



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 24th OF APRIL, 2025

MISC. CRIMINAL CASE No. 16476 of 2024

MAAN SINGH KANNOJIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anil Kumar Mishra, Advocate for the applicant.

Shri Ajay Kumar Nirankari, Public Prosecutor for respondent No.1/State.

Shri Alok Dubey, Advocate for respondent Nos. 2 to 5.

ORDER

This application, under Section 482 of Cr.P.C, has been filed against the order dated 10.05.2022 passed by Additional Sessions Judge designated as Special Judge (under the Electricity Act) No.4, Gwalior in S.T. No.500117 of 2015, by which application filed by the prosecution under Section 216 of Cr.P.C has been rejected.

2. It is submitted by counsel for applicant that earlier MCRC No. 17771 of 2017 was filed against the order dated 12.09.2017 passed by IX Additional Sessions Judge, Gwalior in ST No. 117 of 2015, by which the application filed by applicant under Sections 216 and 311 of CrPC was rejected. The application



was allowed by High Court and matter was remanded back to decide the application afresh. By the impugned order, the application has been rejected.

3. It is the case of applicant that on 07.07.2014, co-accused Manoj Jatav lodged a false report against the son of complainant. On the date of the incident, when complainant scolded Manoj Jatav as to why he had lodged a false report against his son, then co-accused Manoj Jatav, Rinku Jatav, Vipin Jatav and Champat Jatav started abusing him filthily. When he objected, then all the accused persons assaulted him, as a result he sustained injury on his left eyebrow as well as head apart from his lips, face and left eye. When his sons Sonu and Bharat came to intervene, then they too were beaten by all the accused persons. Accordingly, police registered offence under Sections 294, 323, 506B, and 34 of IPC. It was the case of applicant that earlier he had undergone an eye operation about 2 years back and one lens was implanted. Due to the assault made by the accused persons, the said lens got dislocated and he sustained grievous injuries, for which he was treated. The applicant also moved an application under Section 216 of Cr.P.C for enhancement of charges under Sections 326 and 307 of IPC as well as for summoning Dr. Shiv Kaneriya, Dr. U.S. Tiwari, Dr. Shishir Agrawal and Dr. S.Siddam. Aforesaid application was finally disposed of by this Court by order dated 13.04.2022 and the trial Court was directed to take up the application filed by the applicant under Section 216 of Cr.P.C afresh and decide the same without getting influenced or prejudiced by any of the observations made by the trial Court in order dated 12.09.2017.

It is further submitted by counsel for applicant that by impugned order, application filed by prosecution for alteration of charge has been rejected. It is submitted that applicant in his FIR had specifically stated that he was assaulted by all four accused persons by *Lathi* and *Danda*, as a result he sustained injury



on various parts of his face. It is submitted that trial Court did not consider the fact that grievous injury was caused by using deadly weapon and therefore has committed material illegality by rejecting the application.

4. *Per contra*, application is vehemently opposed by counsel for accused persons. It is submitted that complainant has changed his version with regard to the weapon used by the accused persons and thus the trial Court did not commit any mistake by maintaining the charge under Section 325 of IPC.

5. Heard learned counsel for the parties.

6. So far as the offence under Section 307 of IPC is concerned, it is suffice to mention here that applicant could not point out any circumstance which may bring the case within the purview of Section 307 of IPC. Therefore, trial Court did not commit any mistake by not framing charge under Section 307 of IPC.

7. However, it is the case of prosecution that accused persons had assaulted the complainant by *Lathi* causing injury on various parts of his face. As a result of the assault made by lathi, the lens which was implanted got broken and his nasal bone also got fractured. Accused persons are already facing trial for offence under Section 325 of IPC, that means that they are already facing trial for grievous injury.

8. The only question for consideration is as to whether any weapon was used for causing injury which may bring the offence within the purview of Section 326 of IPC or not?

9. From the CT scan report of bilateral orbit, it is clear that right nasal bone of complainant was found fractured and CT study also revealed evidence of posterior dislocation of lens of the left eyeball and particles of lens were displaced within the posterior vitreous. Thus, *prima facie* it is clear that grievous injury was caused to complainant Mansingh. The allegation of complainant is that he was assaulted by *Lathi* and *Danda*.



10. Whether the aforesaid weapon can be treated as a deadly weapon or not is not to be decided at the stage of framing of charge but it can be decided after the trial is over by considering the size of *Lathi*, the force with which it was used etc. Furthermore, if a person is tried for a serious offence, then he can always be convicted for the lesser offence. For offences under Sections 325 and 326 of IPC, the nature of injury is common i.e. grievous. The only difference is with regard to the manner in which injury was caused.

11. Under these circumstances, this Court is of considered opinion that the trial Court committed a material illegality by rejecting the application filed under Section 216 of CrPC. In fact, the trial court should have *suo motu* exercised its jurisdiction to alter the charge.

12. Accordingly, the order passed by the trial court dated 10/5/2022 is hereby set aside. The charge framed under Section 325 of IPC is modified and in its place it is directed that the trial Court shall alter the charge to Section 326 of IPC. As already pointed out, the nature of injury for offence under Sections 325 and 326 of IPC is the same, therefore no doctor would be required to be recalled in view of the altered charge. However, if the trial Court thinks it appropriate to recall certain witnesses to find out whether any deadly weapon was used for causing injury to complainant or not, then it can recall the said witnesses. However, it is once again clarified that no doctor shall be recalled.

13. With aforesaid observations, application is allowed.

(Justice G.S.Ahluwalia)

Judge

(and)