



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 445 OF 2024

Anup S/o. Vijay Jawaji,
Aged: 29 Yrs., Occ.: Business,
R/o. Plot No. 245, Hudko Colony,
Jaripatka, Nagpur

...APPLICANT

// VERSUS //

1. **State of Maharashtra,**
Through Police Station Officer,
Police Station –Ambazhari,
District- Nagpur.
2. **Pratik S/o. Pramod Gupta,**
Aged : 30 Yrs., Occu. Private,
R/o. Naka No.2, Gupta Complex,
Bhilgaon Chowk, Kamptee Road,
Nagpur

NON-APPLICANTS

Mr Rajnish Vyas, Advocate for the applicant
Mr Amit Chutke, APP for Non-applicant No. 1/State

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATED : MAY 07, 2025.

ORAL JUDGMENT : (PER : ANIL S. KILOR, J.)

1. None appeared for respondent No. 2, though served
long back.

2. Heard.

3. **RULE.** Rule made returnable forthwith. Taken up for final disposal with the consent of learned counsel for the parties.

4. By the present application, filed under Section 482 of the Code of Criminal Procedure ("the Cr.P.C.", for short), prayer is made to quash and set aside the charge-sheet arising out of FIR No.842 of 2023 dated 28.12.2023, registered with Police Station Ambazari, District Nagpur for the offences punishable under Sections 324 and 504 of the Indian Penal Code ("the IPC" for short). Further a prayer for quashing of the proceedings bearing Regular Criminal Case No. 3707 of 2024 pending on the file of Judicial Magistrate First Class, Nagpur is also made.

5. Having gone through the contents of the FIR it is evident that the allegations are that the applicant assaulted the non-applicant No.2 by key of his car and because of such assault the

injuries were caused on the forehead and on left ear of the non-applicant No.2.

6. Learned counsel for the applicant relied upon the judgment in the case of *Anwarul Haq .v/s. State of U.P.*¹, wherein the Hon'ble Supreme Court of India has held in para No. 12 thus:

“12. Section 324 provides that "[whoever, except in the case provided for by Section 334, voluntarily causes 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]" can be convicted in terms of Section 324. The expression "any instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this section.”

7. Further, learned counsel for the applicant relied upon the judgment in the case of *Tanaji Shivaji Solankar and others .v/s.*

1 (2005) 10 SCC 581

*The State of Maharashtra and another*² wherein the Co-ordinate Bench of this Court has held in para 6 thus:

“6. We would like to go by contents of First Information Report, statements of witnesses and other documents in order to consider as to whether the offence under Section 324 of the Indian Penal Code has been made out or not. The other offences i.e. Sections 323, 504, 506 read with Section 34 of the Indian Penal Code are non cognizable in nature and in that event First Information Report under Section 154 of the Code of Criminal Procedure will not be maintainable. First Information Report and statements of witnesses, especially the injured, would also show that when informant had allegedly requested applicants not to transport bricks from the brick kiln till the decision of the case, she states that she was assaulted. She levels allegation against applicant No.1 that he took bite (i.e. by using his teeth as weapon) to the left forearm of her brother Laxman and she also states that applicant No.2 had taken bite of her right hand. That means, she has levelled allegation that applicant Nos.1 and 2 both have used teeth as weapon. As per the ingredients of Section 324 of the Indian Penal Code, the hurt should be 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 etc. As aforesaid, the medical certificates of informant and her brother show that there was simple hurt to both of them. Now, the weapon that is used is stated to be hard and blunt object. The teeth

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marks were not noted by the Medical Officer and he has given the description of injury as Contused Lacerated Wound. The dimensions given cannot match with the injury that might be caused by human teeth. The natural curve in case of bite is not noted. Therefore, it is hard to believe that injuries which were noted on the person of informant and her brother would have been caused by human teeth. Hon'ble Supreme Court in Shakeel Ahmed (supra) while considering the offence under Section 326 of the Indian Penal Code observed that teeth of human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 of the Indian Penal Code. If we consider Section 326 of the Indian Penal Code, then as compared to Section 324 of the Indian Penal Code, there is only the difference of word 'hurt' and 'grievous hurt' in the respective sections and then the change in the sentence. Therefore, the observations in Shakeel Ahmed (supra) are applicable to the case under Section 324 of the Indian Penal Code also. In Shakeel Ahmed (supra) injury was grievous as the phalanx of index finger was snapped off and, therefore, it was considered under Section 325 of the Indian Penal Code. If we apply the same rule, then the injury would come down to Section 323 of the Indian Penal Code, which is non cognizable in nature. Therefore, with this evidence, though there appears to be a cross case; yet, it would be an abuse of process of law to ask the applicants to face the trial, as the ingredients of offence under Section 324 of the Indian Penal Code are not attracted for the aforesaid reasons. Hence, following order."

8. From the above referred observation of the Hon'ble Supreme Court of India and the Co-ordinate Bench of this Court it

is evident that the expression “any instrument, which used as a weapon of offence, is likely to cause death” should be construed with reference to the nature of the instrument and not the manner of its use.

9. It is necessary for the prosecution to establish that the accused voluntarily caused hurt and such hurt was caused by means of an instrument referred to in Section 324 of the IPC. To make it more clear the hurt should be in such cases by means of any instrument for shooting, stabbing or cutting, or any instrument which used as a weapon of offence and 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 is deleterious to the human body to inhale, to swallow or to receive into the blood etc.

10. In the teeth of the above referred well settled principle of law if we revert back to the fact, it is evident that in the present matter as per the prosecution the weapon was the key. Thus, even if

the allegations are taken at its face value, in view of the above referred judgment in the case *Anwarul Haq (supra)*, no offence constitute, as alleged.

11. The applicant is also charge-sheeted for the offence punishable under Section 504 of the IPC. However, even the Section 504 of the IPC will not attract even if the allegations are taken at its face value.

12. Learned APP though opposing the present application is not disputing the law laid down by the Hon'ble Supreme Court of India in the case of *Anwarul Haq (supra)*. In that view of the matter, we pass the following order:

- i. The criminal application is **allowed**.
- ii. Charge-sheet arising out of the FIR No. 842 of 2023 for the offences punishable under Sections 324 and 504 of the Indian Penal Code registered with Police Station Ambazari, District Nagpur and the consequential proceedings bearing Regular Criminal Case No. 3707 of 2024 pending on

the file of Judicial Magistrate First Class, Nagpur, are hereby quashed.

Rule is made absolute accordingly.

Pending applications, if any, also stand **disposed of**.

[PRAVIN S. PATIL, J]

[ANIL S. KILOR, J.]

Namrata