

\$-22

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

+ CRL.M.C. 3786/2011

% Judgment delivered on: 18th November, 2011

TARA CHAND & ANR. Petitioners
Through : Mr. Bijender S. Dhol, Adv.

Versus.

STATE & ORS. Respondents
Through : Ms. Rajdipa Behura, APP for State
along with IO/SIKailash.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

- | | |
|--|-----|
| 1. Whether the Reporters of local papers | No. |
| may be allowed to see the judgment? | |
| 2. To be referred to Reporter or not? | No. |
| 3. Whether the judgment should be reported | No. |
| in the Digest? | |

SURESH KAIT, J. (Oral)

1. Learned counsel for the petitioner submits that vide FIR No. 433/2011, a case under Sections 288/337/338 Indian Penal Code, 1860 was registered against the petitioners on the complaint of complainants/respondents at P.S. Mehrauli.

2. On 05.09.2011, SI Kailash Chand visited the place where accident

took place i.e House No. B/108, Mehrauli Extension, New Delhi after reaching there where House No. B/108, Harijan Health Club's roof was found collapsed near to that excavation of basement of Plot No. B/107, Maidan Garhi Extension was found. The injured were found to be carried away by PCR Van at AIIMS Trauma Centre, Senior officers visited the place.

3. Due to that incident the complainant/respondent Nos. 2 to 7 got injuries, out of which respondent No. 3 to 7 got simple injuries and respondent No. 2/Mr. Yogesh Kumar, s/o Jaipal got grievous injuries and till date he is not able to walk on his own because of the said injuries.

4. Vide the instant petitioners, the petitioners has prayed for quashing for the FIR registered against them.

5. He further submits that respondent NO. 2 to 7 have amicably settled the disputes and they do not want to pursue the matter further.

6. Further submits that they have compensated all the respondents and their medical expenses.

7. Respondent No.2/Mr. Yogesh had not come to the court as he is unable to walk. His father Mr. Jaipal is present in the court today. IO/SI Kailash properly identifies him.

8. Both the petitioners undertake to pay Rs.2.5lacs to respondent No.2/Mr. Yogesh as further/enhanced compensation, as the respondent No.2 received grievous injuries. The proof of payment of the enhanced compensation by both petitioners to respondent No. 2 would be filed within 02 weeks.

9. Learned APP strongly opposes the quashing of FIR as the offence pertains to Section 288 of Indian Penal Code, 1860, which is non-compoundable in nature. Therefore, keeping in view the Gyan Sing Vs. State, the FIR may not be quashed.

10. Learned APP referred the case of Hon'ble Supreme Court in *Gian Singh v. State of Punjab & Anr.* in *SLP (Crl.) No.8989/2010* wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, *B.S. Joshi v. State of Haryana (2003) 4 SCC 675*, *Nikhil Merchant v. Central Bureau of Investigation & Anr. (2008) 9 SCC 677* & *Manoj Sharma v. State & Ors. (2008) 16 SCC 1* to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not. Therefore, she has prayed that till the outcome of the larger Bench of the Apex Court, present petition may be adjourned *sine-die*. Alternatively, she prayed that in the event, the FIR is quashed, heavy costs should be

imposed upon the petitioners.

11. The Division Bench of Mumbai High Court in *Nari Motiram Hira v. Avinash Balkrishnan & Anr.* in *Crl.W.P.No.995/2010* decided on **03.02.2011** has permitted for compounding of the offences of ‘*non-compoundable*’ category as per Section 320 Cr. P.C. even after discussing the case of *Gian Singh (supra)*.

12. Therefore, I feel that unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme Court, all the above three decision hold the field and are the binding precedents.

13 As stated in para 8 above, the petitioner shall pay the total amount of Rs. 2.5 Lac in favour of Respondent no. 2 within 2 weeks. The proof of the same shall be placed on record.

14. Keeping the Compromise Deed into view and the submissions of the learned counsel for the parties, I quash the FIR No. 433/2011 under Sections 288/337/338 Indian Penal Code, 1860 registered against the petitioners at P.S. Mehrauli and all criminal proceedings emanating therefrom.

15. Accordingly, CrI. M.C. 3786/2011 is allowed.

16. Dasti.

SURESH KAIT, J

NOVEMBER 18, 2011/j/

RS