

Accordingly, the present petition is allowed and the impugned order is set aside as The pending application is also disposed of.

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28. The parties are left to bear their own costs.

Result:- Petition allowed.

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ABC 2020 (I) 89 DEL
ACQUITTAL & BAIL CASES
HIGH COURT OF DELHI

(Vibhu Bakhru, J.)

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W.P.(CRL) 3582/2018 & CRL.M.A. 47963/2018

Decided on 26 November, 2019

NEETU BHANDARI & ORS.

- Petitioners(s).

Versus

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DEPUTY COMMISSIONER OF POLICE & ORS. - Respondent(s).

Law Covered:- (A) Indian Penal Code, 1860 – Sections 323& 324/34 – Injury by biting – Held, complaint did not indicate an offence u/s 324 – Offence u/s 323 not indicated in status report – The offence is not cognizable and – the police authorities could not have investigated the same without the order of a Magistrate – Commission u/s 324 set aside. (Para 19)

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(B) Indian Penal Code, 1860 – Sections 324 & 326 – Teeth of human being – as scope of an instrument for cutting as mentioned u/s 324 – "teeth of a human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated u/s 326. (Para 13)

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(C) Interpretation of Statute – Indian Penal Code, 1860 – Sections 324 vis-à-vis 326 – Almost identical language of both the sections – Interpretation – While Sec. 326 relates to an offence of causing a grievous hurt by means of instruments as specified therein – Sec. 324 is attracted if the hurt caused by those instruments is not grievous – The essential ingredients of both the Section, apart from the nature of hurt, remain the same. (Para 15)

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(D) Indian Penal Code, 1860 – Sections 324 – Criminal Jurisprudence – Injury by teeth – Instrument for cutting – The question whether the teeth is an instrument for cutting would not be dependent on the manner in which the teeth are used. (Para 17)

(E) *Indian Penal Code, 1860 – Sections 324 – Criminal Jurisprudence – Weapon – Nature vis-à-vis use – the question whether an instrument is for shooting or stabbing, would not be dependent upon the manner in which it is used – but would depend upon its nature. (Para 17)* a

(F) *Interpretation of Statute – Indian Penal Code, 1860 – Sections 324– Expression "any instrument, which used as a weapon of offence, is likely to cause death" – Construction of – should be construed with reference to the nature of the instrument and not the manner of its use – Anwarul Haq v. State of U.P. – relied upon.* b

Facts:- It was alleged that when the respondent no.2 had come with a mechanic to clean the outside drain of his house the petitioners started abusing him. They started beating him and petitioner no.1 had bit his hand. Thereafter, petitioner no.1 voluntarily hit her head on the wall and stated that she would file a false case against him. Main question considered by the honourable Delhi High Court was, if human teeth can be considered as a deadly weapon. It was held that the teeth of a human being cannot be considered as deadly weapon. The contention that the complaint did not indicate an offence punishable u/s 324, IPC was upheld. c d

Law of relief:- Human teeth cannot be construed as an instrument used for cutting. e

Held:- This Court is of the view that the question whether human teeth falls within the scope of an instrument for cutting as mentioned under Section 324 of the IPC, is no longer res integra. The Supreme Court in the case of *Shakeel Ahmed v. State (Delhi): (2004) 10 SCC 103* has authoritatively held that "teeth of a human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 IPC." (Para-13) f

It is at once clear that the language of Section 326 of the IPC is almost identical to the language of Section 324 of the IPC. While Section 326 of the IPC relates to an offence of causing a grievous hurt by means of instruments as specified therein, Section 324 of the IPC is attracted if the hurt caused by those instruments is not grievous. The essential ingredients of both the Section, apart from the nature of hurt, remain the same. (Para-15) g h

The question whether the teeth is an instrument for cutting would not be dependent on the manner in which the teeth are used. Similarly, the question whether an instrument is for shooting or

stabbing, would not be dependent upon the manner in which it is used. (Para-17)

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In view of the above, the contention that the complaint did not indicate an offence punishable under Section 324 of the IPC is merited. The status report does indicate commission of an offence under Section 323 of the IPC. However, the said offence is not cognizable and therefore, the police authorities could not have investigated the same without the order of a Magistrate. (Para-19)

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Counsel:- For petitioner(s): Mr Ashish Virmani, Mr Pallav Mongia, Mr Saropreet Singh, Mr Saksham, Advs.

