

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

Date of Decision: February 03, 2015

+ CRL.M.C. 194/2013 & Crl. M.A.No.726/2013

S K GULATI &ORS. Petitioners

Through: Ms. Shilpi Jain, Advocate

versus

GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr.Praveen Bhati, Additional
Public Prosecutor for respondent-
State with SI Vikas
Mr. Mahesh Prashad, Advocate for
respondent No.2

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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In this petition, challenge is to Revisional Court's order of 25th October, 2012 as well as trial court's order of 30th July, 2011 on the ground that *prima facie* case is not made out for the offences under Sections 323/325/ 341/506/34 of the IPC in FIR No.33/2008, registered at police station Saraswati Vihar, Delhi.

At the hearing, it was submitted by learned counsel for petitioners that the MLC from a private hospital has been relied upon although there is cutting on it and '*cancelled*' is also written and so, no charge for the

offence under Section 325 of IPC is made out. It is submitted that the investigation is tainted.

Attention of this Court is drawn to the MLC (*Annexure P-2*) from the Government Hospital to point out that the injured-complainant had complained of palpitation only and the patient had left for private hospital. Thus, it is submitted that MLC from the private hospital is manipulated to make the offence grievous though, it is case of simple injury. It is also pointed out that there are three different versions given by respondent-complaint as to why respondent-complaint had gone from a government hospital to a private hospital.

At this stage, learned Additional Public Prosecutor for respondent-State had drawn the attention of this Court to the order of 25th March, 2011 (*Annexure P-7*) passed by the trial court which indicates that the Doctor from the private hospital, who had prepared the subsequent MLC of the respondent-complainant, was examined by the trial court.

Learned counsel for petitioners submits that the trial court has exceeded its jurisdiction in directing that the X-Ray report of respondent-complainant of a private hospital be taken on record and the witness, who had prepared the x-ray report, be examined.

Reliance was placed upon Apex Court's decision in *Mrs. Aparna A. Shah v. M/s. Sheth Developers Pvt. Ltd. & Anr.* 2013 (8) SCALE 140, *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.* AIR 1983 SC 67, *Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.* AIR 2012 SC 1747, *Adalat Prasad v. Rooplal Jindal and Ors.* AIR 2004 SC 4674 and *Randhir Singh Rana v. State (Delhi Administration)* (1997) 1 SCC 361 to submit that at the charge-stage, on the basis of the material

already on record, it is to be seen as to whether *prima facie* case is made out or not.

Upon hearing and on perusal of the impugned orders, material on record and the decisions cited, I find that the trial court is well within its rights to exercise its powers under Section 311 of the Cr.P.C. at any stage of trial and has rightly done so to put the doctor, who had prepared the X-Ray report, in the list of witnesses. Whether the MLC from a private hospital can be relied upon or not, is required to be considered at trial stage and falls for consideration after the evidence is recorded. Whether the investigation is tainted or not, is also an aspect which does not fall for consideration at the charge stage.

At the charge stage, it is only to be seen as to whether a *prima facie* case is made out or not. Even a strong suspicion is sufficient to put the accused on trial. On this aspect, pertinent observations of Apex Court in *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460 are as under: -

"At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage."

In the considered opinion of this Court, *prima facie* case is made out against the petitioners for the offence in question. There is no

palpable error in the impugned orders. This petition lacks substance and is accordingly dismissed while refraining to comment upon the merits lest it may prejudice petitioners at trial.

(SUNIL GAUR)
JUDGE

FEBRUARY 03, 2015

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