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

+ **CRL.REV.P. 662/2019**

ASHOK SHARMA

..... Petitioner

Through Mr Ramesh Gupta, Senior Advocate with
Mr Bharat Sharma, Mr Mahender Sharma,
Mr Shailendra Singh, Mankaran Singh,
Advocates.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Ms Kusum Dhalla, APP for State.
SI Kailash Chand present.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.03.2020

1. The petitioner has filed the present petition impugning an order dated 15.03.2019, whereby the learned ASJ has directed that the matter be remanded to the learned MM as according to the Trial Court a *prima facie* case for commission an offence under Section 308 of the IPC has not been made out.
2. A charge sheet had been filed against the respondents for committing offences punishable under Sections 323/341/506/354/308/451/452/34 of the IPC. At the outset, the learned ASJ noticed that all the alleged offences other than Section 308 of the IPC were triable by a Magistrate and examined the matter only with the perspective of determining whether any case for framing charges under Section 308 of the IPC was made out.
3. The said case arises out of FIR bearing No. 197/2017 registered with

PS Fatehpur Beri. The said FIR was registered on the report of an incident which had occurred on the evening of 26.07.2017. It was alleged by the complainant (Ashok Sharma) that the respondents had attacked him and his family members with *lathis* and iron rods. Resultantly, the complainant had suffered a laceration injury on the left side of his temporal and occipital scalp 3 x 2 c.m. The MLC classified the said injury as grievous. Three other members of the complainant's family had also suffered grievous injuries and other family members had suffered simple injuries.

4. The Court had noted that a scuffle had ensued between two groups of persons residing in the neighbourhood. It was reported that the same matter was resolved, however, subsequently, the complainant's neighbour along with his brother had confronted the complainant and hurled abuses. It was alleged that the brother of the accused (Surender) had caught hold of the complainant and started beating him. In the meanwhile, the complainant's sister had attempted to rescue him but she was pushed away by the accused (Mahinder). It is stated that, thereafter, the accused Mahinder and other family members started beating the complainant and his family members. It is alleged that the accused Mahinder had followed the complainant, entered his house and had beaten him and his family members with *lathis* and Iron rods. The complainant had made endeavours to protect the women of the family, who were allegedly being abused at this stage and the accused inflicted serious blows on the complainant and other family members. All the family members of the complainant had suffered injuries and four of them (including the complainant) had suffered grievous injuries. Whilst the complainant had suffered a grievous injury on his head, the other persons are stated to have received injuries on arms and legs.

5. The Learned ASJ was of the view that the sequence of events indicated that a quarrel had taken place on a trivial issue and injuries were inflicted in the heat of the moment, therefore, the intention to commit an offence of culpable homicide not amounting to murder could not be imputed to the accused. The Court also proceeded on the basis that the laceration injury on the head was a minor injury, which indicated that the blow inflicted was not with such severity, as to suggest any intention or knowledge on the part of the accused to commit a culpable homicide not amounting to murder.

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

7. This Court is unable to concur with the view of the learned ASJ. There appears to be no reason to disbelieve the complainant had suffered a grievous injury on the head. Although, the Trial Court has considered the said injury as a minor one, the MLC has classified the said injury as grievous. The question whether the prosecution would be able to establish the same is a matter of trial. However, at this stage, the Trial Court could not have proceeded on the basis that there was no *prima facie* case that the accused had inflicted a grievous injury on the head of the complainant. The prosecution's case is that the delivery of an injury on the head indicated the knowledge, if not intention, to commit a culpable homicide. This case could not be rejected at this stage. *Prima facie*, if it is established that the accused had delivered a blow by an iron rod, as alleged, on the head of the complainant resulting in a grievous injury, there would be reasonable ground to suspect that the accused had the knowledge that such a blow could result in a fatality.

8. The narration of events also indicates that the accused had followed

the complainant into their house; the complainant had then moved away from there and had tried to escape to another house. It is alleged that the accused had followed him there as well. The alleged conduct of the accused in delivering blows that resulted in grievous injuries and pursuing the complainant to delivering such blows also gives rise to a grave suspicion that the accused had the intention to inflict serious injuries that could be fatal.

9. The fact that three persons other than the complainant have also suffered grievous injuries also cannot be ignored. It is also necessary to bear in mind that at this stage, the court is merely required to examine whether the prosecution has provided material to suspect that the accused have committed the offences as alleged. The question, whether the prosecution is able to establish that the accused had committed such offences is required to be determined at a later stage. Given the facts as narrated, the prosecution ought not to be precluded from establishing the necessary ingredients of commission of an offence punishable under section 308 of the IPC.

10. Considering the above, the present petition is allowed and the impugned order remanding the matter to the learned MM to consider framing of charges, is set aside. Consequently, any order passed by the learned MM framing charges, is also set aside.

11. The matter is directed to be placed before the learned ASJ for further proceedings.

VIBHU BAKHRU, J

MARCH 13, 2020/pkv