

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

Judgment delivered on: 20th August, 2015

+ **CRL.M.C. No.5766/2014**

RAVI PRAKASH Petitioner
Represented by: Mr. M. Hasibuddin, Advocate.

Versus

STATE GOVT OF NCT OF DELHI AND ANOTHER Respondents
Represented by: Mr. Ravi Nayak, Additional Public
Prosecutor for the State with
SI Dinesh Kumar, PS Jaitpur.
Mr. Yogesh Kumar, Advocate for
the Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

+ **CRL.M.C. No.5766/2014**

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, (Cr.P.C.) petitioner seeks setting aside of the impugned order dated 15.09.2014 passed by the learned District & Sessions Judge, South-East, Saket Court Complex, New Delhi, in Criminal Revision No.92/2014 filed by the respondent No.2.

2. After completion of investigation, though police filed the chargesheet under Sections 323/341 IPC against the petitioner, however, vide order dated 17.07.2012, charges under Sections 325/341 were framed against the petitioner.

3. On 12.12.2012, statements of PW1 to PW 3 were recorded. Thereafter, the complainant moved an application under Section 323 Cr.P.C. for committal of the case to the Sessions Court. In the said application, it was stated that respondent No.2 has received serious injuries upon her head and nature of the same was opined by the doctor as 'grievous', hence, an offence punishable under Section 308 IPC was made out against the petitioner, which is triable by the Sessions Court.

4. It was further stated in the said application that the applicant/respondent No.2 had earlier moved an application under Section 156(3) Cr.P.C., however, the same was dismissed by the learned Trial Court stating that Section 308 IPC can be added at the appropriate stage.

5. On an application under Section 323 Cr.P.C. having been moved by the respondent No.2 for committal of the case to the Court of Sessions, the learned Trial Court passed the order dated 18.02.2014 by recording that the complainant has been examined as PW1, who deposed that she was hit on head with lathi, and PW2 and PW3 have deposed that the petitioner/accused had hit the complainant with a lathi on her head. The learned Trial Court noting that material on record showed that the complainant had been hit with lathi only once and there was no material to show that accused had hit the complainant with an intention or knowledge to cause her death, dismissed the said application moved by the respondent No.2.

6. Being aggrieved, the respondent No.2 challenged the same before the Appellate Court by filing Criminal Revision No.92/2014. The same was allowed by the learned Appellate Court vide order dated 15.09.2014

by recording that the complainant was hit on head with lathi resulting grievous injuries for which she received nine stitches. Such a blow could have caused her death and, therefore, observed that framing of charge under Section 308 IPC was called for.

7. It was further recorded that a blow with a lathi on the head is capable of resulting in death. Simple knowledge that it could so result, ordinarily has to be imputed to the offender unless there are other circumstances to indicate that he could not have had such knowledge. Merely because the injury has been opined as simple on a vital region does not mitigate the offence under Section 308 IPC. Accordingly, the learned Trial Court was directed to take further steps.

8. The learned ASJ has relied upon the case of *Ajit Singh & Anr. Vs. State, 2010 (1) JCC 792* of this Court, wherein observed that a charge under Section 308 IPC had been rightly framed where the accused had inflicted a blow on the head with a rod, even if the injury was stated to be simple in nature.

9. Learned counsel appearing on behalf of the respondent No.2/ complainant submitted that the complainant received the head injury, which was grievous in nature as she received nine stitches for the same. He further submitted that the said injury could have been fatal, however, the respondent No.2 survived. Thus, the learned ASJ has passed the appropriate order.

10. Learned Additional Public Prosecutor appearing on behalf of the State has submitted that the learned Trial Court at the stage of framing of charge or during recording of evidence, has power to direct the police to

conduct further investigation and if the Trial Court finds material on record, charge can accordingly be amended as has been done in the case in hand.