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For Respondent(s): Mr Rajesh Mahajan, Ms Jyoti Babbar, Mr Peeyush Singhal, Advs.

Cases Referred:-

1. Khemchand Soni v. The State of Madhya Pradesh , (Para-12)
2. Anwarul Haq v. State of U.P., (2005) 10 SCC 581, (Para-12)
3. Shakeel Ahmed v. State (Delhi), (2004) 10 SCC 103, (Para-12)

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JUDGMENT

VIBHU BAKHRU, J.: - 1. The petitioners have filed the present petition, *inter alia*, praying that FIR No. 311/2018, under Sections 323/324/34 of the Indian Penal Code, 1860 (IPC) registered with PS Narela and all proceedings emanating therefrom, be quashed. The petitioners further pray that directions be issued to ensure the safety and security of the petitioners from anti-social elements, including respondent nos. 2 and 3. In addition, the petitioners pray that the complaint filed by them with respect to the incident, which occurred on 29.04.2018, be investigated thoroughly by the police.

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2. The petitioners claim that the FIR in question does not disclose any cognizable offence and therefore the same could not be registered.

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3. Briefly stated, the essential facts necessary to address the controversy in the present petition are as under:

3.1 The FIR in question - FIR No. 311/2018 - was registered at the instance of respondent no. 2 on 29.04.2018. He had reported that he had a second home at H No. 368, near Dere Wali Chaupal, Pana Udyan, Narela, Delhi which he had rented nine months ago to petitioner no.2. He stated that the cheques given by petitioner no.2 as rent had bounced and thereafter, he was forced to give petitioner no.2 an ultimatum to pay the rent or vacate the house. This angered the

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petitioner no.2 who started threatening respondent no. 2 and stated that he would register false sexual harassment cases against him through his wife. He stated that on 29.04.2018, respondent no.2 had come with a mechanic to clean the outside drain of his house at 9:30 a.m. The petitioners started abusing him. They started beating him and petitioner no.1 had bit his hand. Thereafter, petitioner no.1 voluntarily hit her head on the wall and stated that she would file a false case against him.

3.2 Respondent no.2 stated that he had thereafter, called the police. He was taken to a hospital where he was treated for his wound. Thereafter, he filed the said FIR with reference to the abovementioned incident.

4. The petitioners contend that the facts stated in the abovementioned FIR are false and the same has been registered with the connivance of the police. The petitioners state that they had paid rent in advance to respondent no.2. However, respondent no. 2 along with his goons had been threatening the petitioners to vacate the rented property. They allege that respondent no.2 had removed the electricity meter and water supply illegally to coerce the petitioners to vacate the premises in question. The petitioners had previously complained to the police regarding respondent no.2, but no action had been taken. Aggrieved by the same, the petitioners have filed the present petition.

5. The petitioners have a different version of the incident that took place on 29.04.2018. The petitioners state that apprehending further violence by the respondents, they had written a complaint to the SHO, PS Narela, on 29.04.2018, seeking police protection. The petitioners allege that on that date, respondent nos. 2 and 3 had broken into the residence of the petitioners with swords and sticks with the intention to kill their family. They had sexually assaulted petitioner no.1 and petitioner no.2 and his family had been coerced to lock themselves up in a room. The petitioners state that on calling on the 100 number, the police had not come. Thereafter, the respondents wrecked the house of the petitioners and stole valuable property. The petitioners state that the police is in connivance with respondent nos. 2 and 3 and therefore, have not taken any action on the complaints filed by them. In this context the petitioners pray that directions be issued to the police to provide protection from the respondents and for the registration of their complaint dated 29.04.2018.

a 6. The status report has been filed wherein it is stated that on 01.04.2018, a complaint was received from petitioner no.2 stating that despite paying electricity bills, respondent no.2 (Ram Niwas Verma), respondent no.3 (Naresh Verma) and some other persons from Tata Power Delhi Distribution Limited (TPDDL) had removed the electric meter/connection from the said premises. Petitioner no.2 alleged that b the said persons wanted to evict the petitioners from the premises occupied by them. This complaint was inquired into and it was found that the dispute was that of a civil nature and, therefore, no police action was warranted. Accordingly, the said complaint was closed.

