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

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Reserved on: 13.02.2023

Pronounced on: 06.04.2023

+ **CRL.REV.P. 139/2023, CRL. M.A. 3778/2023 & 3779/2023**

SMT. VIJAY & ORS.

..... Petitioners

Through: **Mr. Biwswajeet Shrain, Advocate**

versus

STATE & ORS

..... Respondents

Through: **Mr. Naresh Kumar Chahar, APP
for State with SI Vikash, P.S. J.P.
Kalan**

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the petitioners against the impugned order dated 15.11.2022 passed by learned Additional Sessions Judge-05, South West District, Dwarka Courts, New Delhi ('Trial Court') in Sessions Case No. 794/2021, arising out of FIR bearing no. 145/2020, registered at Police Station J.P. Kalan, Delhi, for the offence punishable under Section 308/34 of Indian Penal Code, 1860 ('IPC'), whereby charges have been framed

against petitioners and other accused persons under Sections 341/308/323/34 of IPC by learned Trial Court.

2. Briefly stated, facts of the present case are that on 26.06.2020, upon receipt of DD no. 58A, the concerned police officials had reached the place of incident i.e. Jitan Pana Village, Dhansa, New Delhi, where they had discovered that two parties, involved in a dispute over land, had been taken to the hospital for MLC by PCR, and the injured individuals had been declared unfit to give statements by the concerned doctors. Thereafter, the concerned police officer had recorded the statement of the complainant Sh. Rakesh (respondent no. 2), who had reported that while he was at his home and his cousin brother namely Sh. Virender (respondent no. 3) had returned from work, three persons namely Anil, Shree Om and Mohit had attacked Sh. Virender with iron rods, and when he had gone to help his brother, he had also been attacked by the said persons. He had alleged that thereafter, the present petitioners i.e. Dalip, Sandeep, Deepak, Naresh, Vijay, and Kiran had also arrived at the spot, equipped with wooden sticks, and had started beating Sh. Rakesh, his mother and wife of Sh. Virender, and Sh. Virender had sustained several injuries on his head and body. On the basis of this complaint, present FIR was registered.

3. After investigation, charge sheet was filed against the accused persons and learned Trial Court *vide* impugned order dated 15.11.2022 framed charges under Sections 341/308/323/34 of IPC. The relevant portion of the order reads as under:

“...After having gone through the submissions of both the parties and perusal of the record, particularly, the statements of Rakesh, Pinki, Indrawati and Virender, it appears that all accused persons were present at the spot and they attacked upon the Virender, Rakesh, Indrawati, Pinki and Kusum. In the said quarrel, Virender sustained grievous injuries, particularly, on his vital part and another person, namely, Rakesh, Indrawati, Pinki and Kusum also sustained injuries. I am of the considered view that there is a prima face case u/s 341/308/323/34 IPC against all the accused persons is made out. Accordingly, charge u/s 341/308/323/34 IPC be framed against all of them.

Separate Charge for the offence under Section 341/308/323/34 IPC is framed against the accused persons to which they plead not guilty and claim trial. PWs Rakesh, Virender and Pinky be summoned through IO concerned for next date of hearing. Also issue summons to MHIC(M) concerned to produce the case property, if any, on next date of hearing...”

4. Aggrieved by the aforesaid order, the present revision petition has been preferred by the petitioners.
5. Learned counsel for the petitioners states that learned Trial Court has failed to appreciate that nine persons allegedly accosted the injured, and the six petitioners herein had reached the place of incident later on and were only having wooden sticks. It is stated that the injuries received by the complainants are simple in nature except respondent no.3 who had received one grievous injury on Left Fronto Tempore Parietal, thus, the same would not attract Section 308 IPC qua the petitioners. It is further argued that there was no intention or knowledge on part of the petitioners to cause such injuries, and merely because an

injury has been found on the head, it cannot be said that such an injury was caused with the intention or knowledge to commit culpable homicide not amounting to murder. Learned counsel for the petitioners submits that cross-FIR bearing no. 146/2020 was also registered at the behest of petitioner no. 4 against respondent no. 2 and 3 under Sections 323/341/506/34 IPC. It is stated that fight took place immediately without any preparation on the part of petitioners, and it was respondent no. 2 and 3 and their family members who started fighting and in the said scuffle, all the petitioners had sustained injuries.

6. *Per contra*, learned APP for the State, opposes the present petition, argues that bare perusal of the statement of Rakesh, Pinki, Indrawati and Virender shows that all the accused persons, including the present petitioners were present at the spot with iron rods and wooden sticks and they had attacked upon the respondents. It is further submitted that Virender sustained grievous injury on his head in the said incident, as a result of which he remained in the hospital for 21 days, therefore, there is no infirmity in the impugned order passed by learned Trial Court.

7. The arguments addressed on behalf of both the sides have been heard and material on record has been perused.

8. The statutory law with respect to framing of charge and discharge is provided under Sections 227 and 228 of Cr.P.C., and the same has been reproduced as under for reference:

"227. Discharge.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the

submissions of the accused and the prosecution in this behalf. the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

9. In *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.* 2022 SCC OnLine SC 1057, the Hon'ble Apex Court has reiterated the well-settled law on exercise of power under Section 397 or Section 482 of Cr.P.C. by the Courts while deciding a petition seeking discharge or quashing of charge framed by the Trial Court. The relevant observations in this regard read as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, **at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person.** It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. **It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record.** Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when

charge had been framed, is also well settled. **At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied.** Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

(Emphasis supplied)

10. The contention of learned counsel for the petitioners is that there was no intention to cause deadly injury and merely because injury has been caused on the head, the petitioners cannot be charged for offence punishable under Section 308 of IPC. He also argued that at best, only a charge under Section 323 IPC can be made out against the petitioners. To appreciate the contentions raised on behalf of petitioners, it would be relevant to discuss the law relating to Section 308 IPC, which reads as under:

“308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he

would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Illustration A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.”

