

27# \$~

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

+ **CRL.M.C. 3359/2016**

WAZIR SINGH & ANR

..... Petitioners

Represented by: Mr. Jaspreet S. Rai and Mr.
Rohit Nagpal, Advocate.

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Kuldeep,
PS Vikas Puri, West.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

14.09.2016

Crl. M.A. No. 14240/2016 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 3359/2016 and Crl. M.A. No. 14239/2016 (Stay)

1. FIR No. 21/2011 was registered pursuant to directions under Section 156 (3) Cr.P.C. and on investigation a charge sheet was filed for offences punishable under Sections 323/341/34 IPC against the petitioners who are the father and son.

2. Cognizance of offence as taken was challenged by the petitioners by filing Crl. M.C. No. 2701/2011 which was dismissed by this Court vide order dated 3rd September, 2012. Vide order dated 23rd September, 2015 the learned Metropolitan Magistrate found a prima facie case for framing of charge for offences punishable under Sections 323/341/34 IPC against the

CRL.M.C. 3359/2016

Page 1 of 3

petitioners and thus framed the said charge. Order dated 23rd September, 2015 was challenged by the petitioners by filing a revision petition which was dismissed by the learned Additional Sessions Judge vide impugned order dated 11th July, 2016. Hence the present petition.

3. The contention of learned counsel for the petitioners is that even on the face of the complaint no offence is made out. The allegations of the complainant are not supported by the MLC which was prepared by a private hospital as no injury was found on the complainant despite complaining of being hit on the head by an iron rod. It is urged that the learned Trial Court and the learned Revisional Court failed to notice that the complaint against the petitioners was concocted one and made after a delay of two days with no explanation rendered for the delay caused. It is further submitted that there are material contradictions in the statement of Satyawati, the mother of the respondent No.3 recorded after the incident. Further there was no recovery of weapon of offence alleged by the police connecting the petitioners to the alleged crime. Hence it is prayed that the order framing charge dated 23rd September, 2015 and the impugned order dated 11th July, 2016 be set aside.

4. The allegations against the petitioners in the FIR by respondent No.3 S.C. Kaushik are that on 24th February, 2009 at about 8.00 AM son of S.C. Kaushik, that is, Sudhir Kaushik was waiting for him in his house near the gate as he had to be taken for BTC Pusa for taking the exam. When the complainant reached in his street he saw that the petitioner No.1, resident of the same street, was having a rod in his hand and was beating his son Sudhir Kaushik with the rod and the petitioner No.2 was having a cricket bat in his

hand who also attacked his son Sudhir Kaushik on his head. After seeing the complainant they both ran away and the Petitioner No.1 started pretending to other neighbours who had gathered on hearing the cries of his son that his son was trying to harm his car which was parked outside without any sign of attack.

5. MLC of Sudhir Kaushik notes alleged history of assault and patient hit by rod on his head (as told by the attendant) at his residence and complain of headache. Though no external injury was found however, the assault was not ruled out and the injury was opined to be simple in nature. Further as per the allegations the son of the complainant Sudhir Kaushik was inside his residence and thus an offence under Section 341 IPC was also prima facie made out. The defence of the petitioners that above case was a concocted case or that there was delay in registration of the FIR or that the MLC was not got prepared deliberately from a government hospital but from a private hospital are all issues which can be gone into at the stage of trial and at the stage of charge it cannot be held that there was no prima facie case on the basis of the allegations as noted in the FIR against the petitioners for framing charge under Sections 341/323/34 IPC.

6. Consequently, the present petition and the application are dismissed.

MUKTA GUPTA, J.

SEPTEMBER 14, 2016
‘vn’