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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 404/2023 & CRL.M.A. 9452/2023**

SIYARAM KANOJIA

.....Petitioner

Through: Mr. Ripu Daman
Bhardwaj, Mr. Kushagra
Kumar & Mr. Abhinav
Bhardwaj, Advs.

versus

NCT OF DELHI

.....Respondent

Through: Mr. Naresh Chahar, APP
for the State.
SI Rahul, DIV 1E.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **09.07.2024**

1. The present petition is filed under Section 397 read with Section 482 of the Criminal Procedure Code, 1973 (**CrPC**) challenging the order dated 03.12.2022, passed by the learned Additional Sessions Judge (**ASJ**) in FIR No. 350/2015 (hereafter '**the impugned order**').
2. The learned ASJ by the impugned order has issued summons to the petitioner by invoking the provisions of Section 319 of the CrPC. The petitioner has been summoned as an accused in relation to offences under Sections 308/323/34 of the Indian Penal Code, 1860.
3. The FIR No. 350/2015 was registered pursuant to the complaint given by the complainant, who alleged that he along with his brother were beaten up by the petitioner and other accused persons pursuant to a quarrel which the petitioner had, with the brother of the complainant. Various injuries were also



allegedly suffered by the complainant and his brother.

4. The learned counsel for the petitioner submits that the impugned order has been passed erroneously without considering the record. He submits that the petitioner was falsely implicated in the present case which had led to the petitioner filing a complaint with the Public Grievances Cell (PG Cell) of the Delhi Police.

5. He submits that pursuant to the complaint given by the petitioner, a separate inquiry was conducted and the complaint given by the petitioner was found genuine. On the basis of the scientific evidence collected by the prosecution it was found that the petitioner was not even present at the spot at the time of the alleged quarrel. He submits that report of the PG Cell was produced before the learned Trial Court and the learned Trial Court by order dated 03.12.2016 had released the petitioner from the case after accepting the scientific evidence.

6. The learned Trial Court in its order dated 03.12.2016 categorically noted that the allegations made against the petitioner are baseless. It is not disputed that the learned Trial Court by a specific judicial order dated 03.10.2016 had released the petitioner from the case. It appears that the charges were subsequently framed and the petitioner was not charged for any offence under Sections 308/323/34 of the IPC.

7. The statement which led to issuance of the impugned order is consistent with the statement which was considered by the learned Trial Court on earlier occasion and despite the same, the petitioner was not charged considering the scientific evidence. It is apparent that the impugned order has been passed without considering the record.

8. The Magistrate has power under Section 319 of the CrPC



to proceed against any person who appears to be guilty of an offence. The power, however, is not to be exercised in a mechanical and casual manner. It is apparent that the impugned order is passed without being apprised of the proceedings as held before the learned Trial Court on earlier occasion.

9. In view of the above, the present petition is allowed and the impugned order is set aside and the matter is remanded back to the learned Trial Court for consideration afresh.

10. The petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

JULY 9, 2024

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