

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

CRIMINAL WRIT PETITION NO.6112 OF 2019

Aseer Irshad Khatib

...Petitioner

Versus

The Senior Inspector of Police and Ors.

...Respondents

Mr. Mubin Solkar a/w Mr. Anas Shaikh and Mr. Tahir Hussain i/b Ms. Zara Salati, for the Petitioner.

Ms. P. P. Shinde, A.P.P for the Respondents – State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 6th MARCH 2024

P.C. :

1. The grievance of the petitioner, who is seeking re-investigation of the case is, that the police have deliberately not applied Section 307 of the Indian Penal Code ('IPC') to the petitioner's complaint despite an offence having been disclosed. He submits that the accused are all influential persons and therefore deliberately the police have not included Section 307 of the IPC. He further submits that the petitioner (original complainant) was assaulted with an iron rod, but the said iron rod which was blood stained was subsequently

replaced. He further submits that a perusal of the certificate which is at page 37 at serial No.1, it is observed that there is soft tissue swelling on high parietal region (skull lateral) with a hard and blunt object; and at serial No.2, although obvious fracture was not noted, dislocation was noted. He submitted that since dislocation was noted, it was also incumbent for the police to add Section 326 of the IPC. He submits that merely because the doctor noted that the injury was simple, is not a criteria for applying Sections 323 and 324 of the IPC. He submits that the situs on which the assault was made and the purpose for which the assault was made, also assumes importance in the peculiar facts.

2. On the last date, the matter was adjourned to enable the learned APP to take instructions, whether the prosecutor in the trial Court, intends to file an application, having regard to the evidence that had come on record, for altering the charge/adding Section 307 of the IPC or any other section.

3. Today, the learned APP submits that it is also open for the complainant i.e. the petitioner to file an appropriate application before the trial Court and if such an application is filed, the prosecutor will not oppose the same.

4. Needless to state, that the petitioner is at always at liberty to file an appropriate application, seeking addition of additional charge, if he so deems fit and necessary. If such an application is filed, the learned Judge to decide the same, on the basis of the evidence that has already come on record and thereafter decide the same, in accordance with law.

5. The petition is accordingly disposed of with the aforesaid directions and observations.

All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.