



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 162 OF 2024

Laxman Sitaram Pawar
And Others

... Petitioner

VERSUS

The State Of Maharashtra
And Another

... Respondents

.....
Ms. Sheetal V. Salunke, Advocate for Petitioner
Mr. S.B. Jadhav, APP for Respondents – State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th MARCH, 2024

ORDER :

1. This petition, under Article 227 of the Constitution of India, challenges the order passed by learned Judicial Magistrate, First Class, Tuljapur, below Exhibit-80 in R.C.C. No.264/2015.

2. Charge under sections 452, 147, 148, 149, 323, 504 of the Indian Penal Code is framed against petitioner. Prosecution is leading its evidence after recording of Medical Officer's evidence, prosecution filed application Exhibit-80 under section 216 of the Code of Criminal Procedure contending that it has come in the evidence of Medical Officer

that informant has suffered fracture of 10th rib, which is a grievous injury caused by petitioner with stone and stick, therefore, charge under section 326 be framed against petitioner. Petitioner opposed the said application. Trial Court has allowed the application and directed to frame charge under section 326 of the Indian Penal Code against petitioner. Petitioner is aggrieved by this order.

3. Heard learned advocate for petitioner and learned APP for respondents – State. Perused the writ petition memo, annexures thereto and impugned order.

4. Learned advocate for applicant by relying on ***Horilal and Anr. Vs. State of U.P. (1970) 1 SCC 8***, submits that there is no material on record to justify framing of charge under section 326. The extent of fracture has not come on record. Merely because word 'fracture' mentioned in the injury certificate that does not mean that injury was grievous and there is on nothing record to show that informant has not followed his ordinary pursuits for a period of 20 days. Therefore, the order of framing charge under section 326 against petitioner is unsustainable.

5. Learned APP, on the other hand, supported the impugned order.

6. Medical Officer PW-4 has proved injury certificate of informant at Exhibit-79, wherein fracture of anterior end of 10th rib is noted. The said injury is stated to be grievous. Fracture is covered under 7th clause of section 320 of the Indian Penal Code. It is well settled that charge can be altered at any stage of trial. There is sufficient material on record to frame charge under section 326 of the Indian Penal Code.

7. Argument of petitioner that there is nothing on record to show that informant has suffered and was unable to suffer a bodily pain for a period of 20 days and was unable to follow his ordinary pursuits, is misconceived. Since the present case is covered in 7th clause of section 320 of the Indian Penal Code, the said argument is untenable.

8. In *Horilal* (supra), conviction under section 326 was challenged. The injury caused in that case showed that the particular bones on which the injuries were inflicted were cut. Hence, it is held that it does not amount to a fracture. Further, in the facts of the said case, it was held that, "*nature of injuries considered with the evidence of the doctor would*

undoubtedly establish that all the injuries were grievous, these injuries were inflicted by kantas which are dangerous weapons and hence conviction under section 326 is fully justified". Since this decision is rendered in different facts, it does not help the case of petitioner.

9. For the aforestated reasons, there is no substance in the challenge raised in the present petition and petitioner has failed to make out a case to warrant interference in extraordinary writ jurisdiction. Criminal Writ Petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE