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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 963/2024 & CRL.M.A. 22158/2024**
DEEPANKAR & ANR.Petitioners

Through: Mr. Jairaj Singh, Mr. Deepak Chopra
& Mr. Kapil Gaur, Advs

versus

THE STATE NCT OF DELHIRespondent
Through: Mr. Digam Singh Dagar, APP for
State with Insp. Rahul DIU

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **04.10.2024**

1. This petition has been filed assailing the order on charge dated 21st December 2023. Status report has been filed by the State in this regard.
2. Counsel for the petitioner points out in particular to para 10 which has relied upon simple injuries which were evident from the MLCs of Shankar, Kavita, Sheela Devi and Shivam; but still charges under Section 308/34 IPC have been framed aside from Sections 325/324/452 /34 IPC as well. The challenge is only to charge under Section 308 IPC.
3. MLCs have been perused by this Court which showed that all injuries are simple except for that of Vinod, who had sustained grievous injuries.
4. Counsel for petitioner further points out that in the altercation that occurred on 3rd August 2017 between the accused and people who had accompanied him and tenants of his father were allegedly in retaliation of injuries sustained by his father at behest of complainants.
5. A cross FIR No.777/2017 has also been registered against the complainants, on the same date, in which charges have been framed. As per the impugned order, it is noted that the issue arose only out of an alleged criminal trespass in the house of the complainants, where the accused and



others were carrying baseball bats and *dandas* and assaulted the complainants and the family members. When a mob gathered, they fled away, leaving the *dandas* and baseball bats at the spot. The existence of injuries which are normally simple in nature, do not invite a charge of Section 308 IPC.

6. In this regard, counsel for petitioner has adverted to the decision of this Court in ***Sanjeev Kumar & Anr. v. State***, 2023:DHC:2060 where in a similar situation the case law has been discussed. In particular, attention is drawn to decision in ***Bhram Dutt v. State*** 1996 SCC OnLine Del 163 wherein it was held that in order to constitute an offence under Section 308 IPC “*it must be proved (1) that the accused committed an act, (2) that the said act was committed with the intention or knowledge to commit culpable homicide not amounting to murder and (3) the act was committed under such circumstances if the accused by that act had caused death he would have been guilty of culpable homicide.*” It was further ruled that intention is a question of fact which is gathered from the acts committed by the accused and knowledge means awareness of the consequences of the act. This has also been followed by this Court in *Ved Kumari v. State*, 2002 SCC OnLine Del 168 in setting aside summons issued under Section 308 IPC.”

7. In this view of the matter, having appreciated overall facts and circumstances, the petition is allowed and charges under Section 308 IPC are therefore not sustainable. The trial may proceed with respect to other charges.

8. Petition stands disposed of along with the pending application.

9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 4, 2024/sm