



2024:DHC:1480



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

Date of decision: 23.02.2024

+ **CRL.REV.P. 257/2024**

NARESH KUMAR AND OTHERS

..... Petitioners

Through: Mr.Achin Goel, Adv. (through
VC)

versus

THE STATE NCT OF DELHI & ANR.

..... Respondents

Through: Ms.Priyanka Dalal, APP with
ASI Dilbag Hussain

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 5799/2024 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 12.12.2023 (hereinafter referred to as 'Impugned Order') passed by the learned Additional Sessions Judge-06 (South) Saket Courts, New Delhi (hereinafter referred to as 'Trial Court') in SC 455/2023, titled *State v. Naresh Kumar @ Sunny*, arising out of the FIR No. 303/2023 registered at Police Station: Tigri under Sections 308/34 of



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the Indian Penal Code, 1860 (in short, 'IPC'). Later, the charge-sheet was filed *inter alia* against the petitioners under Sections 307/34 of the IPC.

3. Issue notice.

4. Notice is accepted by Ms.Priyanka Dalal, learned APP for the State.

5. By the Impugned Order, the learned Trial Court has found *prima facie* case for offence under Sections 307/34 of the IPC to be made out *inter alia* against the petitioners and consequently, has directed framing of the charge accordingly.

6. The learned counsel for the petitioners submits that the MLC dated 05.08.2023 carried out at the Jai Prakash Narayan Apex Trauma Center (AIIMS) records the history of the assault given by the injured as an assault by 6-7 persons by hitting with a blunt object at 10.00 PM. The injured did not state that the injury was inflicted on his stomach with any intention or knowledge to cause death. In fact, the MLC shows that the only injury suffered by the injured was laceration over face below left eye orbit and over left temporal region. These were 'simple' in nature.

7. He submits that later, the IO instigated the injured to make a complaint so that more serious charge can be made against the petitioners. On such instigation, the injured then reported that he had undergone an operation for Appendix and is having pain in his stomach. It is only based on the said instigation, that further procedure was carried out on the injured, however, even in the report dated 12.08.2023, the doctors found no internal bleeding and the injured was



managed only with antibiotics and analgesics.

8. The learned counsel for the petitioner submits that the prosecution still not satisfied, took another opinion from the Super-Speciality Division of Forensic Pathology And Molecular DNA Laboratory, JPN Apex Trauma Centre, AIIMS, New Delhi, which again opined only as under:

“OPINION: (As per Findings mentioned in the Documents submitted)-

Considering all the findings as mentioned in MLC Report, Xray report and Discharge summary, I am of the opinion that injuries sustained by Mr Manish, are grievous in Nature, caused by blunt external force/surface impact and could have been possible in alleged circumstances i.e Assault. And injuries sustained in incident caused the operation at that time.”

9. He submits that even this opinion does not suggest that the petitioners could have had knowledge or intention to cause death of the injured. He submits that, therefore, charge under Section 307 of the IPC cannot be framed.

10. He further submits that the learned Trial Court has wrongly opined that, in the present case, Sub clause (8) of Section 320 of the IPC can be invoked. He submits that the injured did not suffer any bodily pain for a period of 20 days nor was he unable to follow his ordinary pursuits for the said period. The injuries suffered by him also did not endanger his life.

11. On the other hand, the learned APP, who appears on advance notice, submits that the petitioners are the neighbours of the injured. They were fully aware of the injured having undergone a procedure



for Appendix. They intentionally tried to cause injury on parts that were relevant with respect to the said procedure, that is, his stomach. There was also an injury caused on the head of the injured with a stone slab. She submits that for invoking Section 307 of the IPC, it is not necessary that the injured must suffer a grievous injury, rather it is the intention of the accused that is important. She further submits that, in the present case, the intention can be gathered from the manner in which the injury has been caused to the injured.

12. I have considered the submissions of the learned counsels for the parties.

13. I must first remember that the jurisdiction of this Court, at this stage, is rather limited. The Supreme Court in its judgement in *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1, has held that the inherent power under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. In *State of Haryana and Ors v. Bhajan Lal and Ors*. 1992 Supp (1) 335, the Supreme Court, while giving illustrative cases where the FIR or a complaint may be quashed, also cautioned that the power vested with this Court even under Section 482 of the Cr.P.C. is limited and should be exercised very sparingly, with circumspection and that too, only in rarest of rare cases, and only where no case can at all be said to have been made out against the accused or where the trial itself would be a travesty of justice. I am afraid that the petitioners have not been able to make out such a case in the present factual background.

14. The learned Trial Court based on the evidence that has been presented before it by the prosecution, has found reason to proceed



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against the petitioners under Sections 307/34 of the IPC. The injuries suffered by the injured are evident from the various medical reports that have been placed on record. The injured was hospitalised for almost a week. The medical report of 08.09.2023 also opines that the injuries suffered by the injured were grievous in nature. Whether the petitioners were in knowledge of the injured having undergone a procedure for Appendix and therefore, can be attributed with an intention or knowledge for causing death, are matters of evidence in trial. This is not the stage for entering into a detailed analysis of the same.

15. I, therefore, find no merit in the present petition. The petition and the application are accordingly dismissed.

NAVIN CHAWLA, J

FEBRUARY 23, 2024/ns/am

Click here to check corrigendum, if any