

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

CRIMINAL WRIT PETITION NO. 4859 OF 2022

Prashant Gajanan Mhatre

... Petitioner

Versus

State of Maharashtra & Ors.

... Respondents

Mr. Nitin Sejpai a/w Mrs. Pooja Sejpai and Ms. Akshata Desai
for the Petitioner

Mr. R. M. Pethe, A.P.P for the Respondents-State

API Mr. Pravin Phadtare from Panel Crime Branch, Navi
Mumbai, is present

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.
TUESDAY, 16th JANUARY 2024***

P.C. :

1 By this petition, the petitioner seeks a direction to the
respondent i.e. respondent No. 1 to apply Section 307, in
addition to the other sections of the Indian Penal Code ('IPC').

2 Mr. Sejpai, learned counsel for the petitioner submits
that initially the offence was registered by the Kamothe Police

Station for the alleged offence punishable under Section 307 and other sections of the IPC, as against the accused. He submits that after investigation, the police diluted the charge from 307 to 326 and as such, filed charge-sheet under Section 326 and other provisions of the IPC. The petitioner is aggrieved by deletion of Section 307 from the charge-sheet.

3 Learned counsel for the petitioner submits that having regard to the FIR/complaint made by the petitioner, the situs of the injury, blow by iron rod, Section 307 would apply. Learned counsel also relied on the photograph, which is at page 58 of the petition, to show the nature of injury sustained by the petitioner. He submits that since charge-sheet has been filed under Section 326 and other IPC sections, the case would now come up before the learned Judicial Magistrate First Class, whereas, if Section 307 was applied, the case would have come up for trial before the Sessions Court.

4 Learned A.P.P states that having regard to the doctor's medical certificate and the CCTV footage, the Kamothe Police were of the opinion that the offence would be one under Section 326 and not under Section 307 of the IPC.

5 Be that as it may, learned A.P.P, on instructions, states that the police would file an appropriate application before the concerned Court at the time of framing of charge and will seek inclusion of Section 307 of the IPC.

6 In view of the statement made by the leaned A.P.P, on instructions, nothing survives for further consideration in the petition.

7 If an application is filed by the police before the learned Magistrate at the time of framing of charge for addition of Section 307 of the IPC, the learned Judge to decide the said application on its own merits, after hearing the parties as to

whether Section 307 would be applicable or not and accordingly, decide the same.

8 The petition stands disposed of on the aforesaid terms.

9 Needless to state that all contentions of all parties are kept open.

MANJUSHA DESHPANDE, J. REVATI MOHITE DERE, J.