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

+ **CRL.REV.P. 661/2017**

SUNIL KUMAR

..... Petitioner

Through: Mr. Ritesh Agrawal, Mr. Teejas
Bhatia and Ms. Aishwarya Adlakha,
Advocates

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Hirein Sharma, APP for State
with SI Sushil Malik, P.S. Naraina.
Mr. K. Singhal, Mr. Chetan Bhardwaj
and Mr. Arshid, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER
30.01.2020

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1. Vide present petition, the petitioner seeks directions as follows:-

a) To summon the trial court record of Sessions Case No. 79/3/17, pertaining to FIR No. 20/12 PS Naraina, titled as "State Vs. Sunil Kumar" pending in the court of Shri. Ajay Pandey, ASJ, Patiala House Courts, New Delhi;

b) To quash/set aside the impugned order dated 10.08.2017 passed by Shri. Ajay Pandey, ASJ, Patiala House Courts, New Delhi, in Sessions Case No. 79/3/17, pertaining to FIR No. 20/12 PS Naraina, titled as "State vs. Sunil Kumar" wherein the Ld. ASJ framed charges and ordered trial against the petitioner;

2. The brief facts of the case are that on 01.02.2012, an FIR No. 20/12 dated 01.02.2012 under section 308 IPC was got registered at P. S. Naraina

by one Darshan Lal Katyal against unknown persons. In the said FIR, it is alleged that he is the resident of F-17, Naraina Vihar, New Delhi and he is a senior citizen aged about 76 years. He is involved in various social works and is also the Treasurer of Apna Park Committee. Apna Park is situated just behind the house of the complainant in which in the morning and evening, he goes for a walk. On 22.01.2012, in the evening when he went for a walk, he found that Ms. Sudesh Tomar, R/o E-248, Naraina Vihar, New Delhi, was walking with her dog and stopped by for the dog to defecate. The complainant humbly requested her not to do that because such an act is prohibited and causing pollution, on which that lady got angry and abused him. She said to complainant that he had no business to stop her and raised question to the complainant such as “who are you”? “are you owner of this place”? Sudesh Tomar also said that he will have to face dire consequences for stopping her as he doesn't know who she is. She further said that there is nobody in Naraina who can stop her and she will crush him and he should keep himself ready for that. At that time, Mr. K. L. Bhatia, R/o F-1 Naraina Vihar, New Delhi-28, and Nandan, Gardener of Apna Park, were also present. The complainant didn't take that seriously and went to his house from there.

3. After this incident, on 25.01.2012, at around 5:00 pm in the evening, the complainant was crossing the road in front of Apna Park, then suddenly a young man came running from the back and stated that he is the same person who had argued with Madam Sudesh Tomar in the park and forcefully hit on his head with a brick, due to which the complainant fell on the ground. The complainant tried to catch hold of him on which that man jumped and kicked on the nose of the complainant due to which the nose of

the complainant started bleeding and the complainant fell down and became unconscious. He recognised the said young man by face, whom Sudesh Tomar had sent to hit him.

4. Learned counsel appearing on behalf of the petitioner submits that after investigation, charge sheet under Section 308 IPC was filed on 01.04.2017. In the said charge sheet, it is stated that there was no involvement of Sudesh Tomar in the incident with the complainant. It is also stated that on the date of the incident, Sudesh Tomar had gone to Haridwar with her driver. However, in spite of that the petitioner was charge sheeted without any evidence against him and contrary to the fact that his involvement was based upon the alleged incident between complainant and Sudesh Tomar. Since no incident had occurred with Sudesh Tomar, there was no question of any involvement of the petitioner for taking any revenge for Sudesh Tomar.

5. He further submits that on 10.08.2017 learned Addl. Sessions Judge-04, Patiala House Courts, New Delhi, framed charge against the petitioner for the offence punishable under section 308 IPC. It is held by the learned Judge that there is prima facie sufficient material to frame the charge against the petitioner. However, the learned Judge failed to appreciate that the allegations against the petitioner was based upon the incident happened with Sudesh Tomar but according to the Investigating Officer, no such incident ever happened with Sudesh Tomar as she was in Haridwar on 22.01.2012 and 25.01.2012. Thus, there was no question of involvement of the petitioner for doing any act of assault on the complainant, however, he for the purpose to take revenge against Sudesh Tomar, the complainant has implicated the petitioner.

6. fact remains that the present incident has taken place only because of the altercation between the complainant with Sudesh Tomar on 22.01.2012 in Apna Park and the complainant was hit by brick as alleged by the petitioner on 25.01.2012. This incident had taken place may be out of a vehement conversation with Sudesh Tomar. However, he is not made accused in the chargesheet, though her statement has been recorded wherein she stated that on 25.01.2012 she was at Haridwar not in Delhi. But, the CDR of said Sudesh Tomar establishes that she was very much in Naraina Vihar, New Delhi. Thus, the investigation is not properly carried out. Instead of directing further investigation, I hereby advice the trial Court to look into the matter and direct, if necessary, to investigate further regarding role of Sudesh Tomar.

7. In view of the above, at this stage, I am not inclined to quash the FIR and emanating proceedings therefrom against the petitioner.

8. Petition is accordingly dismissed.

9. The trial Court is directed to proceed with the case as per law.

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10. In view of the order passed in the present petition, the application has been rendered infructuous and is accordingly disposed of.

SURESH KUMAR KAIT, J

JANUARY 30, 2020

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