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

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Date of decision: 10th January, 2025

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CRL.M.C. 2461/2018

GAURAV

.....Petitioner

Through: Mr. Anirudh Yadav, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the State with SI Dharamveer, P.S.Chhawla.

Ms. Mishika Singh, Advocate (DHCLSC) for the complainant/R-2 along with complainant in person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Petition under *Article 227 of the Constitution of India, 1950* read with *Section 482 of the Criminal Procedure Code, 1973* has been filed on behalf of the Petitioner/Accused, Gaurav, against the Order dated 27.11.2017 *vide* which the learned ASJ has set aside the Order dated 11.04.2017 of M.M. discharging the Petitioner.

2. FIR No.232/2015 under *Section 324/341/34 of the Indian Penal Code, 1860* was registered at P.S. Chhawla on the complaint of Sh. Raj Singh wherein he had alleged that on 18.04.2015, at about 8 P.M. his brother Rajender was sitting in front of the grocery shop, when



Himanshu @ Monty s/o Bir Singh, who lives in their neighbourhood, came and told him to make his brother Gaurav to understand that his coming to his plot and smoke hukka, has become a cause of quarrel in the family because the mother of the Complainant/Raj Singh feels that they are spoiling their son.

3. On this, Monty along with his brother/Gaurav started using abusive language. The Complainant tried to make them understand, but Monty slapped him and they both had a scuffle. Thereafter, Monty went to his house and brought a vegetable cutting knife and called his brother Gaurav who came and caught hold of him, while Monty attacked him with a knife and inflicted injuries in his head, face, ear and hand. The Complainant/Rajender was rescued by his neighbors Rakesh, Nitesh and Ramchander.

4. After completion of investigation, Charge Sheet had been filed before the learned M.M.

5. The learned M.M., *vide* order dated 11.04.2017, at the stage of framing of Charge, considered the submissions made on behalf of the accused Gaurav and discharged him by observing that there were contrary version given by the witnesses, the benefit of which has to be extended to the accused. Reliance was placed on the judgments State of Delhi vs. Gyan Devi & Ors, (2000) 8 SCC 239 and Union of India vs. Prafulla Kumar Samal & Anr, 1979 AIR 366.

6. Revision was filed against the said Order of discharge, before the learned ASJ who in the impugned Order, observed that the two



witnesses Ram Chander and Rakesh were not eye-witnesses and apparently had arrived at the spot after the fight. The statement of the Complainant, Raj Singh was cogent and prima facie disclosed the offences under Section 324/341/34 IPC. Consequently, the Order of discharge of learned M.M was set aside and the directions were given for framing of Charge against the Petitioner.

7. Aggrieved by the said Order, present Petition has been filed.

8. The main ground on which the impugned Order has been assailed, is that the Petitioner Gaurav was not present and involved in the incident but has been falsely named by the Complainant. This is evident as the Complainant though he was fit for statement and was discharged on the same day of the incident i.e. 18.04.2015, despite which he made the statement after four days, on 22.04.2015. There is an inordinate delay of four days in registration of FIR which clearly reflects that the Petitioner was not involved in the incident, but has been named falsely in the complaint.

9. It is further argued that this fact is corroborated from the respective statements under Section 161 Cr.P.C. of Ram Chander and Rakesh, the two witnesses that who as per the Complaint, had come to rescue him but have not named the Petitioner as the aggressor/accused. As observed in *Gyan Devi* and *Prafulla Kumar Samal* (Supra), there are contradictions in the statements of the witnesses which create a doubt about the entire prosecution story and the Petitioner is entitled to be discharged.



10. Furthermore, no original MLC has been placed on record.
11. All these circumstances clearly point out towards the false implication of the Petitioner by the Complainant, entitling him to a Discharge.
12. ***Learned Prosecutor has submitted*** that there is the statement of the Complainant wherein the entire incident has been given in detail wherein the specific role of the Petitioner as co-assaultor, has been described. It has already been explained in the impugned Order by Ld. ASJ that the witnesses Ram Chander and Rakesh, prima facie came to the spot subsequent to the incident and therefore, at this stage there can be no adverse inference drawn nor can it be said that there is a contradiction in the statements of the witnesses. It is submitted that there is no infirmity in the Impugned Order and the Revision is liable to be rejected.
13. ***Learned counsel on behalf of the Complainant*** has essentially argued on the same aspects. It is also pointed out that there is a cross Complaint which has been filed by the brother of the Petitioner in regard to the same incident whereby the happening of the incident is not in dispute. It is submitted that there is no merit in the Revision, which is liable to be dismissed.
14. **Submissions heard and record perused.**
15. Admittedly an incident took place on 18.04.2015. The Complainant/Respondent No.2/Raj Singh had detailed in his Complaint that there was a quarrel between him and co-accused



Himanshu who went to his house and came back armed with a kitchen knife. His brother, Gaurav/Petitioner accompanied him and while Gaurav caught him, Himanshu inflicted injuries on him with a kitchen knife. There are prima facie clear averments of *wrongful restraint* and of *causing hurt by a knife* discernible from the complaint.

16. The inflicting of injuries is corroborated by the fact that on the same day, Complainant was taken to the hospital and his MLC was prepared.

17. The record reflects that IO had moved an Application for getting a copy of the MLC on the ground that the original MLC had got misplaced. This explains the reason for the original MLC not being on record. Mere non-production of original MLC, cannot be considered a factor creating doubt on the Complaint of Raj Singh.

18. The other circumstance which has been alleged to create a doubt about the incident is the delay of four days in registration of FIR on 22.04.2015, even though the Complainant was discharged from the hospital on the same day of incident.

19. It is a matter of trial whether there is any cogent explanation of delay of 4 days in registration of the FIR. It cannot be ignored at this stage, that the happening of the incident itself is prima facie established from the statement of the Complainant and the other supporting witnesses; the role of the Petitioner as described by the Complainant and its veracity, can be tested only after the evidence is recorded and not at this stage.



20. In the end, it is claimed that the statements of the two witnesses Ram Chander and Rakesh are in sharp contradiction to the statement of the Complainant in so much as neither of them, took the name of the Petitioner Gaurav as the assailant.

21. Learned ASJ has comprehensively considered the statements of these two witnesses and has noted that prima facie the two reached the spot after the incident. Again, it is a matter of evidence whether the Petitioner was in fact present or not. The learned ASJ has rightly concluded that the statement of the Complainant, cannot be overlooked at this stage and it can also not be concluded that the Statement of witnesses are contradictory.

22. There is a prima facie case made out against the Petitioner under Section 324/341/34 IPC.

23. There is no merit in the present Petition which is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 10, 2025/rk