11. He further submitted that accordingly the Criminal Revision filed by the applicant/complainant against the order dismissing the application under Section 323 Cr.P.C. was allowed. Accordingly, the police has filed the e-challan and the charge under Section 308 is yet to be framed against the petitioner.

12. I have heard the learned counsel for the parties.

13. After completion of investigation, though Police had filed the chargesheet for the offences punishable under Sections 323/341 IPC against the petitioner, however vide order dated 17.07.2012 charges under Sections 325/341 were framed against the petitioner. It establishes that the Id. Trial Court applied its mind at the time of framing of charge and after considering the evidence available on record.

14. PW-1 and PW-2 deposed that the petitioner had hit the respondent no.2 / complainant with a Lathi on her head. This fact was available before the Trial Court at the time of framing of charge. Therefore, Id. Trial Court framed charges under Sections 325/341 IPC against the petitioner. However, respondent no.2 / complainant did not challenge the charge framed and made an application under Section 323 Cr.P.C. whereby prayed that she received injuries upon her head and nature of the same was grievous as opined by the Doctors. Hence, an offence punishable under Section 308 IPC was made out against the petitioner. The plea of the respondent no. 2 was dismissed by the Id. Trial Court vide

its order dated 18.02.2014, whereby it was recorded that all the witnesses have deposed that the petitioner / accused had hit the complainant with a lathi on her head and the material on record shows that complainant has been hit only once with a Lathi and there is nothing on record to show that accused had hit the complainant with an intention or knowledge to cause her death.

15. Being aggrieved with the said order, respondent no. 2 / complainant challenged the same before the Id. Additional Sessions Judge, who while setting aside the order dated 18.02.2014 passed by Id. Magistrate relied upon the Judgment passed in the case *Ajit Singh (supra)* and observed that the case under Section 308 IPC is made out against the petitioner.

16. For considering the offence under Section 308 IPC, the Court has to see the following aspects:

- (i) Intention and knowledge of the accused.
- (ii) Type of weapon used in the offence and
- (iii) On which part of the body the injury caused.

17. In the present case, petitioner / accused had hit the complainant / respondent no. 2 on her head with lathi (wooden stick), however there is no material on record from which we can infer his intention and knowledge to cause her death which is main ingredient of Section 308 IPC. Though, he had the opportunity to hit her further, but he had hit only once. Thus it cannot be established that with such a blow, the injured would loss her life. The Id. Trial Court had not acted as a mouthpiece of the investigating agency. Therefore, though the chargesheet was filed under Sections 323/341 IPC against the petitioner, but charge under

Sections 325/341 IPC was framed.

18. It is trite that during trial, if evidence of grave offence is available, the Trial Court has power to frame the charge for the said offence. Since, in the present case, deposition of the witnesses corroborates the material on record and the chargesheet as well; therefore, there is no scope before the Id. Trial Court to frame the charge under Section 308 IPC.

19. In the case of **Ajit Singh** (*Supra*), the accused inflicted injury on the head of the complainant with an iron rod, whereas in the present case, petitioner / accused had hit only once on the head of the respondent no. 2 / complainant and that is with Lathi (Wooden Stick).

20. Perusal of order on charge shows that the Id. Trial Court has sifted the material available and applied its mind and only thereafter rightly framed charges for the offences punishable under Sections 325/341 IPC.

21. It is pertinent to note that the respondent no. 2 had earlier moved an application under Section 156 (3) Cr.P.C. whereby prayed that Section 308 IPC be added. Same was dismissed. However, she did not challenge the same.

22. In view of above, I am of the considered opinion that Id. Additional Sessions Judge had no further material to come to the conclusion that case under Section 308 IPC is made out against the petitioner. Therefore, I hereby set aside the impugned order dated 15.09.2014 passed in Crl. Rev. P. 92/2014 and emanating proceedings thereto.

23. Accordingly, the petition is allowed.

Crl. M.A. 19618/2014

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

AUGUST 20, 2015
sb/jg