c 7. It is stated that on 29.04.2018, a PCR call was received (DD No. 27B) regarding a quarrel at House No. 368, Pana Udyan, Narela. On receipt of this call SI Devender Kumar along with Ct. Manish had reached the spot and found that the injured had been shifted to SRHC Hospital. Thereafter, SI Devender Kumar reached SRHC Hospital and d received MLC No. 2350/18 in respect of injuries suffered by petitioner no.1 (Neetu). MLC No. 2351/18 of respondent no.2 was also received, which apart from other injuries, also indicated that a bite mark (teeth mark) was observed on the upper right arm. Petitioner no.1 was not e found present at the hospital. The statement of respondent no.2 was recorded. He alleged that he had let out his house on a rent to petitioner no.2 (Rajan) at the rent of `4,000/- per month. He stated that respondent no.2 had paid rent for the first two months but defaulted in payment of rent for the subsequent period. He alleged f that petitioner no.2 had demanded a sum of `2,00,000/- to vacate the house and had threatened that if respondent no.2 took any coercive steps, he would implicate him in a false molestation case. Respondent no.2 stated that on 29.04.2018, he along with a mason, went to clear the drain outside of the house rented by the petitioners, but the g petitioners (Rajan and Neetu) started abusing him. He stated that he objected to their behavior and on his doing so, Rajan had started beating him and Neetu had bit him on his right upper arm. He also alleged that she had hit her head on the wall to frame him in a false case. After inquiries, the FIR in question (FIR No. 0311/2018 under h Section 323/324/34 of the IPC) was registered.

8. It is stated that thereafter, investigations were conducted and certain independent witnesses from the said neighborhood (Ankit, Naveen, Deepak, Smt. Konika and Smt. Omwati) were examined and their statements under Section 161 of the Cr.P.C. were

recorded. It is stated that all the independent witnesses confirmed the allegations made by respondent no.2. They stated that he was beaten by Rajan and Neetu, and Neetu had hit her forehead on the wall in order to make a false case. a

9. Neetu and Rajan were arrested on 30.04.2018 and thereafter, released on bail. A chargesheet under Sections 323/324/34 of the IPC was filed before the learned Metropolitan Magistrate on 30.06.2018. b

10. Mr Virmani, learned counsel appearing for the petitioners contends that the facts as reported do not disclose any cognizable offence and therefore, the FIR in question could not be registered and no investigations could be carried out. He submits that the offence under Section 323 of the IPC is a non-cognizable offence and the complaint does not disclose any offence punishable under Section 324 of the IPC. c

11. Mr Mahajan, learned ASC appearing for the State has countered the aforesaid submissions. He submits that the report indicates that Neetu had bitten respondent no.2 and this was also evidenced by the bite marks found on the upper right arm as observed in the MLC. He submitted that teeth are also used for cutting and would fall within the description of an instrument for cutting, as mentioned in Section 324 of the IPC. He submitted that in view of the above, the commission of the offence under Section 324 of the IPC is alleged and the said offence is a cognizable offence. d e

12. He relied upon the decision of the Madhya Pradesh High Court in *Khemchand Soni v. The State of Madhya Pradesh: Crl. Rev. No. 2411/2012 decided on 20.03.2013* and on the strength of the said decision, submitted that the question whether teeth could be considered an instrument of cutting, would depend upon the nature on the wound inflicted. He also referred to the decision of the Supreme Court in *Anwarul Haq v. State of U.P.: (2005) 10 SCC 581*. f g

13. This Court is of the view that the question whether human teeth falls within the scope of an instrument for cutting as mentioned under Section 324 of the IPC, is no longer res integra. The Supreme Court in the case of *Shakeel Ahmed v. State (Delhi): (2004) 10 SCC 103* has authoritatively held that "*teeth of a human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 IPC.*" h

14. Section 326 of the IPC set out below:-

"326. Voluntarily causing grievous hurt by dangerous weapons or means--

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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 [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."

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15. It is at once clear that the language of Section 326 of the IPC is almost identical to the language of Section 324 of the IPC. While Section 326 of the IPC relates to an offence of causing a grievous hurt by means of instruments as specified therein, Section 324 of the IPC is attracted if the hurt caused by those instruments is not grievous. The essential ingredients of both the Section, apart from the nature of hurt, remain the same.

