326 IPC.

14. Apart from above, charge can be altered as per Section 216 Cr.P.C. at any stage before pronouncement of judgment. Only *prima facie* case is to be seen at the stage. The charge should be as wide as possible. Ultimately if, offence of lessor gravity is found to have been committed comparing to the offence charged, conviction can be recorded accordingly. However, if on conclusion of trial, graver offence is found to have been committed as compared to the offence charged, then *de novo* trial may have to be ordered depending upon the circumstances.

15. In view of the aforesaid discussion, particularly, clear version in the FIR and the nature of the injury caused to the petitioner-complainant, the impugned order cannot be sustained. Same is set aside. The Trial Court is directed to frame charge against respondent Nos.2 and 3 under Section 326 IPC as well. As such, present petition is allowed.

16. However, it is made clear that none of the observations made in this order should be construed as an expression of opinion on the merits of the case, as Trial Court has to decide the matter on its own merits on conclusion of the evidence, without being influenced by the observations made hereinabove.

August 01, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No