



\$~65

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

+ **CRL.M.C. 6065/2024**

AVINASH SHARMA

.....Petitioner

Through: Mr.Atul Agarwal and Ms.Harshita
Agarwal, Advocates

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Salman Ahmed

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **06.08.2024**

CRL.M.A. 23189/2024 (delay in refiling)

1. By way of present application, the petitioner seeks condonation of delay of 68 days in refiling the petition.
2. For the reasons stated in the application, the same is allowed and the delay of 68 days in refiling the petition is condoned.
3. The application is disposed of.

CRL.M.C. 6065/2024

1. By way of present petition, the petitioner seeks to assail the order dated 05.02.2024 passed by the learned trial court whereby the petitioner's/complainant's application filed under Section 319 Cr.P.C. seeking to summon one *Suman Kaushik*, was dismissed.
2. The facts in nutshell are that the present FIR came to be registered in



the context of an incident that had statedly taken place on 07.04.2016. The petitioner has alleged that when he had visited his ancestral plot near Masjid Moth, Y Block, near Shiv Mandir, there were three guards, who had given beatings to the petitioner resulting in injuries. While the FIR was registered under Sections 308/34 IPC, the chargesheet came to be filed under Sections 308/325/174A/ 34 IPC. Apparently, during the course of his testimony, the petitioner noted a lady/*Suman Kaushik* sitting in the court room and for the first time identified her to be the one, who was also present at the spot on the day of the incident. The petitioner attributed the role of instigation to the said lady/*Suman Kaushik* and further stated that at her instigation, three guards/accused persons gave beatings to him. Having made that statement, the subject application under Section 319 Cr.P.C. was filed for impleadment of the said lady/*Suman Kaushik*.

3. Learned counsel for the petitioner contends that even in his statement recorded under Section 161 Cr.P.C. (Ex.PW1/A), the petitioner had mentioned about the presence of a lady/*Suman Kaushik* who had instigated the guards. It is also stated that the presence of that lady at the spot on the day of the incident also finds support from DD No.3A which was lodged at her instance about the incident. It is contended that the I.O. instead of filing the said DD No.3A with the chargesheet, filed the DD No.4A dated 04.08.2016 in the list of documents along with the charge sheet.

4. The present petition is accompanied by previous statements as well as the deposition of the petitioner recorded in trial court. A perusal of the FIR would show that the same was registered at the instance of the present petitioner. In his complaint/statement, the petitioner had stated that when he reached the spot and was talking to one guard, the other two guards were



sitting on the other side. One guard came from behind and hit a *danda* on his head. While the petitioner was trying to save himself, the other two guards also came and together all of them started hitting the petitioner resulting in injuries. After some time, an old lady came and asked the guards to give more beatings to the petitioner. A reading of the above statement nowhere indicates that those guards gave further beatings to the petitioner after the alleged instigation by the old lady. The statement would reveal that those three guards had already given beatings to the petitioner and no further beating was given thereafter. The petitioner's testimony in Court is clearly an improvement over the previous statement. Admittedly, the petitioner neither filed a protest petition when the chargesheet was filed nor took any steps demanding further investigation. The petitioner's identification of the lady in the court room, in absence of any prior identification or allegations, is of no significance. Accordingly, this Court finds no ground to interfere with the impugned. Accordingly, the present petition is dismissed.

MANOJ KUMAR OHRI, J

AUGUST 6, 2024

na