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16. In *Shakeel Ahmed* (supra), the Supreme Court had considered a case where the assailant had bitten off the phalanx of the index finger of the injured. The injury caused fell within the description of grievous hurt and therefore, the appellant was convicted of an offence under Section 326 of the IPC. The Supreme Court held that the offence could not be considered as an offence under Section 326 of the IPC and at best had remained an offence punishable under Section 325 of the IPC. The Court reasoned that the teeth of a human being could not be considered as a deadly weapon as enumerated under Section 326 of the IPC.

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17. In *Khemchand Soni* (supra), the High Court of Madhya Pradesh had proceeded on the basis that the question whether teeth could be considered as a cutting weapon or not would depend on the wound inflicted. The Court reasoned that if a thumb is chopped by teeth, then it would be considered as a sharp cutting weapon. However, if a bone was broken due to the pressure exerted by the teeth, then the hurt could be considered as caused by a blunt object. This Court does not find the said reasoning persuasive. The question

whether the teeth is an instrument for cutting would not be dependent on the manner in which the teeth are used. Similarly, the question whether an instrument is for shooting or stabbing, would not be dependent upon the manner in which it is used. a

18. In this regard, it would be relevant to refer to the observations made by the Supreme Court in *Anwarul Haq* (supra). The Court had set out the provisions of Section 324 of the IPC and had observed as under:- b

"12....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...." c

19. In view of the above, the contention that the complaint did not indicate an offence punishable under Section 324 of the IPC is merited. The status report does indicate commission of an offence under Section 323 of the IPC. However, the said offence is not cognizable and therefore, the police authorities could not have investigated the same without the order of a Magistrate. d e

20. In view of the above, the FIR to the extent that it records commission of an offence under Section 324 of the IPC, is set aside. It would be open for respondent no.2 to seek an appropriate order from the concerned Magistrate. f

21. Insofar as the petitioner's prayer that directions be issued to the police to investigate their complaint regarding the incident of 29.04.2018 is concerned, the status report does indicate that the police had carried out the necessary investigations. They had made inquiries from independent persons from the neighborhood and their statements were also recorded. The statements made by the independent persons from the neighborhood, who had witnessed the incident indicate that respondent no.2 had been beaten by the petitioners. It is also apparent that the disputes stem from the petitioners occupying the premises let out by respondent no.2 and the alleged non-payment of rent thereof. g h

22. In view of the above, this Court does not consider it necessary to issue any directions to the police for carrying out any further investigations regarding the complaint made by the petitioners.

a 23. The proceedings initiated pursuant to FIR bearing no. 311/2018 are quashed, leaving it open for respondent no.2 to take appropriate remedies for the redressal of his grievance.

24. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

b **Result:-** FIR quashed.

ABC 2020 (I) 97 DEL
ACQUITTAL & BAIL CASES
HIGH COURT OF DELHI

(Manmohan & Sangita Dhingra Sehgal, JJ.)

Crl.L.P. 596/2019

Decided on 27th November, 2019

d STATE - Petitioner(s).

Versus

SONIYA & ANR. - Respondent(s).

e **Law Covered:-** (A) Code of Criminal Procedure, 1973 – Section 378 – Appeal against acquittal – Indian Penal Code, 1860 – Sections 323, 328, 346, 363, 376, 109 & 120-B – Protection of Children from Sexual Offences (POCSO) Act, 2012 – Section 4 – Immoral Traffic (Prevention) Act, 1956 – Sections 3, 4 & 5 – Appeal against acquittal – Admission by prosecutrix – that she loved the accused & had voluntarily stayed with him – accused took the prosecutrix to public places but she did not to raise any alarm or invite the attention of the public – Date of kidnapping – material contradiction in the statement of the prosecutrix regarding – Admission by prosecutrix – had not seen the accused paying any money to the respondent no.1 – Held, the evidence of the prosecutrix is neither reliable nor inspires any confidence – Hymen was ruptured – Medical evidence – does not connect the accused to accused with the alleged crime – Matrimonial discord between respondent no.1 (sister-in-law) & prosecutrix's brother – Held, prosecutrix had f deposited falsely and with the intent to frame her sister-in-law – sole testimony of the prosecutrix, which had been wavering and was not consistent – Acquittal upheld. (Para 8, 9, 10, 11, 13 & 14)

g (B) Code of Criminal Procedure, 1973 – Section 378 – Appeal against acquittal – Settled law – Any acquittal order cannot be lightly interfered with by the Appellate Court – The power to grant leave must h