

Criminal Revision No.1006/2011

18.07.2011

Ms. Versha Kothari, counsel for the applicants.

Smt. Nirmala Nayak, Panel Lawyer for the respondent/State.

As prayed by learned counsel for the parties, matter is finally heard.

The applicants have challenged the order dated 19.5.2011 passed by 4th Additional Sessions Judge, Tikamgarh in S.T. No.286/10 in which the charges offence punishable under Section 326 of IPC is appended against the applicants.

As per prosecution story, the incident took place on 24.8.2010 and the victim Mayaram and other persons were assaulted by the applicants. It is mentioned that 3rd & 5th right ribs of the victim Mayaram were found broken, whereas no other victim has been sustained any grievous injury.

Learned counsel for the applicants submits that it is alleged by the victim Mayaram that he sustained injury on his head caused by an axe, but no injury on head was found to be grievous. It is nowhere alleged by the victim Mayaram that the injury caused on his chest or back by any deadly weapon or any sharp cutting weapon. Under such circumstances, if the fracture was caused to the victim Mayaram by hard and blunt object then only offence under Section 325 of IPC is made out against the applicants and, therefore, offence under Section 326 of IPC could not be framed against the applicants.

Learned Panel Lawyer for the State opposes the revision.

It is very much clear in the statement of the victim Mayaram given to the police that he sustained only one injury caused by sharp cutting weapon i.e. an axe on his head and there was no grievous injury found on his head. Though, his 3rd & 5th right ribs were found broken but as per the statements of associates, the injuries were caused by simple sticks and, therefore, it cannot be said that grievous injuries were caused by any sharp cutting weapon or deadly weapon, therefore, no offence under Section 326 of IPC is made out against the applicants or any other accused persons.

Learned Additional Sessions Judge has committed an error in framing such charges, therefore, order dated 19.5.2011 seems to be perverse and without any basis in relating to charges framed under Section 326 of IPC. Looking to the perversity, interference is required in the impugned order by way of this revision.

Consequently, the revision filed by the applicants is hereby allowed. The impugned order dated 19.5.2011 passed by 4th Additional Sessions Judge, Tikamgarh is hereby quashed. The applicants are discharged from the charges levelled against them for the offence punishable under Section 326 of IPC.

It is directed that since no exclusive offence is made out against the applicants, which is triable by the Court of Sessions, learned 4th Additional Sessions Judge, Tikamgarh shall remand the case under Section 228 of Cr.P.C. for trial

of remaining charges and charges under Section 325 of IPC to the concerned C.J.M.

With the aforesaid directions, the revision filed by the applicants is hereby disposed of.

C.C. as per rules.

(N.K. GUPTA)
JUDGE

pnkj