11. The Hon’ble Apex Court in case of *Sunil Kumar v. NCT of Delhi* (1998) 8 SCC 557 has discussed the law relating to Section 308 IPC and has held as under:

“4. The view taken by the High Court is obviously erroneous because offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC”.

12. This Bench in *State (NCT of Delhi) v. Varun Dass and Anr.* 2022 SCC OnLine Del 2992, had also discussed the ingredients and scheme of Section 308 IPC. The relevant portion of the decision is reproduced hereinunder for reference:

“8. It is clear from the reading of the Section itself that to constitute an offence under Section 308 IPC, the following conditions should be fulfilled:

- (a) that a person does an act;
- (b) that the act is done with an intention or knowledge to commit culpable homicide not amounting to murder;
- (c) that the person concerned commits the offence under such circumstances that in case the act so done by that person causes death, he would be guilty of culpable homicide not amounting to murder;
- (d) in case hurt is caused while committing this offence, the person concerned shall be awarded enhanced punishment.

9. Therefore, Section 308 IPC does not make it mandatory that for an offence to be covered under Section 308 IPC, hurt should have been caused by that person. Causing hurt is, therefore, not an essential condition to attract the provisions of Section 308 IPC.

10. The second part of Section 308 IPC further explains that in case hurt is caused to any person by an act falling within the purview of section 308 IPC, the accused shall be punished with imprisonment of either description for a term which may extend to 7 years or with fine or with both.

11. There is no confusion regarding the settled position of law and the definition of Section 308 IPC itself that causing hurt by the act committed under Section 308 IPC and no hurt being caused are both covered under Section 308 IPC itself, attracting different punishments. What is crucial to note while deciding a case at the stage of charge under Section 308 IPC is that the act should have been caused with such intention or knowledge and under such circumstances that in case said act caused death, he would be guilty of culpable homicide not amounting to murder.”

13. At the outset, in the present case, there are specific statements of the public witnesses including the complainant that three accused persons namely Anil, Shree Om and Mohit were armed with iron rods, and had caught hold of the victim and had thereafter beaten him with iron rods. It is further mentioned in the statements that the present petitioners had also arrived at the spot, armed with wooden sticks, and had assaulted the victims, and respondent no. 3 i.e. Virender had sustained injuries on his head, which were opined to be grievous in nature. He had remained admitted in hospital for 21 days.

14. At the stage of charge, since only a *prima facie* view of the matter is to be considered on the basis of material on record, it is clear from the statements of witnesses and circumstances of the case that the accused persons including the petitioners would have had sufficient knowledge that in case the victim was beaten with iron rods and wooden sticks on the head, it would have been sufficient under ordinary circumstances to cause death of the complainant/victim so assaulted. In case death of the victim would have been caused, the accused persons would have been guilty of culpable homicide not amounting to murder.

15. At the cost of repetition, it is to be noted that at stage of charge, the intention or knowledge of an accused envisaged under Section 308 IPC has to be ascertained only *prima facie*, on the basis of the injury caused to the victim, including as to whether it was caused on a vital part of the body, and as to whether the said injury in ordinary circumstances could have caused the death of victim. From the record, it cannot be said that it was a simple case of scuffle between the parties,

and it will be only during trial, that the role of each accused will be clear on the basis of the examination of evidence and the witnesses. Moreover, the fact that the victim Virender remained admitted in hospital for 21 days would also indicate the severity of the injury and only after examination of the doctor concerned, it would be clear as to whether it was sufficient to cause death of the victim in ordinary circumstances.

16. As far as contention of learned counsel for petitioners that another FIR was lodged at the behest of petitioner against respondents is concerned, the mere fact that a cross-FIR was also registered against the victims in this case, can be of no help to the petitioners. Needless to say, both the cases have to be tried independently on the basis of the facts and circumstances of each case and one cannot affect the outcome of the other case at the very threshold. In this regard, reliance can also be placed on the decision of Hon'ble Apex Court in case of **A.T. Mydeen v. The Assistant Commissioner 2021 SCC OnLine SC 1017**, whereby it was held as under:

“25. So far as the law for the trial of the cross cases is concerned, it is fairly well settled that each case has to be decided on its own merit and the evidence recorded in one case cannot be used in its cross case. Whatever evidence is available on the record of the case only that has to be considered. The only caution is that both the trials should be conducted simultaneously or in case of the appeal, they should be heard simultaneously. However, we are not concerned with cross-cases but are concerned with an eventuality of two separate trials for the commission of the same offence (two complaints for

the same offence) for two sets of accused, on account of one of them absconding”.

17. Thus, considering the overall facts and circumstances of the case, and in view of the foregoing discussion, this Court finds no reasons to interfere with the impugned order dated 15.11.2022 passed by learned Additional Sessions Judge-05, South West District, Dwarka Courts, New Delhi.

18. Accordingly, the present petition stands dismissed.

19. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present petition seeking discharge, and the same shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

APRIL 06, 2023/kss

