



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

937 CRIMINAL WRIT PETITION NO. 1400 OF 2024

Mukund Nivratti Chavan

....Petitioner

VERSUS

The State of Maharashtra & others

.....RespondentS

.....

Mr. S. J. Salunke, Advocate for the Petitioner.

Mrs. R. P. Gour, APP for the State.

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

DATE : 21st AUGUST, 2024.

PER COURT :

1. Present Petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India for following prayers :-

C) Be pleased to issue writ of mandamus or any other writ or orders in the like nature, directing the respondent no. 2 & 3 to withdraw the investigation of Crime No. 160/2024 dated 18/05/2024 registered with Police Station Parbhani (Rural), Dist. Parbhani from present Investigation Officer and assign it with competent Police Officer directing him to add section 307, 326 of I.P.C. in the crime.

D) Respondent no. 2 Superintendent of Police, Parbhani may kindly be directed to supervise and monitor investigation of Crime No. 160/2024 dated 18/05/2024 registered with Police Station Parbhani (Rural), Dist. Parbhani.

2. Heard learned Advocate for the Petitioner and learned APP for all the Respondents.

3. Learned Advocate for the Petitioner has taken as true the contents of the First Information Report, discharge card wherein the injuries sustained by him are noted and also the communications dated 24.05.2024 and 31.05.2024 addressed by him to the PI Parbhani (Rural) Police Station and Superintendent of Police, Parbhani. According to the Petitioner, taking into consideration the injuries sustained, the police should register the offence under Sections 307, 326 of Indian Penal Code and since there is no response, according to him, to the communication by him to the PI as well as Superintendent of Police, the investigation should be handed over to another competent Investigating Officer and that Respondent No. 2 should supervise and monitor the investigation.

4. At the outset, we would say that the Petitioner has not yet come with a case that charge-sheet is filed. Therefore, still the sections can be changed if the Investigating Officer is convinced that different offence is transpired. The First Information Report came to be lodged for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code and as aforesaid, the Petitioner is of the opinion that Sections 307 and 326 of Indian Penal Code should be invoked. Definitely, medical papers would have been collected by the Investigating Officer. It appears that the injuries to the rear side of left ear and both thighs is stated to have been caused with an iron rod. It is stated that informant's cousin Nitin was assaulted by accused Subhash with iron rod which has caused injury to the upper part of right eye and left knee. The discharge card of the informant states that there was fracture to the nasal bone. If we consider the First Information Report, then it is specifically stated "सुभाष याने लोखंडी रॉड ने माझे डाव्या कानाचे पाठीमागे दोन्ही खुब्याला, मांडीला मवुका मार लागला. कपाळाला, नाकाला, ओठाला, डोक्यावर रोडवर पडल्याने रक्त निघाले." So, it would be a question of interpretation by the concerned Court at the time of trial as to whether that injury has been caused due to the assault by iron rod. For that purpose, by invoking the constitutional powers under Article 226 of Constitution

of India, this Court cannot go to the extent to say that offence under Section 307 or 326 of Indian Penal Code has been made out, at this stage.

5. Frame of Code of Criminal Procedure is such that it gives room and discretion as well as powers to the Trial Court to consider which offence is transpired and, if at all upon evidence it comes on record that some different offence for which higher punishment is prescribed is transpired, then the concerned Court can take necessary steps. We would take note of Section 323 of Code of Criminal Procedure which prescribes that if, in any enquiry into an offence or trial before the Magistrate, it transpires to him at any stage of the proceeding before signing judgment that the case is one which ought to be tried by the Court of Sessions, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made. Further, we may also take note of Section 325 of Code of Criminal Procedure which prescribes procedure when a Magistrate cannot pass sentence sufficiently severe. In that case, the case may be forwarded to Chief Judicial Magistrate for further proceeding. Therefore, when these provisions would be handy with the Trial

Court, it is absolutely not necessary to grant relief claimed and that cannot be the only ground for transferring the investigation from present Investigating Officer to any other Investigating Officer and direct Respondent No. 2 to monitor the investigation.

6. With these directions, Writ Petition stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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