

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 7th of December, 2023
Pronounced on 5th of January, 2024

CRR No.1428 of 2022

Ravinder Singh and anotherPetitioners

versus

State of Punjab and anotherRespondents

CRR No.1017 of 2022

Harmail SinghPetitioner

versus

State of Punjab and othersRespondents

CORAM : HON'BLE MR JUSTICE PANKAJ JAIN

Present : Mr. Devinder Kaushal, Advocate
for the petitioners in CRR-1428-2022 and
for respondents No.2 & 3 in CRR-1017-2022.

Mr. S.S. Narula, Advocate
for the petitioner in CRR-1017-2022 and
for respondent No.2 in CRR-1428-2022.

Mr. Jaswinder S. Arora, Dy. Advocate General, Punjab.

PANKAJ JAIN, J.

By instant order I intend to dispose off the afore-captioned
two revision petitions.

2. CRR No.1017 of 2022 has been preferred by the

complainant impugning order dated 6th of May, 2022 whereby the application under Section 216 of the Code of Criminal Procedure filed by the petitioner seeking alteration of charge by adding offence punishable under Section 326 of the Indian Penal Code has been rejected.

3. CRR No.1428 of 2022 has been preferred by the accused impugning order dated 4th of April, 2022 passed by Additional Sessions Judge, SAS Nagar, Mohali whereby charges have been framed against the accused for offences punishable under Sections 341 r/w 34 IPC, 325 r/w 34 IPC, 307 r/w 34 IPC, 323 r/w 34 IPC, 506 r/w 34 IPC and 201 r/w 34 IPC.

4. Ld. Counsel representing the complainant submits that as per the FIR specific allegation made by the complainant was that he was given blow on the head by the accused with axe with an intention of killing him. Axe struck his left eye. He submits that the FIR was initially registered for offences punishable under Sections, 323, 341, 307, 326, 506, 34 IPC. Trial Court erred in framing charges under Section 325 IPC and not 326 IPC. It has been contended by him that since by medical evidence and ocular version grievous injury on the eye of the petitioner caused by axe was *prima facie* brought before the Court yet the Court erred in appreciating the same and not framing charge under Section 326 IPC. He thus submits that it was in these

circumstances that the complainant was constrained to move application under Section 216 Cr.P.C. seeking alteration of charge. However Trial Court erred in rejecting the same.

5. Per contra, Counsel for the accused submits that from the medical evidence it came on record that it was a 'blunt injury' and thus Trial Court rightly held that offence falls under Section 325 IPC and not 326 IPC. Reliance has been placed upon observations made by Supreme Court in '**Ganga Prasad vs. State of U.P.**', (1987) 2 SCC 232.

6. Having heard rival contentions made by Counsels representing the parties it will be apt to peruse Section 325 IPC and Section 326 IPC to appreciate the same.

“325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Voluntarily causing grievous hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1

[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. It is not disputed that as per the medical opinion which is part of police report the injury on the body of the complainant falls within the definition of 'grievous hurt' as contemplated under Section 320 of the IPC. 'Grievous hurt' voluntarily caused by accused is by means of any instrument for shooting, stabbing or cutting or any instrument which on being used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to human body to inhale, to swallow, or to receive into the blood, or by means of any animal constitutes offence punishable under Section 326 IPC. The grievous hurt voluntarily caused by use of acid constitutes offence punishable under Section 326(A) IPC. Other voluntarily caused grievous hurt constitutes offence punishable under Section 325 IPC. The allegation in the present case against the accused is of having caused grievous hurt with axe. Thus, the question is : *“whether axe would fall within a ambit of any instrument for shooting, stabbing or cutting or one which is likely to cause death?”*

8. The Trial Court simply held that since medical opinion

shows that it was a blunt injury it would constitute offence under Section 325 IPC and thus charged the accused for the same.

9. In the considered opinion of this Court 'axe' even if leading to 'blunt injury' will still be an instrument for cutting or an instrument which when used as weapon of offence is likely to cause death.

10. In view of above this Court finds that the impugned order passed by the Trial Court dismissing the application filed by the complainant seeking alteration of charge is unsustainable and is thus liable to be set aside. Consequently, CRR No.1017 of 2022 is allowed.

11. Coming on to the other revision preferred by the accused, keeping in view the ocular version of the injured witness which is corroborated by the medical evidence collected by the Investigating Agency this Court finds that the same satisfies the '*test of prima facie case*'. At the stage of charge, the Court is required to see as to whether the evidence placed on record along with report under Section 173 Cr.P.C. satisfies the '*test of prima facie case*' and is not required to go into probative value thereof. Having held that the evidence was sufficient, the revision i.e. CRR No.1428 of 2022 preferred by the accused is hereby ordered to be dismissed.

12. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

13. A copy of this order be kept on the file of other connected case.

January 05, 2024 (Pankaj Jain)
Dpr Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No