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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 493/2011

WASIMUDDIN & ORS

..... Petitioners

Through: Mr. Javed Hashmi, Advocate.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP with SI
Yashpal Singh, PS Chandni Mahal,
Delhi.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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09.11.2011

Crl. M.A. NO. 17584/2011 (Exemption)

Allowed, subject to all just exceptions.

Crl. Rev. P. 493/2011 & Crl. M.A. No. 17583/2011 (Stay)

1. By this petition the Petitioners challenge the order dated 14th September, 2011 framing charges for offence punishable under Sections 323/325/34 IPC against the Petitioners.

2. Learned counsel for the Petitioners contends that the FIR was registered belatedly after 6½ months. Though the alleged injury was inflicted on 23rd January, 2010 however, the FIR was registered on the 1st

Crl.Rev.P. No.493/2011

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physical file have been compared and
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file and no page is missing.

July, 2010. There is no explanation for the delay in registering the FIR for 6½ months. No role has been attributed to the Petitioners and in the absence of any role being attributed, no charges could have been framed against the Petitioners. Till date the statements of the witnesses have not been recorded nor the same have been supplied to the Petitioners. Reliance is placed on *Sahab Singh vs. State of Haryana, III (1997) CCR 40 SC* and *Gorige Pentaiah vs. State of A.P., IV (2008) CCR 330 SC*. In view of the deliberate delay, the allegations as set out in the FIR smack of mala fide. Thus, the charges against the Petitioners are required to be quashed.

3. Learned APP for the State on the other hand contends that the alleged incident is dated 23rd January, 2010 when the MLC of the injureds were prepared and DD entry was lodged. Further the ex-ray of the injured/Complainant Ameen was also done on the same date. However, the opinion on the MLC was given belatedly on 12th March, 2010 and thereafter after recording the statement of the complainant FIR was registered on 1st July, 2010. Since no cognizable offence was made out till the opinion in the MLC was received, the FIR could not have been registered on 23rd January, 2010. The delay in recording of the FIR cannot be a ground for quashing of the charges framed and the same will be seen at the stage of trial. The

statements of witnesses recorded during trial have been supplied to the Petitioners and in case they have any grievance they can make a prayer regarding the same before the learned Trial Court.

4. I have heard learned counsel for the parties.

5. Briefly the prosecution case is that on 23rd January, 2010 a PCR call was received, which was recorded vide DD No. 4B. The injured Afzar Ahmed, Ms. Sameena Arshi and Ameen were taken to the Lok Nayak Hospital by Constable Surender where they were treated. The ex-rays were also conducted. Finally as per the ex-ray it was revealed that there was a fracture in the nasal bone of Ameen Khan. On the same day statement of Afsar Ahmed and Sameena Arshi were recorded who stated about the beating and injuries caused to them. Since no opinion of the Doctor had been received thus no FIR was registered on the same day. On 12th March, 2010 the result regarding the MLC of Ameen was received. The doctor opined that the injury was grievous in nature. Thus on the statement of Ameen the FIR was registered on the 1st July, 2010.

6. Ameen in his statement alleged that on 23rd January, 2010 he was present at the shop of his nephew Arif when his worker Danish came and told that there was a phone call from the sister-in-law and he has been called

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home. When he reached home he saw that Karimuiddin's son and his wife had come and were abusing his wife, brother-in-law and the children. In between Wasim, Rahim, Rais and Nadeem, the Petitioners herein also came there. They started quarrelling with the Complainant when Wasim, Rais and Nadeem caught hold of the Complainant and Rahim gave fist blows on his nose. Sameena/his wife and brother-in-law also intervened resulting in injuries to them. According to the Complainant, the Complainant had taken Rs. 8 lakhs from Karimuiddin in installments 7-8 years ago from which he repaid by giving Rs. 500 per day except holiday. Since Wasim had refused to give in writing about the money received, the Complainant stopped giving the money. According to the Complainant, he had till then given around 13-14 lakhs. The Petitioners on the said date had come in regard to that demand of money and on reaching the house they assaulted the Complainant, his wife and brother-in-law also, who also received injuries due to intervention.

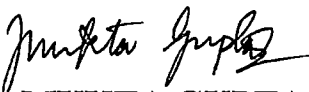
7. A perusal of the complaint lodged by the Complainant Ameen clearly indicates the roles assigned to the Petitioners. As per the doctor, the injury was grievous in nature to Ameen and as regards Sameena and Afzar the same were simple in nature. Thus I find no error in the learned Trial Court framing charges under Sections 323/325/34 IPC against the Petitioners. The

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reliance of the Petitioners on *Sahab Singh* (Supra) is wholly misconceived. Merely because there is delay and enmity between the Petitioners and the complainant, the same will not lead to an irresistible conclusion at this stage that the Petitioners have been falsely implicated and thus the charges should be quashed. The Hon'ble Court was dealing with an appeal against conviction where all the witnesses had been examined and thus on appreciation of evidence the Court came to the conclusion that the prosecution case reveals falsity and the learned Trial Court had convicted the Appellants ignoring that there was a deliberate delay in the FIR and the case of the prosecution was based on highly interested witnesses instead of independent witnesses and by bringing on record a confessional statement which contained false facts. Further even in *Gorige* (supra) the Hon'ble Supreme Court was dealing with a case under Section 3 (1) (x) of the Schedule Casts and Schedule Tribes (Prevention of Atrocities) Act, 1989. It was held that since the basic ingredients of the offence were missing, permitting such a complaint to continue and to compel the Appellant to face the rigmarole of criminal trial would be totally unjustified leading to abuse of the process of the Court.

8. In the present case the witnesses are yet to be examined. Thereupon

the learned Trial Court would be justified in appreciating the veracity of the evidence and impact of the delay in recording of the FIR. I find no merit in the present petition. The petition and the application are accordingly dismissed.


MUKTA GUPTA, J.

NOVEMBER 09, 2011
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