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

% Judgment delivered on: 07.08.2018

+ CRL.REV.P. 327/2017

VIRESH MOHAN Petitioner

versus

STATE (NCT) OF DELHI & ORS Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Abhishek Vikram, Advocate.

For the Respondent: Mr. Kamal Kumar Ghai, APP for
State with ASI Narender Kumar, PS
Bawana.
Mr. Sahil Malik with Mr. Vishal
Bhardwaj and Mr. Vikas Dabas,
Advocates for R-2 to 8 & 10
Mr. Pradeep Kumar Arya with Mr.
Raj Karan Sharma, Mr. Aditya Yadav
and Mr. Priyanshu Malik, Advocates
for R-9.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

07.08.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 06.08.2013 limited to the extent that the said order discharges respondent No.10 – Dharmender, son of

Ram Singh. The Trial Court has held that *prima facie* no charge is made out against respondent No.10 – Dharmender.

2. The contention of the learned counsel for the petitioner is that Dharmender was very much involved in the assault on the petitioner/complainant and his family.

3. It may be noticed that the name of Dharmender does not figure in the FIR.

4. Learned counsel for the petitioner submits that Dharmender was present. However, since the petitioner was dazed after the incident, he must have omitted the name of Dharmender while making a complaint. However, his name subsequently figures in a statement under Section 161 Cr.P.C. given by the brother of the petitioner.

5. It is alleged in the FIR that an altercation had taken place with the petitioner wherein eight persons are alleged to have come into his house and assaulted the petitioner and his family members with sticks and rods.

6. Perusal of the FIR negates the contention of the learned counsel for the petitioner that the petitioner was dazed. This observation is being made as with great precision and detail the role of each of the accused has been mentioned in the FIR. The FIR in great detail mentions as to what kind of weapon was being used by each of the co-accused and how each of the injured was assaulted by the said co-

accused and on which part of the body the injury was inflicted. This kind of detail and description cannot be given by a person who is alleged to be dazed and not in a fit state to remember as to what had being transpired.

7. Further, it is pointed out by the learned APP for the State that even in a subsequent statement under Section 161 Cr.P.C., the petitioner does not name Dharmender. However, his name figures in the statement under Section 161 Cr.P.C. given by the brother of the petitioner, which statement was recorded nearly after one month of the registration of the FIR. Further it may be noticed that in the 161 statement of the brother, Dharmender is alleged to have assaulted the injured Hemant. In the FIR the petitioner has stated that Hemant was assaulted by accused Satish and Joginder.

8. It is pointed out that by the impugned Order-on-Charge, the Trial Court has taken into account the charge sheet filed and also the fact that the investigation did not reveal any incriminating material against respondent No.10 – Dharmender. The Trial Court has duly considered the record of investigation as well as the charge sheet filed and has come to a conclusion that no case is made out for raising any suspicion, leave alone grave suspicion, against respondent No.10 – Dharmender.

9. On perusal of the record, I am in agreement with the view formed by the Trial Court that no case is made out for framing

charges against respondent No.10 – Dharmender and that there is no material raising suspicion, leave alone grave suspicion, against Dharmender except for a statement under Section 161 Cr.P.C. given by the brother of the complainant and that also after one month which is contradicted by the statement of the complainant/petitioner, , who with great detail and precision had ascribed role to each of the co-accused and had omitted the name of the respondent No.10 – Dharmender from the FIR and the statement under Section 161 Cr.P.C.

10. In view of the above, I find no merit in the petition. The same is accordingly dismissed.

Crl.M.A.7320/2017 (for condonation of delay of 201 days in filing the petition)

1. The petitioner, by the present application, seeks condonation of delay of 201 days in filing the petition.

2. The reasons given by the petitioner are that the petitioner had earlier filed a revision impugning Order-on-Charge, which was dismissed as withdrawn on 09.09.2016 with liberty to file a fresh petition. The present petition was filed in May 2017. The reason for delay given is that the petitioner was engaged in some personal family affairs on account of which, he was unable to collect the file from the office of the earlier counsel and after having been relieved of his family obligations had contacted the present counsel for filing the

present petition and it took substantial time in “*joining all pieces of thread of facts which relate back to 2011*”.

3. I am of the view that petitioner has failed to explain the delay. Further, since, I have already considered the petition on merits and rejected the same, I find no ground to condone the delay.

4. The application is accordingly dismissed.

AUGUST 07, 2018
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SANJEEV SACHDEVA, J

