R. C. C. No. 37/2021
State vs. Nathuram.

<u>Order Below Exh. 01</u>
[Passed on 12/02/2021]

In view of order below Exh.01, dated 29/01/2021, the explanation of the investigating officer was called to explain following two things;

> *(i) As to why the offence punishable u/s. 326 of I.P.C. is not attracted in this case during investigation and even at the time of filing charge-sheet.*
>
> *(ii) Why particular section from the charge-sheet is erased with the use of whitener and to explain further - what is erased from the charge-sheet/record.*

2] It is evident from record that, following things are erased from the charge-sheet with the use of whitener;

- *(i) at column no.4 (I) one section is erased.*
- *(ii) at column no.11 (xvi) one section is erased.*
- *(iii) in the arrest from of accused, dated 29/07/2020, in column no.4, one section is erased.*

3] The rest of the things are self explanatory, about what happened on 29/01/2021 after filing of the charge-sheet and its further consideration by the Court, in order dated 29/01/2021.

4] It is apparently clear that, present case falls within the ambit of Sec. 326 of the Indian Penal Code (for short "I.P.C."). The appropriate order in this regard is passed on 29/01/2021.

5] The investigating officer as directed by the order dated

29/01/2021, has tendered his explanation, dated 09/02/2021, on record, yesterday on 11/02/2021 and the same is marked as Exh.11. The said explanation was returnable on today. But, as it is received yesterday and hence it is brought to the notice of Ld. A.P.P. for further hearing. Accordingly, heard Ld. A.P.P. and the matter is taken for further order.

6] After receipt of the above explanation from the investigating officer and in view of above order dated 29/01/2021, following two courses are open now;

(i) *To accept the explanation tendered by the investigating officer, if it found satisfactory.*

(ii) *To reject the explanation and refer the matter to the disciplinary authority of the investigating officer for further appropriate action.*

7] It is submitted by the Ld. A.P.P. that, the investigating officer is new in police service. He was not having much experience of investigation and therefore, he committed the above mistake of not attracting Sec.326 of I.P.C. Ld. A.P.P. fairly submitted that, the act of using whitener in official record is highly questionable and for that purpose appropriate order can be passed by this Court.

8] I have considered the explanation tendered by the investigating officer Police Naik Ashok Ramchandra Jaybhaye, Buckle No.1035 at Exh.11. It is quite true that, the investigating officer is entry level police officer, who is not having much experience about the investigation of crime. He has fairly submitted in his explanation that, he misunderstood the ingredients of offence punishable u/s. 325 and Sec. 326 of I.P.C. He further submitted that, the First Information

Report was registered by the then P.S.O. for the offences punishable u/s. 325, 504, 506 of I.P.C.

9] The investigating officer further fairly admitted that, he also misunderstood the concept of deadly weapon due to size of the stone seized and the nature of injury sustained by the injured. He further submitted that, the non-attraction of Sec. 326 of I.P.C. in the given crime is not deliberately done by him but it happened due to the above misunderstanding.

10] The investigating officer further submitted in his explanation that, when he brought the charge-sheet for presentation, Ld. A.P.P. pointed out to him that, in the given circumstances of the case, the offence punishable u/s. 326 of I.P.C. is made out. Then he put Sec. 326 of I.P.C. at the appropriate places of charge-sheet. Then he again contacted to his superior officers, who advised him that, such an act of adding Sec.326 is not permissible since no formal permission from the Magistrate is taken by appropriate report. In these circumstances, according to investigating officer, he erased Sec. 326 from the charge-sheet with the use of whitener.

11] The explanation of the investigating officer Police Naik Ashok Ramchandra Jaybhaye, Buckle No.1035 denotes that, he inserted Sec.326 of I.P.C. at the appropriate places of charge-sheet at the time of it's presentation, particularly when the Ld. A.P.P. pointed out to him that, Sec.326 of I.P.C. is attracted in the given case. The explanation further denotes that, the investigating officer accordingly added Sec.326 of I.P.C. and thereafter he erased the same on receipt of advise from his senior that such act is not permissible without formal permission of the Court.

12] If the entire explanation of the investigating officer is read out, then it prima-facie appears that, his conduct, as exhibiting from the order dated 29/01/2021 is not deliberate. Firstly, from his explanation it is clear that, he has not intentionally omitted to attract Sec. 326 of I.P.C. rather he misunderstood the ingredients of offence punishable u/s. 325 of I.P.C. and Sec. 326 of I.P.C., in light of the nature of injury sustained by the injured and size of the stone seized. Secondly, it is also clear that, the act of using whitener to erase the added Sec. 326 is done by him under extreme confusion. This might have happened because, as submitted by Ld. A.P.P., the investigating officer is quite new to police service and he has no experience of investigation of different crimes so far.

13] It is aptly true that, 'to err is human'. Hence, considering the explanation tendered him, I am inclined to accept the same with note of caution to him that he must be more vigilant in future while conducting the investigation and not to use whiteners in official record. The minor clerical mistakes if any, in the official record, can be corrected by making it round and putting the initial at said place. Here I find the explanation tendered by the investigating officer as satisfactory.

Hence, the order;

ORDER

(a) The explanation tendered by the investigating officer dated 09/02/2021 at Exh.11 is accepted.

(b) The investigating officer is directed to be more vigilant in future while conducting the investigation and not to use whiteners in official record. He should also note that, the minor clerical mistakes, if any, in the official record, can be corrected by making it round and putting the initial at said place.

(c) Inform the investigating officer accordingly through the Police Inspector, Chakan.

Dated :12/02/2021.

[Devendra B. Patange]
Judicial Magistrate First Class,
Court No.2, Khed-Rajgurunagar.

I affirm that the contents of this PDF file Judgment/order are same word for word as per original Judgment/order.

Name of Stenographer	Shri. D. V. Sawane
Court Name	Shri Devendra B. Patange Civil Judge, Junior Division, Khed-Rajgurunagar, Dist. Pune.
Date of Judgment/order	12-02-2021
Judgment/order signed by Presiding Officer on	12-02-2021
Judgment/order uploaded on	15-02-2021